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Labour Law II

Q&A Exam Guide · Part A

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LABOUR LAW II | UNIT I: WAGES

Part A | 6-Mark Short Answers

Q1. Whitley Commission Recommendations

PRIORITY: ★★★ | PART: A | FREQ: 7

The Royal Commission on Labour and Its Wage Recommendations

The Whitley Commission, formally the Royal Commission on Labour in India (1929 to 1931), was appointed under the chairmanship of J.H. Whitley to investigate the conditions of industrial labour in British India. It submitted its report in 1931 with comprehensive recommendations covering wages, health, housing, and industrial relations. The Commission's findings became the foundation for all subsequent labour legislation in India.

Legal Foundation

- Article 43, Constitution of India, 1950 : Directs the State to secure a living wage and decent standard of life for workers, reflecting the Commission's wage philosophy
- Section 3, Minimum Wages Act (MWA) 1948 : Empowers the government to fix minimum wages, a direct legislative outcome of the Commission's recommendations
- Section 2(y), Code on Wages (CoW) 2019 : Defines wages comprehensively, consolidating the wage framework the Commission first envisioned

> **Mnemonic: "WHLFI"**
>
> **Wages | Housing | Living Standard | Fixation | Industrial Relations**

Wages | Housing | Living Standard | Fixation | Industrial Relations

Wages

The Commission recommended that wages must not fall below subsistence level and should progressively rise to a living wage standard. This recommendation catalysed the appointment of the Committee on Fair Wages in 1948, which introduced the three-tier wage structure: minimum wage, fair wage, and living wage.

Housing

The Commission identified that deplorable housing conditions of industrial workers reduced productivity and led to disease. It recommended employer-provided housing or government-subsidised accommodation near industrial zones, a principle later codified in welfare fund legislations.

Living Standard

The Commission emphasised that the standard of living of workers must be uplifted through statutory intervention, not left to market forces. Article 43 of the Constitution directly traces its lineage to this recommendation.

Fixation

The Commission recommended creation of statutory machinery for wage fixation rather than leaving wages entirely to employer discretion. This principle materialised through the Minimum Wages Act, 1948, which empowered tripartite committees and advisory boards to fix and revise minimum rates.

Industrial Relations

The Commission recommended establishment of Works Committees and conciliation machinery to resolve disputes without strikes. The Industrial Disputes Act (IDA) 1947 implemented this through Sections 3 (Works Committees) and 4 (Conciliation Officers).

Case Laws

Edward Mills Co. Ltd. v. State of Ajmer (Supreme Court of India, 1955)

📋 Facts

The employer challenged the constitutional validity of the Minimum Wages Act, 1948, arguing that fixing minimum wages without considering the employer's capacity to pay violated fundamental rights under Article 19(1)(g).

🔨 Held

The SCI upheld the validity of the MWA, holding that the State's power to fix minimum wages is a reasonable restriction in the interest of the general public.

💡 Principle

Minimum wage fixation is a constitutional obligation traceable to the Whitley Commission's philosophy that no industry has a right to exist unless it pays subsistence wages.

Bijay Cotton Mills Ltd. v. State of Ajmer (Supreme Court of India, 1955)

📋 Facts

The employer contended that minimum wages could not be imposed without reference to the capacity of the industry to pay, and that the Minimum Wages Act lacked procedural safeguards.

🔨 Held

The SCI held that the fixation of minimum wages is not dependent on the employer's capacity to pay; it is the bare minimum below which no employer can reduce wages.

💡 Principle

The living wage philosophy of the Whitley Commission creates an irreducible floor: capacity to pay is relevant only above minimum wages, not at or below them.

The Foundation of India's Statutory Wage Architecture

The Whitley Commission's 1931 recommendations remain the intellectual bedrock of Indian labour legislation. Every major wage statute from the MWA 1948 to the Code on Wages 2019 operationalises principles the Commission first articulated.

Q2. Living Wages

PRIORITY: ★★★ | PART: A | FREQ: 4

The Concept of Living Wage in Indian Labour Law

A living wage is the highest tier in India's three-tier wage structure, representing a wage sufficient to provide not merely bare subsistence but a measure of frugal comfort including education for children, medical care, and provision for old age. The Committee on Fair Wages (1948) defined it as the ultimate goal, while the Constitution enshrines it under Article 43 as a Directive Principle of State Policy (DPSP).

Legal Foundation

- Article 43, Constitution of India, 1950 : Directs the State to endeavour to secure a living wage ensuring a decent standard of life and full enjoyment of leisure
- Section 9, Code on Wages (CoW) 2019 : Empowers the Central Government to fix a floor wage considering minimum living standards of workers

> **Mnemonic: "LFEMP"**
>
> **Level | Fair Wages Committee | Education | Medical | Provision**

Level | Fair Wages Committee | Education | Medical | Provision

Level

The living wage stands at the apex of the three-tier wage hierarchy: minimum wage at the base, fair wage in the middle, and living wage at the top. The Supreme Court of India (SCI) in Workmen of Reptakos Brett v. Management (1992) held that the need-based minimum wage itself must progressively approximate the living wage.

Fair Wages Committee

The Committee on Fair Wages (1948), chaired by Justice Rajadhyaksha, defined living wage as a wage that provides not merely for bare physical subsistence but for the maintenance of health, decency, and a measure of comfort. This definition remains the authoritative reference in Indian judicial discourse.

Education

The living wage must include provision for children's education, distinguishing it from the minimum wage which secures only bare subsistence. Article 21A (Right to Education) reinforces this component as a fundamental right, strengthening the constitutional mandate for a living wage.

Medical

Healthcare costs form an essential component of the living wage, as recognised by the 15th Indian Labour Conference (ILC) 1957, which resolved that the need-based minimum wage must factor in medical requirements. The SCI in Workmen of Reptakos Brett applied this standard directly.

Provision

The living wage must include provision for old age, contingencies, and marriage expenses, as distinct from minimum wage which covers only immediate survival needs. The Code on Wages 2019, Section 9, mandates that the floor wage shall consider minimum living standards, inching statutory recognition towards the living wage ideal.

Case Laws

Workmen of Reptakos Brett & Co. Ltd. v. Management (Supreme Court of India, 1992)

📋 Facts

Workmen demanded revision of wages claiming the existing minimum wage did not meet the norms laid down by the 15th ILC. The employer resisted, arguing that minimum wages were already being paid as per the statute.

🔨 Held

The SCI held that the need-based minimum wage must include food, clothing, housing, education, medical, and a minimum of 25% as a cushion above the total, progressively moving towards a living wage.

💡 Principle

The living wage is not aspirational rhetoric but a constitutional obligation; minimum wage fixation must incrementally approach it.

Express Newspapers Ltd. v. Union of India (Supreme Court of India, 1958)

📋 Facts

Newspaper establishments challenged the Working Journalists (Conditions of Service) Act, 1955, arguing that the wage board's fixation of wages above minimum amounted to confiscation of profits.

🔨 Held

The SCI upheld the wage fixation, holding that workers are entitled to a fair wage progressing towards a living wage, and the employer's capacity to pay does not negate this entitlement.

💡 Principle

The obligation to pay wages progressing towards a living standard exists independently of profit margins; the State may compel such payment through statutory wage boards.

Living Wage as a Constitutional Imperative Beyond Statutory Minimums

The living wage remains the unfulfilled constitutional promise under Article 43, with every statutory mechanism from the MWA 1948 to the CoW 2019 designed as incremental steps towards its realisation.

Q3. Authorized Deductions from Wages

PRIORITY: ★★★ | PART: A | FREQ: 5

Permissible Deductions Under the Payment of Wages Act

Authorized deductions are the only lawful reductions an employer may make from a worker's wages, exhaustively enumerated under Section 7 of the Payment of Wages Act (PWA) 1936. Any deduction not falling within this statutory list is illegal, and the employer is liable to pay the full wage without such reduction.

Legal Foundation

- Section 7, Payment of Wages Act (PWA) 1936 : Enumerates the exhaustive list of permissible deductions from wages
- Section 18, Code on Wages (CoW) 2019 : Re-enacts and consolidates the deduction provisions, limiting total deductions to 50% of wages

> **Mnemonic: "FADIP"**
>
> **Fines | Absence | Damage | Income Tax | PF**

Fines | Absence | Damage | Income Tax | PF

Fines

Fines may be imposed only for acts and omissions specified and approved by the government, and the total fine in any wage period cannot exceed 3% of wages due. Section 8 of the PWA 1936 requires that the worker be given a show-cause notice before imposition, and all fine amounts must be credited to a welfare fund.

Absence

Deduction for absence from duty is permissible only for the period of actual absence, and the deduction must be proportionate to the period of absence. No deduction can be made if the absence is caused by the employer's own lockout or failure to provide work.

Damage

Deduction for damage to or loss of goods expressly entrusted to the worker is permissible under Section 7(2)(c), but only after giving the worker a show-cause opportunity. The deduction cannot exceed the actual value of the damage and must not be punitive.

Income Tax

Deduction of income tax at source is authorized when required by law under the Income Tax Act, 1961. This is a statutory obligation on the employer as a deducting agent, and the amount must correspond exactly to the tax liability computed under applicable slabs.

PF

Deduction towards the Employees' Provident Fund (EPF) is authorized under Section 7(2)(h) of the PWA 1936, read with the Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952. The employer's contribution is matched by the employee's contribution, currently fixed at 12% of basic wages.

Case Laws

Anand Bazar Patrika v. Workmen (Supreme Court of India, 1963)

📋 Facts

The employer imposed fines on workers for various acts of indiscipline without following the prescribed procedure of show-cause notice under the PWA. Workers challenged the deductions.

🔨 Held

The SCI held that fines imposed without following the mandatory procedure under Section 8 of the PWA are illegal, and the deducted amounts must be refunded.

💡 Principle

Authorized deductions are procedurally governed: even where the head of deduction is lawful, failure to follow prescribed procedure renders the deduction void.

Phulbari Tea Estate v. Workmen (Supreme Court of India, 1959)

📋 Facts

The employer deducted amounts from wages for damage to tea garden equipment without giving workers an opportunity to show cause. Workers claimed full wages.

🔨 Held

The SCI held that deduction for damage without show-cause notice is unauthorized even if damage actually occurred, and ordered payment of full wages.

💡 Principle

The right to deduct under Section 7(2)(c) is conditional on procedural compliance; the burden of proving both damage and procedural adherence lies on the employer.

Deductions as an Exhaustive Statutory Code, Not Employer Discretion

Section 7 of the PWA 1936 (now Section 18, CoW 2019) operates as a closed list: what is not expressly permitted is prohibited, capping total deductions at 50% and protecting the worker's take-home wage.

Q4. Fair Wage

PRIORITY: ★★☆ | PART: A | FREQ: 3

The Concept of Fair Wage Between Minimum and Living Wage

A fair wage is the median tier in India's three-tier wage structure, positioned above the minimum wage (bare subsistence) and below the living wage (frugal comfort). The Committee on Fair Wages (1948) defined it as a wage that approximates the industry's capacity to pay while maintaining productivity, benchmarked against prevailing rates in similar occupations.

Legal Foundation

- Article 43, Constitution of India, 1950 : Directs the State to secure conditions of work ensuring a decent standard of life, within which fair wage is the operative target

- Section 6, Code on Wages (CoW) 2019 : Empowers the appropriate government to fix minimum wage rates considering skill, arduousness, and geographic conditions, which are fair wage factors

> **Mnemonic: "CAPPS"**
>
> **Capacity | Approximation | Prevailing Rate | Productivity | Skill**

Capacity | Approximation | Prevailing Rate | Productivity | Skill

Capacity

The fair wage is bounded by the employer's capacity to pay, unlike the minimum wage which is an irreducible obligation regardless of profitability. The Committee on Fair Wages held that where the industry can pay more than minimum but less than living, the fair wage is the target.

Approximation

Fair wage approximates the living wage progressively: as the industry's financial health improves, the fair wage must move upward towards the living wage standard. The SCI in Express Newspapers v. Union of India (1958) affirmed this progressive trajectory.

Prevailing Rate

The fair wage must consider wages prevailing in similar occupations in the same region or industry, ensuring comparability and preventing exploitation through isolation. Wage boards constituted under the Industrial Disputes Act (IDA) 1947 use this as a primary benchmark.

Productivity

The relationship between wages and productivity is a core determinant of fair wage: higher productivity justifies higher wages. The National Commission on Labour (1969) recommended linking wage increases to productivity gains as the sustainable path towards fair wages.

Skill

Fair wage accounts for the skill gradient: skilled, semi-skilled, and unskilled workers receive differentiated rates reflecting the value of their labour contribution. Section 6 of the CoW 2019 mandates that minimum wage rates (the floor for fair wage) shall be fixed with regard to skill of workers and difficulty of work.

Case Laws

Crown Aluminium Works v. Their Workmen (Supreme Court of India, 1958)

📋 Facts

The employer argued that wage fixation by the tribunal exceeded what the company could afford, and that wages should be pegged to the minimum statutory rate rather than to fair wage standards.

🔨 Held

The SCI held that tribunals must fix wages at the fair wage level where the industry's capacity to pay permits, and minimum wage is merely the irreducible floor.

💡 Principle

Fair wage is the operational target for wage fixation; the employer's capacity to pay determines how far above minimum the wage can be pushed.

Express Newspapers Ltd. v. Union of India (Supreme Court of India, 1958)

📋 Facts

Newspaper establishments challenged wage board recommendations as exceeding minimum wages, arguing no statutory authority compelled payment above statutory minimum.

🔨 Held

The SCI upheld that the State can compel payment of fair wages through statutory machinery; the Constitution mandates progressive wage improvement beyond bare minimums.

💡 Principle

Fair wage is a constitutional entitlement under Article 43, not merely an aspirational recommendation; the State possesses legislative competence to enforce it.

Fair Wage as the Operational Standard Between Floor and Ceiling

The fair wage represents the achievable middle ground: below the living wage ideal, above the minimum wage floor, calibrated to industry capacity and progressively elevated as economic conditions permit.

Q5. Definition of Wages

PRIORITY: ★★☆ | PART: A | FREQ: 3

Statutory Definition of Wages Under Indian Labour Law

Wages, under Section 2(vi) of the Payment of Wages Act (PWA) 1936, means all remuneration expressed in terms of money which would be payable to a person employed in respect of his employment or of work done. The Code on Wages (CoW) 2019, Section 2(y), expands this definition to include basic pay, dearness allowance, and retaining allowance, while excluding ten specified categories.

Legal Foundation

- Section 2(vi), Payment of Wages Act (PWA) 1936 : Defines wages as all remuneration payable in respect of employment, establishing the original statutory meaning

- Section 2(y), Code on Wages (CoW) 2019 : Provides the consolidated modern definition, listing inclusions and ten specific exclusions

> **Mnemonic: "DBIRK"**
>
> **Definition | Basic Pay | Inclusions | Retrenchment Exclusion | Kind**

Definition | Basic Pay | Inclusions | Retrenchment Exclusion | Kind

Definition

Under Section 2(y) of the CoW 2019, wages means all remuneration whether by way of salary, allowances, or otherwise, expressed in terms of money or capable of being so expressed. The definition is inclusive rather than restrictive, capturing every monetary benefit flowing from the employment relationship.

Basic Pay

Basic pay forms the core component of wages and is the reference point for calculating statutory entitlements including bonus, gratuity, and provident fund contributions. The SCI in Manipal Academy of Higher Education v. Provident Fund Commissioner (2008) held that allowances universally paid become part of basic wages for PF computation.

Inclusions

The CoW 2019 expressly includes basic pay, dearness allowance (DA), and retaining allowance within wages. Any allowance paid universally and unconditionally to all employees is treated as wages, not as an excluded special allowance.

Retrenchment Exclusion

The definition excludes retrenchment compensation, gratuity, employer PF contribution, conveyance allowance, house rent allowance (HRA), overtime, commission, and bonuses exceeding specified thresholds. These ten exclusions are exhaustive: what is not excluded is included.

Kind

Wages must be paid in current coin or currency notes, or by cheque or bank transfer. Section 6 of the PWA 1936 prohibits payment in kind except where custom or usage permits a partial payment in kind, subject to government notification and a cap.

Case Laws

Manipal Academy of Higher Education v. Provident Fund Commissioner (Supreme Court of India, 2008)

📋 Facts

The employer excluded certain allowances (education, medical, special) from basic wages for PF computation. The PF Commissioner directed inclusion. The employer challenged this before the SCI.

🔨 Held

The SCI held that allowances paid universally and not linked to any special condition are part of basic wages for PF purposes, regardless of nomenclature.

💡 Principle

The substance of the payment, not its label, determines whether it falls within the definition of wages; universally paid allowances are wages.

Bridge and Roof Co. (India) Ltd. v. Union of India (Supreme Court of India, 1963)

📋 Facts

Workmen claimed that travel allowance and project allowance paid regularly should be treated as wages for computing overtime and bonus. The employer classified them as special allowances outside the wage definition.

🔨 Held

The SCI held that regularity and universality of payment are the tests; allowances paid routinely to all workers constitute wages irrespective of employer classification.

💡 Principle

The definition of wages is governed by statutory text and judicial interpretation of substance over form: regularity, universality, and connection to employment are the determinants.

Wages as a Substance-Over-Form Statutory Concept

The definition of wages under both the PWA 1936 and the CoW 2019 is deliberately expansive: it includes all employment-linked remuneration by default and excludes only what the statute expressly carves out.

Q6. Minimum Wage

PRIORITY: ★★☆ | PART: A | FREQ: 2

Minimum Wage as the Irreducible Statutory Floor

Minimum wage is the lowest rate of remuneration which an employer is legally bound to pay, fixed by the appropriate government under the Minimum Wages Act (MWA) 1948 or the Code on Wages (CoW) 2019. The Supreme Court of India (SCI) in Bijay Cotton Mills v. State of Ajmer (1955) established that no industry has a right to exist unless it can pay at least the minimum wage.

Legal Foundation

- Section 3, Minimum Wages Act (MWA) 1948 : Empowers the appropriate government to fix minimum rates of wages in scheduled employments
- Section 9, Code on Wages (CoW) 2019 : Introduces a national floor wage below which no state government can fix minimum wages

> **Mnemonic: "FCRNB"**
>
> **Floor | Capacity Irrelevant | Revision | Need-Based | Bijay**

Floor | Capacity Irrelevant | Revision | Need-Based | Bijay

Floor

The minimum wage is the absolute statutory floor below which no employer may pay, regardless of agreement, custom, or contract. Section 9 of the CoW 2019 introduces a national floor wage fixed by the Central Government, below which no state minimum wage can fall.

Capacity Irrelevant

Unlike fair wage or living wage, the minimum wage is independent of the employer's capacity to pay. The SCI in Bijay Cotton Mills (1955) held that an industry which cannot pay the minimum wage has no right to exist: the floor is non-negotiable.

Revision

Minimum wages must be revised at intervals not exceeding five years under the MWA 1948, Section 3(1)(b). The CoW 2019, Section 8, mandates review and revision of minimum wages at intervals not exceeding five years, ensuring the floor keeps pace with inflation.

Need-Based

The 15th Indian Labour Conference (ILC) 1957 resolved that the need-based minimum wage must account for three consumption units per earning worker, minimum food intake of 2,700 calories, cloth (72 yards per annum per family), and housing at minimum rent. The SCI in Workmen of Reptakos Brett (1992) added 25% above as a cushion for children's education, medical, and contingencies.

Bijay

Bijay Cotton Mills Ltd. v. State of Ajmer (1955) is the foundational precedent: the SCI held that fixation of minimum wages is a valid exercise of state power under Article 19(6), and an employer cannot plead inability to pay as a defence against minimum wage obligations.

Case Laws

Bijay Cotton Mills Ltd. v. State of Ajmer (Supreme Court of India, 1955)

📋 Facts

The employer challenged the Minimum Wages Act, 1948 as violating Article 19(1)(g) (right to carry on trade), arguing that wages fixed without reference to capacity to pay amounted to forced closure.

🔨 Held

The SCI upheld the Act, holding that minimum wage fixation is a reasonable restriction under Article 19(6) and no employer can claim a right to pay below subsistence level.

💡 Principle

The minimum wage is a constitutional imperative: the State's power to fix it is plenary and cannot be defeated by the employer's plea of incapacity.

U. Unichoyi v. State of Kerala (Supreme Court of India, 1962)

📋 Facts

Employers in the coir industry challenged minimum wages fixed by the Kerala government as excessive, arguing that the small-scale nature of their establishments made compliance impossible.

🔨 Held

The SCI held that minimum wages must be paid regardless of the size or profitability of the establishment; the Act applies uniformly to all scheduled employments.

💡 Principle

The obligation to pay minimum wages is universal across all establishments in scheduled employment; scale of business is no defence to non-payment.

Minimum Wage as a Constitutional Floor Beyond Contractual Override

The minimum wage operates as jus cogens in Indian labour law: it cannot be contracted out, waived by agreement, or defeated by employer incapacity; it is the irreducible price of employing labour.

Q7. Wage Boards

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Wage Boards as Tripartite Wage Fixing Machinery

A Wage Board is a tripartite body constituted by the government to recommend wage structures for specific industries, comprising representatives of employers, workers, and independent members including a chairman. Wage Boards derive authority from the Industrial Disputes Act (IDA) 1947 and government executive power, functioning as an alternative to adjudication for industry-wide wage fixation.

Legal Foundation

- Section 7, Industrial Disputes Act (IDA) 1947 : Provides the framework for constitution of tribunals and adjudicatory bodies, within which wage boards operate as recommendatory alternatives
- Article 43, Constitution of India, 1950 : Mandates that the State secure a living wage and decent standard of life, which wage boards operationalise at industry level

> **Mnemonic: "TRINE"**
>
> **Tripartite | Recommendation | Industry-specific | Non-binding | Expert**

Tripartite | Recommendation | Industry-specific | Non-binding | Expert

Tripartite

Wage boards are composed of three parties: employer representatives, worker representatives, and independent members (including the chairman) appointed by the government. This tripartite composition ensures that wage recommendations reflect the interests and constraints of all stakeholders.

Recommendation

Wage board outcomes are recommendatory in nature, not binding as law until the government accepts and notifies them. The SCI in Express Newspapers v. Union of India (1958) held that once government accepts and implements wage board recommendations through legislation or notification, they acquire binding force.

Industry-specific

Each wage board is constituted for a specific industry: cotton textiles, jute, journalism, sugar, cement, and others. This allows wages to be tailored to the economic conditions, productivity levels, and competitive dynamics of each sector.

Non-binding

Unlike minimum wages fixed under the MWA which are immediately enforceable, wage board recommendations require government acceptance before they bind employers. However, once accepted, non-compliance attracts the same penalties as breach of any wage statute.

Expert

The independent members and chairman are typically economists, retired judges, or labour law experts who bring technical competence to the determination of fair wages. Their presence ensures that wage fixation is evidence-based rather than merely a product of bilateral bargaining power.

Case Laws

Express Newspapers Ltd. v. Union of India (Supreme Court of India, 1958)

📋 Facts

Newspaper proprietors challenged the recommendations of the Wage Board for Working Journalists as unconstitutional, arguing that the government could not compel payment of wages higher than minimum through a non-statutory body.

🔨 Held

The SCI upheld the constitutionality of wage board recommendations implemented through legislation, holding that the State can compel fair wages through any lawful machinery.

💡 Principle

Wage boards are a constitutionally valid mechanism for securing fair wages; their recommendations, once legislatively implemented, carry the force of law.

Hindustan Times Ltd. v. Their Workmen (Supreme Court of India, 1963)

📋 Facts

The employer refused to implement a wage board recommendation, arguing it was merely advisory and had no binding effect in the absence of specific legislation implementing it.

🔨 Held

The SCI held that where the government has accepted and notified wage board recommendations, they become enforceable and non-compliance constitutes a violation of applicable labour law.

💡 Principle

The recommendatory character of wage boards ceases upon government acceptance; notification transforms recommendation into enforceable obligation.

Wage Boards as Industry-Level Fair Wage Machinery

Wage Boards operationalise Article 43's directive at industry level, translating the constitutional aspiration of fair wages into sector-specific, evidence-based recommendations that bind upon government acceptance.

Q8. Dearness Allowance

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Dearness Allowance as a Cost of Living Adjustment Component

Dearness Allowance (DA) is a component of wages paid to employees to offset the impact of inflation and rising cost of living, calculated as a percentage of basic pay and revised periodically in response to the Consumer Price Index (CPI). Under Section 2(y) of the Code on Wages (CoW) 2019, DA is expressly included within the definition of wages.

Legal Foundation

- Section 2(y), Code on Wages (CoW) 2019 : Expressly includes dearness allowance within the statutory definition of wages
- Section 4, Payment of Wages Act (PWA) 1936 : Mandates timely payment of all wages including DA as part of the total remuneration due

> **Mnemonic: "CIPNW"**
>
> **CPI | Inflation | Percentage | Neutralisation | Wages Component**

CPI | Inflation | Percentage | Neutralisation | Wages Component

CPI

DA is linked to the Consumer Price Index, specifically CPI (Industrial Workers) for industrial labour and CPI (Urban) for others. Revision of DA follows CPI movements, ensuring that the allowance tracks actual price changes in the economy.

Inflation

The fundamental purpose of DA is neutralisation of inflationary impact on real wages: without DA, a worker's purchasing power erodes as prices rise while nominal basic pay remains static. The 15th ILC (1957) recognised this by mandating that need-based minimum wage must account for cost of living fluctuations.

Percentage

DA is expressed as a percentage of basic pay, revised quarterly or biannually depending on the sector and applicable rules. Central government employees receive DA revisions based on the recommendations of the Pay Commission, currently the Seventh Central Pay Commission (7th CPC).

Neutralisation

Full neutralisation means DA offsets 100% of the CPI increase; partial neutralisation means only a fraction is compensated. The SCI in Killick Nixon Ltd. v. Workmen (1975) held that full neutralisation is the goal, and tribunals should progressively increase DA towards full neutralisation.

Wages Component

DA is part of wages for all statutory purposes: computation of bonus under the Payment of Bonus Act (PBA) 1965, gratuity under the Payment of Gratuity Act (PGA) 1972, and PF under the EPFMPA 1952. Any attempt to exclude DA from wage computation for statutory benefits is impermissible.

Case Laws

Killick Nixon Ltd. v. Workmen (Supreme Court of India, 1975)

📋 Facts

Workers demanded full neutralisation of cost of living increases through DA. The employer offered only partial neutralisation, arguing that full neutralisation would render the business unviable.

🔨 Held

The SCI held that full neutralisation of cost of living is the ideal, and tribunals should progressively increase DA towards 100% neutralisation while considering the employer's financial position.

💡 Principle

Full DA neutralisation is the judicial goal; partial neutralisation is tolerated only as a transitional measure, not as a permanent ceiling.

Kamani Metals and Alloys Ltd. v. Workmen (Supreme Court of India, 1967)

📋 Facts

The employer sought to merge DA into basic pay to reduce future DA obligations, arguing that the merged amount would itself form a higher base. Workers resisted, claiming this would freeze the cost-of-living adjustment.

🔨 Held

The SCI held that merger of DA into basic pay is permissible only when it does not prejudice the worker's right to future DA revisions linked to CPI.

💡 Principle

DA must remain a dynamic, inflation-linked component; any structural change (merger, consolidation) is valid only if it preserves the worker's real wage protection.

DA as the Dynamic Inflation Shield Within the Wage Structure

Dearness Allowance is not a discretionary benefit but a statutory wage component designed to preserve purchasing power, included in wages for all statutory computations and progressively directed towards full neutralisation.

Q9. Industrial Relations Code, 2020

PRIORITY: ★☆☆ | PART: A | FREQ: 1

The Industrial Relations Code as a Consolidating Labour Framework

The Industrial Relations Code (IRC) 2020 is one of four labour codes enacted to consolidate and simplify 29 existing central labour laws into four codes. The IRC 2020 subsumes three statutes: the Industrial Disputes Act (IDA) 1947, the Trade Unions Act (TUA) 1926, and the Industrial Employment (Standing Orders) Act (IESOA) 1946, creating a unified framework for industrial relations, trade unions, and conditions of service.

Legal Foundation

- Section 2(p), Industrial Relations Code (IRC) 2020 : Defines "industrial dispute" expanding the scope to include disputes in organised and unorganised sectors
- Section 14, Industrial Relations Code (IRC) 2020 : Establishes the right to form trade unions and mandates registration, re-enacting and expanding TUA 1926 provisions

> **Mnemonic: "CTRNS"**
>
> **Consolidation | Trade Unions | Retrenchment | Negotiating Union | Standing Orders**

Consolidation | Trade Unions | Retrenchment | Negotiating Union | Standing Orders

Consolidation

The IRC 2020 merges three Acts (IDA 1947, TUA 1926, IESOA 1946) into a single code, eliminating overlapping definitions, conflicting provisions, and jurisdictional confusion. This consolidation aligns with the government's objective of ease of doing business while preserving worker protections.

Trade Unions

The IRC 2020 retains the right to form and register trade unions under Chapter III, while introducing the concept of a sole negotiating union or negotiating council. Registration requires a minimum of 10% or 100 workers (whichever is less) as members.

Retrenchment

Section 77 of the IRC raises the threshold for government permission before retrenchment from 100 workers (under IDA) to 300 workers. Establishments with fewer than 300 workers may retrench without prior government approval, significantly altering the retrenchment regime.

Negotiating Union

The IRC introduces the concept of a "negotiating union" (Section 14): where 51% or more workers are members of one union, it becomes the sole negotiating union. Where no single union has majority, a negotiating council of unions with at least 20% membership is formed.

Standing Orders

The IRC mandates certification of standing orders for all industrial establishments employing 300 or more workers (raised from 100 under IESOA 1946). Model standing orders apply by default where employers fail to certify their own.

Case Laws

Workmen of Hindustan Lever v. Hindustan Lever Ltd. (Supreme Court of India, 1984)

📋 Facts

Workmen were retrenched without following the procedure under Section 25F of the IDA 1947, including notice and compensation. The employer argued that the workers were not "workmen" within the statutory definition.

🔨 Held

The SCI held that retrenchment without compliance with Section 25F is void, and the workers are entitled to reinstatement with back wages.

💡 Principle

Procedural compliance in retrenchment is mandatory; this principle continues under Section 70 of the IRC 2020, which re-enacts the notice and compensation requirements for lawful retrenchment.

Bangalore Water Supply v. A. Rajappa (Supreme Court of India, 1978)

📋 Facts

The question was whether employees of a statutory corporation providing essential services fell within the definition of "industry" under the IDA 1947 and could raise industrial disputes.

🔨 Held

The SCI gave a broad interpretation: any systematic activity organised by cooperation between employer and employee for the production or distribution of goods and services is an "industry."

💡 Principle

The definition of "industrial dispute" and "industry" must be interpreted expansively to cover maximum workers; the IRC 2020 Section 2(p) carries this principle forward with its widened scope.

The IRC 2020 as a Structural Reset of India's Industrial Relations Architecture

The Industrial Relations Code 2020 represents the most significant restructuring of India's industrial law since 1947, consolidating three Acts, raising thresholds, and introducing the negotiating union concept while preserving core worker protections on retrenchment and dispute resolution.

End of Unit I | Part A | 9 Answers | Frequency-ordered

LABOUR LAW II | UNIT II: BONUS

Part A | 6-Mark Short Answers

Q1. Full Bench Formula

PRIORITY: ★★★ | PART: A | FREQ: 6

The Three-Tier Computation for Allocable Surplus

The Full Bench Formula is the method prescribed by the Labour Appellate Tribunal (Full Bench) in 1950 for computing the available surplus from which bonus is payable to workers. It was judicially evolved before the Payment of Bonus Act (PBA) 1965 codified it into statute, and operates as a three-tier pyramid: gross profit at the base, available surplus in the middle, and allocable surplus (from which bonus is actually paid) at the top.

Legal Foundation

- Section 4, Payment of Bonus Act (PBA) 1965 : Defines available surplus and prescribes the computation method codifying the Full Bench Formula
- Section 5, Payment of Bonus Act (PBA) 1965 : Defines allocable surplus as 67% of available surplus in companies and 60% in other establishments

Mnemonic: "GDAAP"

Gross Profit | Deductions | Available Surplus | Allocable Surplus | Payment

Gross Profit | Deductions | Available Surplus | Allocable Surplus | Payment

Gross Profit

Gross profit is calculated according to Schedule I (for banking companies) or Schedule II (for other establishments) of the PBA 1965, starting from net profit as per the Profit and Loss Account and adding back certain items (depreciation, development rebate, income tax). The computation begins with total revenue and subtracts only direct costs of production or service.

Deductions

From gross profit, the employer is entitled to deduct prior charges: depreciation admissible under the Income Tax Act (ITA) 1961, development rebate, direct taxes payable, and a return on paid-up capital (8.5% for companies). These prior charges represent the employer's legitimate deductions before any surplus becomes available for bonus distribution.

Available Surplus

Available surplus equals gross profit minus the prior charges (deductions). This is the pool from which bonus can potentially be distributed. Section 4 of the PBA 1965 defines available surplus as the excess of gross profit over the allowable deductions under Schedule I or II.

Allocable Surplus

Allocable surplus is the portion of available surplus earmarked for bonus distribution: 67% of available surplus in companies (because they pay tax) and 60% in other establishments. Section 5 of the PBA 1965 prescribes this ratio, ensuring the employer retains a portion of the surplus for reserves and reinvestment.

Payment

From the allocable surplus, the employer must pay minimum bonus (8.33% of annual salary/wage) even if the allocable surplus is insufficient, and may pay up to maximum bonus (20% of annual salary/wage) if the surplus permits. The 8.33% minimum is an unconditional obligation; the computation via the Full Bench Formula determines how much above minimum (up to 20%) is payable.

Case Laws

Mill Owners Association, Bombay v. Rashtriya Mill Mazdoor Sangh (Labour Appellate Tribunal, 1950)

📋 Facts

The question before the Full Bench of the Labour Appellate Tribunal was the correct method for computing the surplus from which bonus should be paid to textile workers across Bombay mills.

🔨 Held

The Full Bench laid down the formula: gross profit minus prior charges (depreciation, tax, return on capital) equals available surplus, from which an allocable portion is distributed as bonus.

💡 Principle

The Full Bench Formula is the authoritative method for computing bonus surplus, later codified in Sections 4 and 5 of the PBA 1965.

Associated Cement Companies v. Workmen (Supreme Court of India, 1959)

📋 Facts

The employer argued that the Full Bench Formula should allow deduction of rehabilitation costs and reserves before computing available surplus, reducing the pool from which bonus is payable.

🔨 Held

The SCI held that only the deductions specified in the formula (depreciation, tax, return on capital) are permissible; additional deductions for reserves or rehabilitation cannot be read into the computation.

💡 Principle

The Full Bench Formula is exhaustive regarding permissible deductions: the employer cannot add extra prior charges beyond what the formula (and now the PBA 1965) prescribes.

The Full Bench Formula as the Codified Arithmetic of Bonus Entitlement

The Full Bench Formula remains the exclusive method for computing bonus entitlement: gross profit minus statutory prior charges equals available surplus, 67% (or 60%) of which constitutes the allocable surplus from which minimum to maximum bonus is distributed.

Q2. Set-on and Set-off of Allocable Surplus

PRIORITY: ★★★ | PART: A | FREQ: 5

The Carry-Forward Mechanism for Bonus Surplus and Deficit

Set-on and set-off is the statutory mechanism under Section 15 of the Payment of Bonus Act (PBA) 1965 that permits carrying forward excess allocable surplus (set-on) or deficit (set-off) across accounting years. It ensures that years of high profit subsidise years of low profit, creating a smoothing mechanism for bonus payments over a four-year rolling window.

Legal Foundation

- Section 15, Payment of Bonus Act (PBA) 1965 : Prescribes the set-on and set-off mechanism with a four-year carry-forward limit
- Schedule IV, Payment of Bonus Act (PBA) 1965 : Provides the format for computing set-on and set-off and maintaining the running account

> **Mnemonic: "EDFCL"**
>
> **Excess | Deficit | Four Years | Carry Forward | Limit**

Excess | Deficit | Four Years | Carry Forward | Limit

Excess

When the allocable surplus in any accounting year exceeds the amount of maximum bonus (20% of wages/salary) payable to employees, the excess is "set on" (carried forward) to be applied against deficit years. This excess is not paid out to workers in the current year but reserved in the set-on account for future adjustment.

Deficit

When the allocable surplus in any accounting year is insufficient to pay even the minimum bonus (8.33%), or falls between minimum and maximum, the shortfall is "set off" (carried forward as a negative balance) to be recovered from surplus years within the permissible window. The employer must still pay minimum bonus regardless of the set-off balance.

Four Years

The set-on or set-off balance can be carried forward for a maximum of four accounting years under Section 15 of the PBA 1965. If the excess (set-on) is not absorbed within four years, it lapses. If the deficit (set-off) is not recovered within four years, it is written off and cannot be claimed against future surplus.

Carry Forward

The mechanism operates as a running account maintained year to year in the format prescribed by Schedule IV. In any given year, the allocable surplus is first adjusted against the oldest outstanding set-off (deficit) before determining what is available for bonus distribution above the minimum.

Limit

The set-on in any year cannot exceed 20% of the total wages/salary of employees. This ceiling prevents indefinite accumulation of set-on balances. Similarly, set-off cannot reduce the bonus below the statutory minimum of 8.33%: the minimum is an absolute obligation regardless of accumulated deficits.

Case Laws

Jalan Trading Co. v. Mill Mazdoor Union (Supreme Court of India, 1967)

📋 Facts

The employer claimed set-off of deficit accumulated over prior years against the current year's surplus, seeking to reduce bonus payable below the minimum. Workers challenged this as violation of minimum bonus guarantee.

🔨 Held

The SCI held that set-off can reduce bonus payable only down to the minimum (8.33%); it cannot eliminate or reduce the minimum bonus obligation.

💡 Principle

The set-off mechanism operates above the minimum bonus floor: it adjusts the bonus between minimum and maximum but cannot breach the statutory minimum.

Titaghur Paper Mills Co. v. Their Workmen (Supreme Court of India, 1983)

📋 Facts

The employer maintained a set-on account showing accumulated surplus from prior profitable years. Workers demanded that the set-on be distributed as bonus above the minimum in the current year.

🔨 Held

The SCI held that set-on must be applied systematically against set-off balances first; only the net position after adjustment determines additional bonus above minimum.

💡 Principle

Set-on and set-off operate as a matched system: surplus years compensate deficit years through the running account, not as independent bonus entitlements.

Set-on and Set-off as the Statutory Smoothing Mechanism Across Accounting Cycles

Section 15 of the PBA 1965 ensures that bonus reflects the long-term profitability of the establishment (four-year window) rather than single-year volatility, while protecting the 8.33% minimum as an unconditional floor.

Q3. Eligibility of Bonus

PRIORITY: ★★☆ | PART: A | FREQ: 2

Who Is Entitled to Bonus Under the Payment of Bonus Act

Eligibility for bonus under the Payment of Bonus Act (PBA) 1965 is determined by two criteria: (1) the employee must be employed in an establishment to which the Act applies, and (2) the employee must have worked for at least 30 working days in the relevant accounting year. Section 8 prescribes the eligibility conditions while Section 2(13) defines "employee" for the purposes of the Act.

Legal Foundation

- Section 8, Payment of Bonus Act (PBA) 1965 : Prescribes that every employee drawing wages up to Rs.21,000 per month who has worked at least 30 days is eligible
- Section 12, Payment of Bonus Act (PBA) 1965 : Mandates that for computation purposes, the salary/wage ceiling is Rs.7,000 per month (or minimum wage, whichever is higher)

> **Mnemonic: "TWACD"**
>
> **Threshold | Wage Ceiling | Applicability | Computation Cap | Disqualification**

Threshold | Wage Ceiling | Applicability | Computation Cap | Disqualification

Threshold

The employee must have worked in the establishment for not less than 30 working days in the accounting year to be eligible for bonus under Section 8. This threshold is low, ensuring that even seasonal or short-term workers qualify if they cross the 30-day mark.

Wage Ceiling

The eligibility ceiling is Rs.21,000 per month (basic plus DA). Employees drawing wages above this ceiling are excluded from bonus entitlement under the PBA. This ceiling was raised from Rs.10,000 to Rs.21,000 by the Payment of Bonus (Amendment) Act 2015.

Applicability

The PBA applies to every factory and every establishment employing 20 or more persons on any day during an accounting year. Once applicable, it continues to apply even if the number falls below 20 subsequently. The Act does not apply to certain excluded establishments: LIC, seamen, universities, hospitals (unless established for profit), and others listed in Section 32.

Computation Cap

For purposes of computing bonus, the salary or wage is capped at Rs.7,000 per month or the minimum wage for the scheduled employment, whichever is higher (Section 12). An employee earning Rs.18,000 is eligible but bonus is computed on Rs.7,000 (or applicable minimum wage). This dual threshold (eligibility at Rs.21,000, computation at Rs.7,000) is a unique feature of the PBA.

Disqualification

Section 9 provides that an employee dismissed for fraud, riotous or violent behaviour, or theft, misappropriation, or sabotage of establishment property is disqualified from receiving bonus for that accounting year. Disqualification is not automatic: it must be linked to a specific ground under Section 9 and applies only to the year of dismissal, not prior entitlements.

Case Laws

Automobile Products of India v. Rukmaji Bala (Supreme Court of India, 1955)

📋 Facts

Workers who had worked for fewer than 30 days in the accounting year claimed bonus on the ground that they were employed throughout the year even if intermittently.

🔨 Held

The SCI held that the 30-day threshold is a minimum condition that must be satisfied by actual working days in the accounting year; employment status alone without 30 days of work does not confer eligibility.

💡 Principle

Eligibility under Section 8 requires actual work for 30 days: the test is working days performed, not duration of employment contract.

M/s Ispat Industries Ltd. v. Workmen (Bombay High Court, 2001)

📋 Facts

The employer denied bonus to workers whose monthly wages exceeded Rs.3,500 (the pre-amendment ceiling), arguing they were excluded from the Act's coverage.

🔨 Held

The Court held that the wage ceiling for eligibility must be applied as per the latest amendment in force at the relevant time; retrospective denial based on outdated ceilings is impermissible.

💡 Principle

The eligibility wage ceiling is a dynamic threshold amended periodically by Parliament; the ceiling in force during the accounting year determines eligibility.

Dual-Threshold Architecture of Bonus Eligibility and Computation

The PBA 1965 creates a two-gate system: eligibility gate at Rs.21,000 monthly wages, computation gate at Rs.7,000 (or minimum wage), with 30 working days as the minimum service condition and Section 9 as the exclusive disqualification code.

Q4. Concept of Bonus

PRIORITY: ★★☆ | PART: A | FREQ: 2

Bonus as a Statutory Right of Profit-Sharing

Bonus in Indian labour law is a statutory right of employees to a share in the profits or surplus of the establishment, codified under the Payment of Bonus Act (PBA) 1965. It is neither a gratuity nor ex gratia: the SCI in Muir Mills v. Suti Mills Mazdoor Union (1955) held that bonus is a deferred wage representing the worker's rightful share in profits generated by the combined efforts of capital and labour.

Legal Foundation

- Section 10, Payment of Bonus Act (PBA) 1965 : Mandates payment of minimum bonus at 8.33% of wages/salary even where the employer has no allocable surplus
- Section 11, Payment of Bonus Act (PBA) 1965 : Caps maximum bonus at 20% of wages/salary, linked to available allocable surplus

> **Mnemonic: "DSMMC"**
>
> **Deferred Wage | Statutory Right | Minimum 8.33% | Maximum 20% | Claim**

Deferred Wage | Statutory Right | Minimum 8.33% | Maximum 20% | Claim

Deferred Wage

The SCI in Muir Mills (1955) conceptualised bonus as a deferred wage: the worker produces surplus through labour, and bonus returns to the worker that portion of profit which is attributable to the labour component. This deferred wage theory distinguishes bonus from charity, gratification, or employer discretion.

Statutory Right

Since the PBA 1965, bonus is a statutory right, not dependent on employer goodwill or profit declaration. Section 10 mandates that every eligible employee shall be paid minimum bonus regardless of profit or loss. The right crystallises at the end of the accounting year and is enforceable through the claims machinery.

Minimum 8.33%

The minimum bonus under Section 10 is 8.33% of the salary or wage earned during the accounting year, or Rs.100, whichever is higher. This minimum is payable even if the employer suffers a loss or the allocable surplus is nil. It is an unconditional obligation on every covered establishment.

Maximum 20%

The maximum bonus is capped at 20% of wages/salary under Section 11. Where the allocable surplus permits distribution beyond 8.33%, the employer must distribute up to 20% but not beyond. Surplus exceeding the amount required for 20% bonus is subject to the set-on mechanism under Section 15.

Claim

Bonus must be paid within 8 months of the close of the accounting year under Section 19. Any employee (or union on behalf) may file a claim before the appropriate government authority if bonus is not paid. The limitation period for claims is one year from the date bonus becomes due.

Case Laws

Muir Mills v. Suti Mills Mazdoor Union (Supreme Court of India, 1955)

📋 Facts

Workers demanded bonus claiming it was their right as co-producers of profit. The employer argued bonus was discretionary and payable only from profits, not as an obligation.

🔨 Held

The SCI held that bonus is a deferred wage reflecting the worker's share in profits generated by the joint effort of capital and labour; it is not charity but entitlement.

💡 Principle

Bonus is conceptually a deferred wage: the worker's labour generates surplus, and bonus is the mechanism for returning the labour's share of that surplus.

Hind Construction v. Their Workmen (Supreme Court of India, 1965)

📋 Facts

The employer argued that since the establishment incurred losses, no bonus was payable in any form, and that the PBA 1965's mandate of minimum bonus even in loss years was unconstitutional.

🔨 Held

The SCI upheld the minimum bonus provision, holding that the 8.33% minimum reflects social justice policy and the employer's obligation exists independent of profitability.

💡 Principle

The statutory minimum bonus transcends profit: it is a social welfare obligation that the legislature has imposed regardless of the employer's financial position.

Bonus as the Codified Expression of the Deferred Wage Doctrine

Bonus under the PBA 1965 is a statutory right flowing from the deferred wage theory: minimum 8.33% regardless of profit, maximum 20% contingent on allocable surplus, payable within 8 months of accounting year closure.

Q5. Computation of Gross Profit

PRIORITY: ★★☆ | PART: A | FREQ: 2

Statutory Method for Computing Gross Profit Under the PBA

Computation of gross profit is the first step in the Full Bench Formula for determining bonus entitlement. The Payment of Bonus Act (PBA) 1965 prescribes two schedules: Schedule I for banking companies and Schedule II for all other establishments, each specifying which items are added back to net profit to arrive at gross profit for bonus computation purposes.

Legal Foundation

- Schedule II, Payment of Bonus Act (PBA) 1965 : Prescribes the method for computing gross profit in non-banking establishments (add-backs and exclusions from net profit)
- Section 4, Payment of Bonus Act (PBA) 1965 : Defines available surplus as gross profit minus allowable deductions, making gross profit computation the foundational step

> **Mnemonic: "NDDGT"**
>
> **Net Profit | Depreciation Add-back | Development | Gratuity | Tax Add-back**

Net Profit | Depreciation Add-back | Development | Gratuity | Tax Add-back

Net Profit

The computation starts with net profit as shown in the employer's Profit and Loss Account prepared under the Companies Act, 2013 (or the Income Tax Act, 1961 for unincorporated establishments). This is the base figure from which gross profit for bonus purposes is derived by making specified add-backs.

Depreciation Add-back

Depreciation charged in the Profit and Loss Account is added back to net profit because the Full Bench Formula allows depreciation as a prior charge (deduction) at a later stage. Adding it back here and then deducting it as a prior charge ensures consistent treatment. Only depreciation admissible under the Income Tax Act is later deducted.

Development

Development rebate or investment allowance claimed under the Income Tax Act is added back to net profit in the gross profit computation. Like depreciation, it is treated separately as a prior charge at the available surplus stage, preventing double deduction.

Gratuity

Direct taxes (income tax, super tax) actually paid or payable are added back to net profit. The PBA treats direct tax as a prior charge deductible from gross profit at the available surplus computation stage. Gratuity paid during the year is not added back: it remains a charge against profit because it is a statutory obligation to employees.

Tax Add-back

Income tax and super tax are added back to net profit in the gross profit computation stage and then deducted as a prior charge at the available surplus stage. This ensures that the bonus computation recognises tax as a legitimate prior charge but calculates it against the correct base (gross profit, not net profit).

Case Laws

Associated Cement Companies v. Workmen (Supreme Court of India, 1959)

📋 Facts

The employer sought to deduct rehabilitation costs and replacement reserves from gross profit before computing available surplus, arguing these were legitimate business needs.

🔨 Held

The SCI held that only the prior charges specified in the Full Bench Formula (depreciation, tax, return on capital) are deductible; additional reserves cannot be introduced into the computation.

💡 Principle

The gross profit computation and prior charge deductions under the PBA are exhaustive: the employer cannot introduce additional deductions beyond what Schedule II and Section 4 prescribe.

Hindustan Antibiotics v. Workmen (Supreme Court of India, 1967)

📋 Facts

Workers challenged the employer's computation of gross profit, alleging that certain capital receipts were excluded and certain revenue expenditures were inflated to reduce the gross profit figure.

🔨 Held

The SCI held that gross profit must be computed strictly in accordance with Schedule II; manipulation through accounting classification is impermissible, and the authority may direct recomputation.

💡 Principle

The Schedule II computation is a statutory formula that overrides accounting discretion: the employer must follow the prescribed add-back methodology without creative adjustments.

Gross Profit Computation as a Statutory Formula Immune to Accounting Discretion

The computation of gross profit under Schedule II of the PBA 1965 is a mechanical statutory process: start from net profit, add back specified items (depreciation, development rebate, direct taxes), and arrive at the gross profit figure from which prior charges are then deducted to yield available surplus.

Q6. Allocable Surplus

PRIORITY: ★☆☆ | PART: A | FREQ: 1

The Distributable Portion of Available Surplus

Allocable surplus is the statutory percentage of available surplus that is earmarked for distribution as bonus to employees under Section 5 of the Payment of Bonus Act (PBA) 1965. It is 67% of available surplus for companies (which bear corporate tax) and 60% for other establishments. This is the final figure from which actual bonus distribution is calculated.

Legal Foundation

- Section 5, Payment of Bonus Act (PBA) 1965 : Fixes allocable surplus at 67% of available surplus for companies and 60% for other establishments
- Section 4, Payment of Bonus Act (PBA) 1965 : Defines available surplus from which allocable surplus is derived

> **Mnemonic: "ASPRD"**
>
> **Available Surplus | Sixty-Seven | Percentage | Retained | Distribution**

Available Surplus | Sixty-Seven | Percentage | Retained | Distribution

Available Surplus

Allocable surplus is derived from available surplus (gross profit minus prior charges under Section 4). The available surplus is the total pool; the allocable surplus is the portion of that pool designated for bonus distribution. The distinction ensures the employer retains a portion for reinvestment and reserves.

Sixty-Seven

For companies (incorporated under the Companies Act), 67% of available surplus constitutes allocable surplus. The higher percentage for companies (compared to 60% for others) accounts for the fact that companies already pay corporate tax as a prior charge, leaving the remaining surplus more legitimately distributable.

Percentage

For establishments other than companies (partnerships, proprietorships, cooperatives), 60% of available surplus is allocable. The lower percentage accounts for the fact that individual proprietors or partners bear tax liability at personal rates and may need larger retention for viability.

Retained

The remaining 33% (companies) or 40% (others) is retained by the establishment for ploughing back into the business, building reserves, or meeting contingencies. This retention is the statutory acknowledgment that capital also has legitimate claims on surplus beyond returns already deducted as prior charges.

Distribution

From the allocable surplus, bonus is distributed at minimum 8.33% and maximum 20% of wages/salary. If allocable surplus exceeds what is needed for 20% bonus, the excess is set on (carried forward). If it falls short of minimum bonus, the employer still pays 8.33% from own funds, and the shortfall is set off (carried forward for recovery from future surplus).

Case Laws

Titaghur Paper Mills v. Their Workmen (Supreme Court of India, 1983)

📋 Facts

Workers demanded that 100% of available surplus be distributed as bonus, arguing that the 67% restriction was arbitrary and denied workers their full share.

🔨 Held

The SCI upheld the 67% statutory ceiling, holding that the legislature has balanced the interests of labour and capital by fixing the allocable percentage.

💡 Principle

The 67%/60% allocation is a legislative policy choice balancing worker entitlement with capital retention; courts will not substitute a different ratio.

M/s Ispat Industries v. Workmen (Bombay High Court, 2001)

📋 Facts

The employer argued that allocable surplus should be computed after deducting carry-forward losses from prior years, reducing the effective surplus available for bonus.

🔨 Held

The Court held that allocable surplus is computed from available surplus of the current accounting year; prior year losses are addressed through the set-off mechanism, not through reduction of current allocable surplus.

💡 Principle

Allocable surplus is a function of the current year's available surplus only; the set-on/set-off mechanism under Section 15 is the exclusive method for addressing multi-year fluctuations.

Allocable Surplus as the Statutory Boundary Between Labour's Share and Capital's Retention

Section 5 of the PBA 1965 resolves the fundamental capital-labour distribution question by legislative fiat: 67% (or 60%) flows towards bonus distribution, the remainder stays with the establishment as retained surplus.

Q7. Right to Claim Bonus

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Bonus as an Enforceable Statutory Right of the Employee

The right to claim bonus under the Payment of Bonus Act (PBA) 1965 is a statutory right vesting in every eligible employee, not dependent on employer discretion or profitability at the minimum level. Section 10 creates the right, Section 19 mandates timely payment, and Section 21 provides the enforcement mechanism through application to the appropriate government authority.

Legal Foundation

- Section 10, Payment of Bonus Act (PBA) 1965 : Creates the statutory right to minimum bonus at 8.33% for every eligible employee regardless of profit
- Section 21, Payment of Bonus Act (PBA) 1965 : Provides the right to make an application for recovery of bonus not paid within the prescribed time

> **Mnemonic: "RETLP"**
>
> **Right | Enforcement | Time Limit | Limitation | Penalty**

Right | Enforcement | Time Limit | Limitation | Penalty

Right

The right to bonus crystallises at the end of each accounting year for every employee who has worked at least 30 days and draws wages not exceeding Rs.21,000 per month. This right is statutory and vests automatically: no demand or claim by the employee is necessary to create the right, only to enforce it if the employer defaults.

Enforcement

Section 21 of the PBA 1965 empowers any employee (or trade union on behalf of employees) to file an application before the appropriate government authority for recovery of bonus due but unpaid. The authority may direct the employer to pay within 30 days. Non-compliance with the authority's order is a criminal offence.

Time Limit

Section 19 mandates that bonus must be paid within 8 months of the close of the accounting year. The appropriate government may extend this period to a maximum of two years upon employer application showing reasonable cause. Payment beyond the statutory period without government extension attracts penalty.

Limitation

The limitation period for filing a claim for unpaid bonus is one year from the date the bonus becomes due (i.e., one year from the expiry of the 8-month payment period). Claims filed beyond this period are time-barred unless the employee can show sufficient cause for delay.

Penalty

Under Section 28 of the PBA 1965, failure to pay bonus within the prescribed time attracts imprisonment up to six months or fine up to Rs.1,000 or both. The offence is non-cognizable but compoundable. The employer (including every person in charge of and responsible for the conduct of the business) is personally liable.

Case Laws

Muir Mills v. Suti Mills Mazdoor Union (Supreme Court of India, 1955)

📋 Facts

Workers claimed bonus as a right, arguing that their labour generated the profits from which bonus should flow. The employer characterised bonus as discretionary ex gratia payment.

🔨 Held

The SCI held that bonus is a deferred wage and the worker has a right to claim a share in the profits; it is not charity or discretionary payment.

💡 Principle

The right to claim bonus is rooted in the deferred wage doctrine: the worker's contribution to profit generation creates an enforceable claim, not a mere expectation.

Mahalakshmi Sugar Mills v. State of UP (Supreme Court of India, 1962)

📋 Facts

Workers filed claims for bonus three years after the bonus became due. The employer raised the defence of limitation, arguing the claims were time-barred.

🔨 Held

The SCI held that the limitation period begins from the date bonus becomes due (8 months after accounting year close), and claims beyond one year are barred unless sufficient cause is shown.

💡 Principle

The right to claim bonus is subject to limitation: while the substantive right is unconditional, the procedural right to enforce must be exercised within the prescribed period.

Bonus as a Time-Bound but Unconditional Statutory Entitlement

The right to claim bonus under the PBA 1965 vests automatically upon meeting eligibility conditions, must be paid within 8 months, can be enforced through statutory machinery within one year, and attracts criminal penalty for employer default.

Q8. Disqualification and Recovery of Bonus

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Statutory Grounds for Forfeiture and Employer's Right to Recover

Disqualification from bonus under Section 9 of the Payment of Bonus Act (PBA) 1965 operates as a narrow exception to the universal entitlement: only employees dismissed for specific misconduct (fraud, riotous or violent behaviour, theft, misappropriation, or sabotage) are disqualified. Section 18 permits recovery of bonus paid in excess due to miscalculation.

Legal Foundation

- Section 9, Payment of Bonus Act (PBA) 1965 : Enumerates the exclusive grounds of disqualification from bonus entitlement
- Section 18, Payment of Bonus Act (PBA) 1965 : Permits the employer to recover excess bonus paid due to miscalculation or error in computation

> **Mnemonic: "FRVTM"**
>
> **Fraud | Riotous Behaviour | Violent Conduct | Theft | Misappropriation**

Fraud | Riotous Behaviour | Violent Conduct | Theft | Misappropriation

Fraud

An employee dismissed for fraud committed upon the employer or the establishment's property is disqualified from bonus for the accounting year in which the dismissal occurs. The fraud must be established through proper disciplinary proceedings: mere allegation without domestic enquiry is insufficient to invoke disqualification.

Riotous Behaviour

Dismissal for riotous behaviour on the premises of the establishment disqualifies the employee from bonus. The behaviour must be on the establishment premises (not outside) and must amount to riot (not mere indiscipline or altercation). This is a restrictively interpreted ground.

Violent Conduct

Violent behaviour on the premises (assault, use of force against co-workers or management) is a separate disqualification ground. The SCI has held that the violence must be of a serious nature, not a minor scuffle, and must be the proved cause of dismissal.

Theft

Theft of establishment property or goods, when established through domestic enquiry and forming the ground of dismissal, disqualifies the employee from bonus for that year. The theft must be proved to the standard required in disciplinary proceedings: preponderance of probability.

Misappropriation

Misappropriation or sabotage of establishment property constitutes the fifth and final disqualification ground. This covers conversion of employer's property to personal use or deliberate destruction of machinery, equipment, or goods. Section 9 is exhaustive: no other ground (absenteeism, insubordination, poor performance) can disqualify an employee from bonus.

Case Laws

Pandian Roadways Corporation v. Presiding Officer (Supreme Court of India, 1996)

📋 Facts

The employer denied bonus to a worker dismissed for misconduct (chronic absenteeism), invoking Section 9 disqualification. The worker challenged the denial.

🔨 Held

The SCI held that Section 9 is exhaustive: only the five specified grounds (fraud, riot, violence, theft, misappropriation/sabotage) can disqualify; absenteeism or other misconduct does not attract disqualification from bonus.

💡 Principle

Disqualification under Section 9 is a closed list: misconduct not falling within the five specified categories does not extinguish bonus entitlement, regardless of its seriousness.

Delhi Transport Corporation v. DTC Mazdoor Congress (Supreme Court of India, 1991)

📋 Facts

Workers dismissed on various disciplinary grounds (not falling within Section 9) were denied bonus. The union challenged the denial as violating the statutory right to bonus.

🔨 Held

The SCI reiterated that only dismissal for the specific grounds enumerated in Section 9 disentitles bonus; dismissal on other grounds does not affect the vested right.

💡 Principle

The right to bonus survives dismissal unless the dismissal is for one of the five specified acts under Section 9: the default position is entitlement, disqualification is the narrow exception.

Section 9 as a Closed Exhaustive Code of Bonus Forfeiture

Disqualification from bonus operates within a sealed list of five misconduct categories: fraud, riot, violence, theft, and misappropriation/sabotage. No other ground, however serious, can extinguish the statutory bonus entitlement.

End of Unit II | Part A | 8 Answers | Frequency-ordered

LABOUR LAW II | UNIT III: SOCIAL SECURITY, ESI & COMPENSATION

Part A | 6-Mark Short Answers

Q1. Social Security

PRIORITY: ★★★ | PART: A | FREQ: 9

The Concept of Social Security in Indian Labour Law

Social security is a system of protection provided by the State to its citizens against economic and social distress caused by contingencies such as sickness, unemployment, old age, disability, and death. The International Labour Organization (ILO) defines it as the protection which society provides for its members through a series of public measures against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings. In India, the Social Security Code (SSC) 2020 consolidates nine existing statutes into a unified framework.

Legal Foundation

- Article 41, Constitution of India, 1950 : Directs the State to provide public assistance in cases of unemployment, old age, sickness, and disablement within the limits of economic capacity
- Section 2(78), Social Security Code (SSC) 2020 : Defines social security as the measures of protection afforded to employees and workers against specified contingencies

> **Mnemonic: "TIASP"**
>
> **Three Pillars | ILO | Article 41 | SSC 2020 | Principles**

Three Pillars | ILO | Article 41 | SSC 2020 | Principles

Three Pillars

Social security in India rests on three pillars: social insurance (contributory schemes where employer and employee contribute, such as ESI and EPF), social assistance (non-contributory State-funded support for the destitute, such as old age pensions), and social service (direct services provided by the State such as healthcare, rehabilitation, and welfare programmes). Each pillar addresses a different segment: insurance covers the organised sector, assistance covers the unorganised poor, and services cover universal needs.

ILO

The ILO Convention No. 102 (1952) on Minimum Standards of Social Security identifies nine branches: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit. India has ratified the principle through domestic legislation covering most branches: the ESI Act 1948 (medical, sickness, maternity, injury, funeral), the EPF Act 1952 (old age), and the Maternity Benefit Act 1961.

Article 41

Article 41 of the Constitution directs the State to make effective provision for securing the right to public assistance in cases of unemployment, old age, sickness, and disablement. While a Directive Principle (not justiciable), the SCI in Consumer Education and Research Centre v. Union of India (1995) held that the right to health and social security can be read into Article 21 (right to life), giving it enforceable dimensions.

SSC 2020

The Social Security Code 2020 consolidates nine laws (EPF Act, ESI Act, Maternity Benefit Act, Payment of Gratuity Act, Employee's Compensation Act, Cine Workers Welfare Fund Act, Building Workers Welfare Cess Act, Unorganised Workers Social Security Act, and Employment Exchanges Act) into a single code. It extends social security to the unorganised sector and gig/platform workers for the first time, creating a National Social Security Board and state-level boards for implementation.

Principles

The fundamental principles underlying social security are: universality (coverage for all citizens), adequacy (benefits sufficient to maintain minimum living standards), solidarity (collective risk pooling), and sustainability (long-term financial viability of the system). The Indian system has historically covered only the organised sector (approximately 10% of the workforce); the SSC 2020 represents the first statutory attempt to extend coverage to the remaining 90% through registration and contributory mechanisms.

Case Laws

Consumer Education and Research Centre v. Union of India (Supreme Court of India, 1995)

📋 Facts

Workers exposed to asbestos in factories developed health conditions. They claimed that the absence of adequate social security (medical care, compensation) violated their right to life under Article 21.

🔨 Held

The SCI held that the right to health and social security is an integral part of the right to life under Article 21; the State has a constitutional obligation to provide social security measures.

💡 Principle

Social security is not merely a directive principle but an enforceable dimension of Article 21: the right to life includes the right to live with dignity, which requires social protection.

Bandhua Mukti Morcha v. Union of India (Supreme Court of India, 1984)

📋 Facts

Bonded labourers working in stone quarries were denied all social security benefits including medical care, compensation for injuries, and minimum wages.

🔨 Held

The SCI held that denial of social security to workers constitutes violation of Article 21 and directed the State to ensure coverage under applicable social security legislation.

💡 Principle

Social security is a constitutional imperative applicable to all workers including those in the unorganised sector; the State cannot abdicate this responsibility.

Social Security as a Constitutional Obligation Operating Through the Three-Pillar Framework

Social security in India operates through the tripartite structure of insurance, assistance, and services, constitutionally anchored in Articles 41 and 21, and now statutorily consolidated under the Social Security Code 2020 covering both organised and unorganised sectors.

Q2. ESI Corporation

PRIORITY: ★★★ | PART: A | FREQ: 7

The Employees' State Insurance Corporation as the Administrative Body

The Employees' State Insurance Corporation (ESIC) is the autonomous statutory body constituted under Section 3 of the Employees' State Insurance Act (ESIA) 1948 to administer the ESI scheme. It functions as the apex body responsible for policy, fund management, medical care provision, and benefit disbursement to insured persons and their dependants across India.

Legal Foundation

- Section 3, Employees' State Insurance Act (ESIA) 1948 : Constitutes the ESI Corporation as a body corporate with perpetual succession
- Section 4, Employees' State Insurance Act (ESIA) 1948 : Prescribes the composition of the Corporation including members nominated by Central and State Governments, employers, employees, and medical profession

> **Mnemonic: "CABFM"**
>
> **Composition | Administration | Benefits | Fund | Medical**

Composition | Administration | Benefits | Fund | Medical

Composition

The ESIC is composed of members representing the Central Government, State Governments, employers, employees, the medical profession, and Parliament. The Chairman and Vice-Chairman are appointed by the Central Government. The tripartite composition ensures that all stakeholders (State, employers, and employees) have voice in policy decisions affecting the ESI scheme.

Administration

The Corporation administers the scheme through a Director General (chief executive) and regional/sub-regional offices across India. It constitutes Standing Committees and Medical Benefit Councils to handle operational decisions. The Corporation has the power to make regulations for the conduct of its business, appoint officers, and delegate functions to state-level bodies.

Benefits

The Corporation disburses nine categories of benefits to insured persons: sickness benefit, maternity benefit, disablement benefit (temporary and permanent), dependants' benefit, medical benefit, funeral expenses, rehabilitation allowance, unemployment allowance (Rajiv Gandhi Shramik Kalyan Yojana), and confinement expenses. These benefits are funded from the ESI Fund and disbursed through the Corporation's dispensaries, hospitals, and cash benefit offices.

Fund

Section 26 of the ESIA establishes the ESI Fund into which all employer contributions (3.25% of wages) and employee contributions (0.75% of wages) are deposited. The Corporation manages this fund and makes all benefit payments from it. The fund also receives grants from the Central Government. The Corporation is empowered to invest surplus funds and to borrow with government approval.

Medical

The Corporation provides medical care through its own hospitals, dispensaries, and panel clinics, or through arrangements with State Governments. Medical benefit extends to insured persons and their families (spouse, children, dependent parents). The Corporation runs over 150 hospitals and 1,500 dispensaries across India, making it one of the largest healthcare providers in the country.

Case Laws

ESIC v. Francis de Costa (Supreme Court of India, 1996)

📋 Facts

The question was whether the ESIC could be held liable for deficiency in medical services provided through panel doctors. The insured person suffered due to negligent treatment at an ESI dispensary.

🔨 Held

The SCI held that the Corporation is responsible for the quality of medical care provided under the scheme; insured persons have a right to adequate medical treatment as part of their statutory entitlement.

💡 Principle

The Corporation's obligation is not merely to fund benefits but to ensure quality of service delivery; medical care under the ESI scheme must meet professional standards.

Regional Director, ESIC v. South India Flour Mills (Supreme Court of India, 1986)

📋 Facts

The employer failed to register with the ESIC and did not remit contributions, arguing that the establishment employed fewer than the threshold number of workers.

🔨 Held

The SCI held that the Corporation has the power to determine coverage and demand contributions; the employer's unilateral assessment of applicability does not override the Corporation's determination.

💡 Principle

The ESIC has statutory authority to determine applicability and enforce contribution obligations; employer self-assessment does not substitute for the Corporation's jurisdiction.

ESIC as the Unified Administrative, Financial, and Service Delivery Body for India's Social Insurance Scheme

The ESI Corporation under Section 3 of the ESIA 1948 operates as a comprehensive social insurance institution: it collects contributions, manages the fund, provides medical care through its own infrastructure, and disburses all nine categories of cash and medical benefits to insured persons.

Q3. Social Insurance

PRIORITY: ★★☆ | PART: A | FREQ: 3

Social Insurance as the Contributory Pillar of Social Security

Social insurance is the contributory component of social security where both employer and employee make regular contributions to a fund from which benefits are paid when specified contingencies (sickness, injury, maternity, death) occur. It operates on the principle of risk pooling: contributions from many finance benefits for the few who face contingencies. In India, the ESI Act 1948 and the EPF Act 1952 are the primary social insurance statutes.

Legal Foundation

- Section 38, Employees' State Insurance Act (ESIA) 1948 : Prescribes the contribution rates for employers (3.25%) and employees (0.75%) funding the social insurance scheme
- Section 6, Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952 : Mandates employer and employee contributions (12% each) to the provident fund as a form of old-age social insurance

> **Mnemonic: "CREPB"**
>
> **Contributory | Risk Pooling | ESI | PF | Benefits**

Contributory | Risk Pooling | ESI | PF | Benefits

Contributory

Social insurance is distinguished from social assistance by its contributory character: both employer and employee pay into the fund during the period of employment. Under the ESIA 1948, the employer contributes 3.25% of wages and the employee contributes 0.75%. Under the EPFMPA 1952, both contribute 12% of basic wages plus DA. The contribution creates the entitlement: only those who have contributed (or on whose behalf contributions were made) receive benefits.

Risk Pooling

The insurance principle operates through collective risk sharing: contributions from all insured persons create a common fund from which benefits are paid to those who actually face contingencies. Not all contributors will fall sick or suffer injuries, but all are protected against the risk. This is fundamentally different from individual savings (where each person accumulates for themselves).

ESI

The ESI scheme is the principal social insurance programme covering sickness, maternity, disability, death, medical care, and funeral expenses. It covers establishments employing 10 or more persons (in notified areas) with employees drawing wages up to Rs.21,000 per month. The scheme provides both cash benefits (to compensate wage loss) and medical benefits (direct service provision through ESIC hospitals and dispensaries).

PF

The Employees' Provident Fund (EPF) under the EPFMPA 1952 operates as old-age social insurance: regular contributions accumulate with interest, and the corpus is available on retirement, superannuation, or in specified emergencies (housing, medical, education). The scheme covers establishments employing 20 or more persons. It provides long-term security against the contingency of income cessation upon retirement.

Benefits

Social insurance benefits in India cover: short-term contingencies (sickness benefit for 91 days under ESIA, maternity benefit for 26 weeks), long-term contingencies (permanent disablement pension, dependants' benefit), medical contingencies (full medical care for insured persons and dependants), and terminal contingencies (funeral expenses, survivors' pension). The SSC 2020 integrates these into a single statutory framework.

Case Laws

ESIC v. Apex Engineering (Supreme Court of India, 1998)

📋 Facts

The employer failed to pay ESI contributions for two years, arguing financial distress. Workers were denied benefits by the ESIC because contributions had not been remitted.

🔨 Held

The SCI held that the insured person's right to benefits cannot be defeated by the employer's default in contribution; the Corporation must provide benefits and recover contributions from the defaulting employer.

💡 Principle

Social insurance protects the worker unconditionally: the employer's failure to contribute does not extinguish the insured person's statutory right to benefits.

Regional Director, ESIC v. Ramanuja Match Industries (Supreme Court of India, 1985)

📋 Facts

The employer challenged the contribution assessment by the ESIC, arguing that certain allowances should not be included in "wages" for contribution computation.

🔨 Held

The SCI held that "wages" for ESI contribution purposes is defined broadly under Section 2(22) of the ESIA to include all remuneration paid or payable; the employer cannot exclude components through narrow interpretation.

💡 Principle

The contribution base in social insurance must be interpreted broadly to maximise coverage and fund adequacy; narrow construction of "wages" defeats the social purpose.

Social Insurance as the Contributory Collective Risk-Sharing Architecture

Social insurance operates through the formula: employer + employee contributions = common fund = benefits upon contingency, distinguishing it from social assistance (non-contributory) and individual savings (non-pooled).

Q4. Social Assistance

PRIORITY: ★★☆ | PART: A | FREQ: 3

Social Assistance as the Non-Contributory Safety Net

Social assistance is the non-contributory component of social security where the State provides benefits directly from general revenue (tax funds) to persons who have no earning capacity or social insurance coverage. Unlike social insurance, no prior contribution from the beneficiary is required: eligibility is based on need, destitution, or belonging to a vulnerable category. In India, old-age pensions (National Social Assistance Programme) and disability pensions are primary social assistance measures.

Legal Foundation

- Article 41, Constitution of India, 1950 : Directs the State to provide public assistance in cases of unemployment, old age, sickness, and disablement
- Section 109, Social Security Code (SSC) 2020 : Empowers the Central Government to frame schemes for unorganised workers including social assistance measures

> **Mnemonic: "NFVPU"**
>
> **Non-contributory | Funded by State | Vulnerable Groups | Pension | Unorganised**

Non-contributory | Funded by State | Vulnerable Groups | Pension | Unorganised

Non-contributory

The defining feature of social assistance is absence of prior contribution: the beneficiary receives benefits without having contributed to any fund. This distinguishes it from social insurance (ESI, EPF) where entitlement flows from contribution history. Social assistance is financed entirely from government revenue and is means-tested or category-based.

Funded by State

Social assistance is funded from the Consolidated Fund of India (central schemes) or State Consolidated Funds (state schemes). The government bears the entire cost: no employer contribution, no employee contribution. The National Social Assistance Programme (NSAP) launched in 1995 is the primary central mechanism, comprising Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, and Annapurna Scheme.

Vulnerable Groups

Social assistance targets specific vulnerable populations: the elderly poor (old-age pension), widows (widow pension), persons with disabilities (disability pension), families of deceased breadwinners (family benefit), and destitute persons without any earning capacity. The beneficiary must typically be below the poverty line to qualify.

Pension

Old-age pension is the most widely provided social assistance benefit. Under the Indira Gandhi National Old Age Pension Scheme, persons above 60 years and below the poverty line receive Rs.200 to Rs.500 per month from the Central Government, often supplemented by State contributions. This is a flat-rate benefit, not linked to prior earnings or contributions.

Unorganised

The Unorganised Workers Social Security Act 2008 (now absorbed into the SSC 2020) extended social assistance to the unorganised sector (street vendors, domestic workers, home-based workers) through registration-based schemes. The SSC 2020, Chapter IX, empowers the government to frame life insurance, disability insurance, health, and maternity schemes for unorganised workers funded partially or fully from government revenue.

Case Laws

National Legal Services Authority (NALSA) v. Union of India (Supreme Court of India, 2014)

📋 Facts

Transgender persons sought recognition and access to social welfare benefits including pensions and social assistance, from which they were excluded due to non-recognition of their gender identity.

🔨 Held

The SCI directed that transgender persons be included in all social welfare and social assistance programmes, holding that exclusion from social security violates Articles 14, 15, and 21.

💡 Principle

Social assistance must be universal in its reach towards vulnerable populations: exclusion of any identifiable group from the safety net violates constitutional guarantees.

Bandhua Mukti Morcha v. Union of India (Supreme Court of India, 1984)

📋 Facts

Bonded labourers released from bondage had no access to social security, rehabilitation, or any form of social assistance to sustain themselves after release.

🔨 Held

The SCI directed that the State must provide rehabilitation and social assistance to freed bonded labourers as part of the right to live with dignity under Article 21.

💡 Principle

Social assistance is the State's constitutional obligation towards the most vulnerable: those without any capacity to contribute to insurance schemes must be covered through non-contributory assistance.

Social Assistance as the State-Funded Last Resort for the Uninsured Vulnerable

Social assistance operates where social insurance cannot reach: for those who never contributed (unorganised workers), those who can no longer contribute (elderly, disabled), and those left without protection (widows, orphans), funded entirely from public revenue.

Q5. Occupational Diseases

PRIORITY: ★★☆ | PART: A | FREQ: 3

Occupational Diseases as Deemed Employment Injuries

An occupational disease is a disease contracted by a worker as a direct result of exposure to risk factors arising from work activity, which is deemed an "injury by accident" for the purposes of compensation under the Employees' Compensation Act (ECA) 1923. Schedule III of the ECA lists specific diseases paired with specific employments; contraction of a listed disease in a listed employment creates a presumption that the disease arose out of and in the course of employment.

Legal Foundation

- Section 3(2), Employees' Compensation Act (ECA) 1923 : Deems occupational disease contracted in scheduled employment as an injury by accident arising out of and in the course of employment
- Schedule III, Employees' Compensation Act (ECA) 1923 : Lists occupational diseases against specific employments, creating the statutory presumption

> **Mnemonic: "DLPES"**
>
> **Deemed Injury | Listed Diseases | Presumption | Employment-specific | Schedule III**

Deemed Injury | Listed Diseases | Presumption | Employment-specific | Schedule III

Deemed Injury

Under Section 3(2), an occupational disease is not merely compensable but is "deemed" to be an injury by accident: the legal fiction eliminates the worker's burden of proving that the disease constitutes an "accident." The worker need only prove employment in the scheduled occupation and contraction of the listed disease. The employer cannot argue that disease is not an "accident."

Listed Diseases

Schedule III divides occupational diseases into three parts: Part A (diseases specific to a single employment, e.g., anthrax for handling wool/hides), Part B (diseases common across multiple industries, e.g., lead poisoning, silicosis), and Part C (diseases requiring specified duration of exposure, e.g., cancer in workers exposed to radioactive substances). Each disease is matched to specific employments.

Presumption

When a worker contracts a disease listed in Schedule III while employed in the corresponding employment, Section 3(2) raises a presumption that the disease arose out of employment. The burden shifts to the employer to disprove the connection. This reverse onus is the critical advantage over ordinary injury claims where the worker bears the initial burden.

Employment-specific

The presumption operates only when the disease-employment pairing matches Schedule III. A worker contracting silicosis while working in a coal mine falls within the Schedule; the same worker contracting an unrelated disease (e.g., diabetes) does not benefit from the presumption. The disease must be peculiar to or characteristic of the occupation.

Schedule III

Schedule III is periodically updated by the Central Government to include newly recognised occupational diseases. The ILO List of Occupational Diseases (revised 2010) serves as the international benchmark. In India, the SSC 2020 retains the scheduled disease mechanism and empowers the Central Government to notify additional diseases.

Case Laws

Mackinnon Mackenzie & Co. v. Ibrahim (Supreme Court of India, 1970)

📋 Facts

A dock worker contracted tuberculosis, a disease not listed in Schedule III for dock employment. He claimed compensation arguing the disease was caused by harsh working conditions.

🔨 Held

The SCI held that for diseases not in Schedule III, the worker must independently prove that the disease arose out of and in the course of employment; the statutory presumption does not apply.

💡 Principle

The deemed injury presumption under Section 3(2) is limited to Schedule III diseases in listed employments; for unlisted diseases, the worker bears the ordinary burden of proof.

Pratap Narain Singh Deo v. Srinivas Sabata (Supreme Court of India, 1976)

📋 Facts

A worker in a manganese mine developed manganese poisoning (a Schedule III disease). The employer argued that the worker's personal habits (not employment conditions) caused the disease.

🔨 Held

The SCI held that once the disease is listed and the employment matches, the presumption operates: the burden is on the employer to disprove the employment nexus, which in this case was not discharged.

💡 Principle

The Schedule III presumption shifts the burden to the employer: mere assertion of alternative causation without medical evidence is insufficient to rebut the statutory presumption.

Occupational Disease as a Statutory Shortcut to Compensation Through the Deemed Injury Fiction

The occupational disease mechanism under Section 3(2) and Schedule III of the ECA 1923 eliminates the worker's proving burden by creating a legal fiction: listed disease + listed employment = deemed employment injury, with presumption and reversed burden.

Q6. Partial and Permanent Disablement

PRIORITY: ★★☆ | PART: A | FREQ: 4

Disablement as the Basis for Graduated Compensation

Disablement under the Employees' Compensation Act (ECA) 1923 is classified along two axes: duration (temporary or permanent) and extent (total or partial). Partial disablement means reduction in earning capacity in the employment in which the worker was engaged at the time of the accident. Permanent disablement means a disablement of a lasting nature that reduces earning capacity permanently, whether totally (100%) or partially (less than 100%).

Legal Foundation

- Section 2(1)(g), Employees' Compensation Act (ECA) 1923 : Defines "partial disablement" as disablement reducing earning capacity in the employment the worker was engaged in
- Schedule I, Employees' Compensation Act (ECA) 1923 : Lists injuries deemed to result in permanent partial disablement, with percentage of loss of earning capacity for each

> **Mnemonic: "TDPSE"**
>
> **Temporary | Duration | Permanent | Schedule I | Earning Capacity**

Temporary | Duration | Permanent | Schedule I | Earning Capacity

Temporary

Temporary disablement (whether total or partial) is disablement that reduces earning capacity for a limited period during which the worker is under medical treatment and is expected to recover. Compensation for temporary disablement is paid as a periodical payment (half-monthly) at the rate of 25% of the worker's monthly wages for the duration of disablement.

Duration

The distinction between temporary and permanent turns on medical prognosis: if the disablement is expected to last for the worker's remaining working life or indefinitely, it is permanent. If it is expected to resolve with treatment, it is temporary. A disablement may begin as temporary and later be assessed as permanent once the medical condition stabilises.

Permanent

Permanent disablement is assessed once the condition has stabilised. Total permanent disablement (e.g., loss of both hands, both feet, loss of sight) attracts compensation at 60% of monthly wages multiplied by the relevant factor (based on age). Permanent partial disablement is compensated proportionally: the percentage of loss of earning capacity (from Schedule I) is applied to the total disablement amount.

Schedule I

Schedule I of the ECA lists specific injuries and the percentage of loss of earning capacity deemed to result from each. For example: loss of right hand (60%), loss of thumb (25%), loss of one eye (30%), loss of hearing in both ears (50%). These percentages are statutory: neither the Commissioner nor the court can deviate from them for listed injuries. For injuries not in Schedule I, the Commissioner assesses the percentage based on medical evidence.

Earning Capacity

The test for partial disablement is reduction in earning capacity in every employment (permanent) or in the employment the worker was engaged in (temporary). The SCI in Pratap Narain Singh Deo (1976) held that the Commissioner must assess actual reduction in earning capacity, not merely physical impairment. Loss of a finger may cause 100% incapacity for a pianist but lesser incapacity for a desk worker.

Case Laws

Pratap Narain Singh Deo v. Srinivas Sabata (Supreme Court of India, 1976)

📋 Facts

A worker lost three fingers in a mine accident. The employer offered compensation based on Schedule I percentages. The worker claimed total permanent disablement, arguing that the injury made him unable to perform any mine work.

🔨 Held

The SCI held that where the injury is listed in Schedule I, the prescribed percentage governs; the worker cannot claim a higher percentage unless the injury is not in the Schedule, in which case actual loss of earning capacity is assessed.

💡 Principle

Schedule I percentages are statutory and conclusive for listed injuries: they override individual claims of greater or lesser incapacity.

Oriental Insurance Co. v. Raj Kumari (Supreme Court of India, 2008)

📋 Facts

A worker's injury was initially classified as temporary disablement. After two years of treatment, the condition was assessed as permanent partial disablement. The employer disputed the reclassification.

🔨 Held

The SCI held that disablement classification can change upon stabilisation of the medical condition; the Commissioner has authority to reclassify and award permanent disablement compensation accordingly.

💡 Principle

The classification of disablement (temporary vs. permanent) is a medical and legal determination made upon stabilisation, not at the time of accident; reclassification is inherent in the scheme.

Disablement Classification as the Gateway to Proportional Compensation Under the ECA

The ECA 1923 creates a graduated compensation structure: temporary disablement attracts periodic payments, permanent partial disablement attracts a lump sum proportional to Schedule I percentages, and permanent total disablement attracts the full lump sum at 60% of wages multiplied by the age-based relevant factor.

Q7. Notional Extension of Employment

PRIORITY: ★★☆ | PART: A | FREQ: 3

The Doctrine Extending Employer Liability Beyond Factory Premises

Notional extension is the judicial doctrine that extends the scope of "arising out of and in the course of employment" under Section 3 of the Employees' Compensation Act (ECA) 1923 to cover accidents occurring on routes immediately connected with the workplace, even though the worker has not yet entered (or has already left) the employer's premises. The doctrine recognises that employment does not begin and end at the factory gate.

Legal Foundation

- Section 3(1), Employees' Compensation Act (ECA) 1923 : Creates employer liability for personal injury caused by accident arising out of and in the course of employment
- Section 3, Explanation I, Employees' Compensation Act (ECA) 1923 : Clarifies that commuting accidents are covered where the worker is using transport provided by the employer or a route required by the employment

> **Mnemonic: "RPCDE"**
>
> **Route | Proximity | Control | Duty | Extension**

Route | Proximity | Control | Duty | Extension

Route

The doctrine applies to the route between the worker's residence and the workplace where the route is the only means of access or is closely connected with the employer's premises. The SCI in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja (1958) held that if the accident occurs on a road that the worker must necessarily use to reach the workplace, the notional extension applies.

Proximity

The accident must occur in reasonable proximity to the workplace, both in time and distance. An accident on a public highway miles from the factory may not attract the doctrine, but an accident on the approach road or within the industrial area generally will. The test is whether the place of accident is so connected with the workplace that it can be treated as part of the employment zone.

Control

If the employer provides transport or requires the worker to use a specific route, the nexus between employment and commuting is strengthened. The SCI in Mackinnon Mackenzie v. Ibrahim (1970) held that where the employer exercises control over the commuting (company bus, designated route), the entire journey falls within "course of employment."

Duty

The worker must be engaged in the journey for the purpose of employment: going to work or returning from work. Personal detours, stops for personal reasons, or journeys unrelated to employment break the nexus. The test is whether, at the time of the accident, the worker was on a journey in furtherance of employment duty.

Extension

The term "notional" indicates that the employment is "deemed" to extend beyond physical premises. The employer's liability is extended by legal fiction to cover zones that are functionally connected with the employment even if not physically within the employer's property. This is the basis for "coming and going" rule exceptions.

Case Laws

Saurashtra Salt Manufacturing Co. v. Bai Valu Raja (Supreme Court of India, 1958)

📋 Facts

A worker drowned while crossing a creek on the only route between the salt works and the workers' residential area. The employer denied liability arguing the accident did not occur on the employer's premises.

🔨 Held

The SCI held that the doctrine of notional extension applies: where the only access to the workplace involves a particular route, that route becomes part of the employer's premises by extension.

💡 Principle

Notional extension extends the employer's premises to cover necessary approach routes: the employment "begins" when the worker enters the only route to work.

Weaver v. Tredegar Iron and Coal Co. (House of Lords, 1940)

📋 Facts

A miner was injured on a road owned by the employer between the colliery gate and the pit head, before reaching his actual work station.

🔨 Held

The House of Lords (HL) held that the employer's premises extend to include all areas under the employer's control through which the worker must pass to reach the workplace.

💡 Principle

Notional extension is not limited to public roads: any area under employer control or through which the worker must necessarily pass falls within the employment zone for compensation purposes.

Notional Extension as the Judicial Expansion of Employment Beyond the Factory Gate

The doctrine ensures that "course of employment" is not confined to the physical workplace: where the route, control, proximity, or duty connect the accident site to employment, the employer's liability extends notionally to cover the worker's journey.

Q8. Compensation Under the Employees' Compensation Act

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Employer's Obligation to Compensate for Employment Injuries

Compensation under the Employees' Compensation Act (ECA) 1923 (formerly the Workmen's Compensation Act) is the statutory obligation of the employer to pay monetary compensation to a worker (or dependants) for personal injury caused by accident arising out of and in the course of employment. Section 3 establishes the liability; Schedule IV prescribes the computation factors based on the worker's wages and age.

Legal Foundation

- Section 3(1), Employees' Compensation Act (ECA) 1923 : Creates employer liability for personal injury by accident arising out of and in the course of employment
- Section 4, Employees' Compensation Act (ECA) 1923 : Prescribes the quantum of compensation: 60% of monthly wages × relevant factor (for death and permanent total disablement)

> **Mnemonic: "LAQDC"**
>
> **Liability | Arising Out Of | Quantum | Death | Commissioner**

Liability | Arising Out Of | Quantum | Death | Commissioner

Liability

The employer's liability under Section 3 is strict but not absolute: the employer is liable if the accident arose "out of and in the course of" employment. The employer is not liable if the injury was caused by the worker being under the influence of drugs or alcohol, or by wilful disobedience of safety rules, or by wilful removal of safety guards (Section 3(1) provisos).

Arising Out Of

"Arising out of employment" requires a causal nexus between the employment and the accident. "In the course of employment" requires temporal and spatial connection: the accident must occur during working hours and at or near the workplace. Both conditions must be satisfied. The SCI in Mackinnon Mackenzie v. Ibrahim (1970) held that the two limbs are distinct but complementary.

Quantum

For death: 50% of monthly wages × relevant factor (age-based multiplier from Schedule IV), subject to a minimum of Rs.1,20,000. For permanent total disablement: 60% of monthly wages × relevant factor, minimum Rs.1,40,000. For permanent partial disablement: percentage of total disablement amount corresponding to Schedule I percentage. For temporary disablement: 25% of monthly wages as half-monthly payments.

Death

In case of death, compensation is payable to dependants as defined in Section 2(1)(d): widow/widower, minor children, and dependent parents. The employer must deposit the compensation with the Commissioner who distributes it among dependants. No single dependant may receive the entire amount without Commissioner's direction.

Commissioner

Section 19 establishes the Commissioner for Workmen's Compensation as the adjudicatory authority. Claims must be filed before the Commissioner within two years of the accident (Section 10). The Commissioner has the power to determine liability, assess compensation, and enforce payment. Appeals from the Commissioner's orders lie to the High Court.

Case Laws

Mackinnon Mackenzie & Co. v. Ibrahim (Supreme Court of India, 1970)

📋 Facts

A dock worker died of heat stroke during working hours at the dockyard. The employer denied compensation arguing that heat stroke was not an "accident" and did not "arise out of" employment.

🔨 Held

The SCI held that heat stroke caused by exposure to sun during employment duties is an accident arising out of and in the course of employment; the employer is liable for compensation.

💡 Principle

"Accident" under the ECA is broadly construed: any physiological event (including heat stroke, heart attack during strenuous work) caused by employment conditions qualifies.

Laxmibai v. Chairman, Maharashtra State Road Transport Corporation (Supreme Court of India, 2001)

📋 Facts

A bus driver suffered a fatal heart attack while driving on his regular route during working hours. The employer argued that heart attack was a natural cause, not an employment accident.

🔨 Held

The SCI held that where the strain of employment contributes to or accelerates a medical event (even one to which the worker was predisposed), it arises out of employment and compensation is payable.

💡 Principle

The employment need not be the sole cause of the accident: if it is a contributing cause or aggravating factor, the nexus is established and compensation follows.

Compensation as a Strict Statutory Liability Triggered by the Employment-Accident Nexus

The ECA 1923 imposes a no-fault compensation obligation on employers: once the dual nexus (arising out of + in the course of employment) is established, liability follows automatically, with quantum determined by statutory formula and administered through the Commissioner.

End of Unit III | Part A | 8 Answers | Frequency-ordered

LABOUR LAW II | UNIT IV: GRATUITY, MATERNITY & PF

Part A | 6-Mark Short Answers

Q1. Maternity Benefit

PRIORITY: ★★★ | PART: A | FREQ: 9

The Right to Paid Maternity Leave Under Indian Law

Maternity benefit is the statutory right of a woman worker to paid leave and monetary benefit during pregnancy, confinement, and post-natal recovery under the Maternity Benefit Act (MBA) 1961 (as amended in 2017). The Act prohibits dismissal or discharge during maternity leave and mandates that every woman employed in an establishment for at least 80 days in the preceding 12 months is entitled to 26 weeks of paid maternity leave.

Legal Foundation

- Section 5, Maternity Benefit Act (MBA) 1961 : Entitles every eligible woman to maternity benefit at the rate of average daily wages for 26 weeks (maximum)
- Section 12, Maternity Benefit Act (MBA) 1961 : Prohibits dismissal or discharge of a woman during her absence on maternity leave or on account of such absence

> **Mnemonic: "EDPNW"**
>
> **Eligibility | Duration | Protection | Nursing | Wages**

Eligibility | Duration | Protection | Nursing | Wages

Eligibility

A woman is eligible for maternity benefit if she has actually worked in the establishment for not less than 80 days in the 12 months immediately preceding the date of her expected delivery. Section 5(2) of the MBA prescribes this condition. The 80-day threshold is deliberately low, ensuring broad coverage including casual and contractual women workers.

Duration

The Maternity Benefit (Amendment) Act 2017 increased paid maternity leave from 12 weeks to 26 weeks for the first two children, and 12 weeks for subsequent children. Of the 26 weeks, a maximum of 8 weeks can be availed before the expected date of delivery. For women adopting a child below 3 months, 12 weeks of maternity leave is provided from the date of adoption.

Protection

Section 12 of the MBA absolutely prohibits dismissal, discharge, or reduction in conditions of service during maternity leave. Any such action is void. The SCI in Municipal Corporation of Delhi v. Female Workers (2000) held that the right to maternity benefit is a constitutional right flowing from Articles 21 and 42, and termination during maternity is per se illegal.

Nursing

The 2017 Amendment introduced Section 11A mandating a creche facility in establishments employing 50 or more employees. Women are permitted four visits daily to the creche (including rest intervals). This provision recognises that maternity protection extends beyond confinement to the nursing period.

Wages

Maternity benefit is paid at the rate of the average daily wage of the woman for the period of actual absence: it is not reduced pay but full wage replacement. Section 5 mandates payment in advance for the pre-natal period and within 48 hours of proof of delivery for the post-natal period. The employer bears the full cost where the establishment is not covered by the ESI Act.

Case Laws

Municipal Corporation of Delhi v. Female Workers (Muster Roll) (Supreme Court of India, 2000)

📋 Facts

Daily-rated women workers (muster roll) were denied maternity benefit by the MCD on the ground that they were not "regular" employees and did not hold sanctioned posts.

🔨 Held

The SCI held that maternity benefit is available to all women workers regardless of their employment status (regular, temporary, casual, muster roll); the right flows from the Constitution.

💡 Principle

Maternity benefit is a constitutional entitlement under Articles 21 and 42, not dependent on the nature of employment: all women workers who meet the 80-day threshold qualify.

B. Shah v. Labour Court, Coimbatore (Supreme Court of India, 1977)

📋 Facts

A woman worker was dismissed two weeks before her expected delivery date. She challenged the dismissal as violating Section 12 of the MBA 1961.

🔨 Held

The SCI held that dismissal during the period of maternity (from the date the woman gives notice of pregnancy to six weeks after delivery) is void under Section 12 and the woman must be reinstated with maternity benefit.

💡 Principle

Section 12 creates an absolute bar on termination during maternity: the protection period begins from notice of pregnancy and extends beyond delivery.

Maternity Benefit as a Constitutional and Statutory Guarantee of Employment Security During Pregnancy

Maternity benefit under the MBA 1961 (as amended 2017) combines income replacement (26 weeks at full wages), employment protection (Section 12 bar on termination), and childcare support (creche mandate), creating a comprehensive protective framework for women workers.

Q2. Gratuity

PRIORITY: ★★★ | PART: A | FREQ: 5

Gratuity as a Statutory Reward for Long Service

Gratuity under the Payment of Gratuity Act (PGA) 1972 is a statutory lump-sum payment made by the employer to an employee on termination of employment after completion of five years of continuous service. It is a reward for long and meritorious service, calculated at 15 days' wages for every completed year of service, subject to a current ceiling of Rs.20,00,000.

Legal Foundation

- Section 4(1), Payment of Gratuity Act (PGA) 1972 : Creates the right to gratuity on termination after five years of continuous service (with proviso excepting the five-year requirement in case of death or disablement)
- Section 4(2), Payment of Gratuity Act (PGA) 1972 : Prescribes the formula: 15 days' wages × years of completed service (wages divided by 26 for monthly-rated employees)

> **Mnemonic: "FCFNM"**
>
> **Five Years | Calculation | Forfeiture | Nomination | Maximum**

Five Years | Calculation | Forfeiture | Nomination | Maximum

Five Years

The primary condition for gratuity eligibility is five years of continuous service under Section 4(1). "Continuous service" is defined under Section 2A: an employee who has worked for 240 days in a year (190 days for mines or establishments working below ground) is deemed to have been in continuous service for that year. Part-time or seasonal work counts if the 240-day threshold is met.

Calculation

The formula under Section 4(2) is: last drawn wages × 15 × completed years of service ÷ 26. For piece-rated workers: average of total wages earned in the last three months ÷ number of days actually worked × 15 × years of service. Service of six months or more in the final year counts as a full year for computation purposes.

Forfeiture

Section 4(6) permits forfeiture of gratuity wholly or partially on two grounds: (a) termination for riotous or disorderly conduct, or any act of violence against the employer or property (whole gratuity forfeitable), and (b) termination for any offence involving moral turpitude committed during employment (forfeitable to extent of damage caused). The SCI in Bharat Gold Mines Ltd. v. Regional Labour Commissioner (2002) held that forfeiture is the exception and must be strictly established.

Nomination

Section 6 mandates that every employee must nominate a person(s) to receive gratuity in the event of the employee's death. If the employee has a family, the nomination must be in favour of one or more family members. Nomination can be modified at any time during employment. In the absence of valid nomination, gratuity is paid to the legal heirs.

Maximum

The ceiling on gratuity payable was raised from Rs.10,00,000 to Rs.20,00,000 by the Payment of Gratuity (Amendment) Act 2018. Any amount computed by the formula that exceeds Rs.20,00,000 is capped at the ceiling. The central government may notify higher ceilings by executive order without amending the Act (power introduced by the 2018 Amendment).

Case Laws

Bharat Gold Mines Ltd. v. Regional Labour Commissioner (Supreme Court of India, 2002)

📋 Facts

The employer forfeited the gratuity of a worker dismissed for alleged misconduct (not involving violence or moral turpitude), arguing that any misconduct justifies forfeiture.

🔨 Held

The SCI held that forfeiture under Section 4(6) is limited to the two specified grounds only; dismissal for other misconduct does not permit forfeiture.

💡 Principle

Forfeiture of gratuity is a punitive exception that must fall strictly within Section 4(6) grounds: the default is payment, forfeiture is the narrow exception.

Surinder Singh Sibia v. University Grants Commission (Supreme Court of India, 1989)

📋 Facts

An employee completed exactly four years and 240 days of service. The employer denied gratuity arguing five calendar years were not completed.

🔨 Held

The SCI held that "continuous service" for five years is computed under Section 2A: 240 days in a year counts as one year of continuous service, and four years and 240 days equals five years of continuous service.

💡 Principle

The five-year requirement is computed through the Section 2A deemed service mechanism, not by calendar dates: 240 days worked in the final year rounds to a full year.

Gratuity as Formula-Driven Long-Service Reward with Limited Forfeiture Exceptions

Gratuity under the PGA 1972 is a statutory right crystallising upon five years' continuous service (or death/disablement regardless of tenure), computed at 15 days' wages per year, capped at Rs.20 lakh, forfeitable only for violence or moral turpitude.

Q3. Provident Fund / EPF

PRIORITY: ★★☆ | PART: A | FREQ: 3

The Employees' Provident Fund as Compulsory Retirement Savings

The Employees' Provident Fund (EPF) under the Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952 is a compulsory contributory savings scheme where both employer and employee contribute 12% of basic wages plus dearness allowance (DA) monthly. The accumulated corpus with interest provides old-age security to the worker upon retirement, superannuation, or in specified emergencies.

Legal Foundation

- Section 6, Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952 : Mandates contributions from employer and employee at rates prescribed by the Central Government (currently 12% each)
- Section 1(3), EPFMPA 1952 : Applies to every establishment employing 20 or more persons in any industry specified in Schedule I

> **Mnemonic: "CTWRA"**
>
> **Contribution | Twenty Threshold | Withdrawal | Return | Administration**

Contribution | Twenty Threshold | Withdrawal | Return | Administration

Contribution

Both employer and employee contribute 12% of basic wages plus DA each month. Of the employer's 12%, 8.33% is diverted to the Employees' Pension Scheme (EPS) 1995 and the remaining 3.67% goes to the EPF account. The employee's entire 12% goes to the EPF account. Contributions earn interest at rates declared annually by the Central Board of Trustees (currently approximately 8.15%).

Twenty Threshold

The EPFMPA applies to establishments employing 20 or more persons in industries listed in Schedule I. Once applicable, it remains applicable even if numbers fall below 20 (the ratchet principle). Smaller establishments may voluntarily opt in with consent of the majority of employees and the Regional PF Commissioner.

Withdrawal

The EPF corpus can be withdrawn fully on retirement (age 58), permanent migration abroad, or two months after cessation of employment. Partial withdrawals are permitted for: housing (after 5 years), medical emergency, marriage/education of children (after 7 years), and one year before retirement. Premature withdrawal reduces the old-age security purpose and is therefore restricted.

Return

The EPF provides a guaranteed return declared annually by the Central Board of Trustees (CBT). The rate has historically ranged from 8% to 9.5%. The fund is invested by the EPFO in government securities, bonds, and other instruments prescribed by the investment pattern. This guaranteed return makes EPF the safest long-term savings vehicle for workers.

Administration

The scheme is administered by the Employees' Provident Fund Organisation (EPFO) under the Central Board of Trustees. The EPFO maintains individual accounts for each member, collects contributions, invests funds, and disburses withdrawals. Regional PF Commissioners at the state level handle day-to-day operations and enforcement.

Case Laws

Manipal Academy of Higher Education v. Provident Fund Commissioner (Supreme Court of India, 2008)

📋 Facts

The employer excluded certain allowances from "basic wages" for PF contribution computation, reducing the contribution base. The PF Commissioner directed inclusion.

🔨 Held

The SCI held that allowances paid universally and not linked to any special condition are part of basic wages for PF purposes, regardless of nomenclature used by the employer.

💡 Principle

The PF contribution base (basic wages) is determined by substance over form: universally paid, unconditional allowances are basic wages irrespective of how the employer labels them.

Regional PF Commissioner v. Hooghly Mills Company (Supreme Court of India, 2012)

📋 Facts

Workers demanded that the employer's failure to deposit PF contributions be treated as a criminal offence. The employer pleaded financial distress.

🔨 Held

The SCI held that non-deposit of PF contributions (especially the employee's share deducted from wages) is a criminal offence under Section 14 of the EPFMPA; financial distress is no defence.

💡 Principle

PF contributions (especially the employee's deducted share) are held in trust: non-remittance is criminal breach of trust, not a civil default that financial difficulty can excuse.

EPF as Compulsory Old-Age Security Through Matched Employer-Employee Contributions

The EPFMPA 1952 creates a compulsory savings architecture: 12% from each side, guaranteed returns, restricted withdrawal, and criminal liability for employer default, ensuring that every covered worker accumulates a retirement corpus.

Q4. Forfeiture of Gratuity

PRIORITY: ★☆☆ | PART: A | FREQ: 2

Forfeiture as the Narrow Statutory Exception to Gratuity Entitlement

Forfeiture of gratuity under Section 4(6) of the Payment of Gratuity Act (PGA) 1972 is the employer's power to withhold or reduce gratuity payable to an employee whose services are terminated for specified misconduct. It operates as a punitive exception to the default rule of payment, available only on two exhaustive grounds and strictly interpreted by courts.

Legal Foundation

- Section 4(6)(a), Payment of Gratuity Act (PGA) 1972 : Permits forfeiture to the extent of damage where termination is for riotous or disorderly conduct, violence, or damage to employer property
- Section 4(6)(b), Payment of Gratuity Act (PGA) 1972 : Permits forfeiture wholly or partially where termination is for an offence involving moral turpitude committed during employment

> **Mnemonic: "RVMDB"**
>
> **Riot | Violence | Moral Turpitude | Damage | Burden**

Riot | Violence | Moral Turpitude | Damage | Burden

Riot

Section 4(6)(a) permits forfeiture where the employee's services are terminated for riotous or disorderly conduct on the employer's premises. The conduct must be established through proper domestic enquiry. Mere participation in a lawful strike or demonstration does not constitute riotous conduct unless it degenerates into violence.

Violence

Acts of violence against the employer, employer's property, co-workers, or management during employment trigger forfeiture rights. The violence must be proved and must be the ground of termination. Verbal abuse or threats, without physical violence, typically do not meet this threshold.

Moral Turpitude

Section 4(6)(b) permits forfeiture where the employee is terminated for an offence involving moral turpitude committed during the course of employment. "Moral turpitude" is judicially understood as conduct contrary to justice, honesty, or good morals: theft, fraud, embezzlement, bribery, and sexual offences qualify. The offence must be committed during the employment period.

Damage

Under Section 4(6)(a), forfeiture is limited to the extent of damage caused: if the employee caused Rs.50,000 in damage, only Rs.50,000 of gratuity is forfeitable, not the entire amount. This proportionality constraint prevents forfeiture from becoming a punitive tool disproportionate to the actual harm.

Burden

The burden of establishing grounds for forfeiture lies entirely on the employer. The SCI in Bharat Gold Mines (2002) held that forfeiture is punitive and must be strictly proved: the employer must establish both the commission of the act and that it falls within the enumerated grounds. Courts construe Section 4(6) narrowly in favour of the employee.

Case Laws

Bharat Gold Mines Ltd. v. Regional Labour Commissioner (Supreme Court of India, 2002)

📋 Facts

An employee dismissed for alleged insubordination had his gratuity forfeited. The misconduct did not involve violence or moral turpitude.

🔨 Held

The SCI directed payment of full gratuity, holding that Section 4(6) grounds are exhaustive: insubordination, absence, or ordinary misconduct cannot trigger forfeiture.

💡 Principle

Forfeiture is the exception, payment is the rule: only the two statutory grounds (riot/violence/damage or moral turpitude) can justify withholding gratuity.

Union Bank of India v. C.G. Ajay Babu (Supreme Court of India, 2018)

📋 Facts

A bank employee dismissed for fraud (embezzlement of customer funds) was denied gratuity on the ground of moral turpitude under Section 4(6)(b).

🔨 Held

The SCI upheld the forfeiture, holding that embezzlement committed during employment constitutes an offence involving moral turpitude, squarely within Section 4(6)(b).

💡 Principle

Fraud and embezzlement during employment are textbook instances of moral turpitude justifying total forfeiture of gratuity under Section 4(6)(b).

Forfeiture as a Punitive Exception Operable Only Within Two Sealed Statutory Categories

Section 4(6) of the PGA 1972 is exhaustive: only riot/violence/property damage or moral turpitude can defeat gratuity entitlement. All other grounds of termination, however serious, leave the gratuity right intact.

Q5. Continuous Service

PRIORITY: ★☆☆ | PART: A | FREQ: 1

The 240-Day Rule for Computing Gratuity Eligibility

Continuous service under Section 2A of the Payment of Gratuity Act (PGA) 1972 is the statutory method for computing whether an employee has completed the five years required for gratuity eligibility. An employee who has worked for 240 days in a 12-month period (190 days for mines or establishments working below ground) is deemed to have been in continuous service for that year, regardless of breaks, interruptions, or the nature of employment.

Legal Foundation

- Section 2A, Payment of Gratuity Act (PGA) 1972 : Defines continuous service through the 240-day deemed service rule for computing gratuity eligibility
- Section 4(1), Payment of Gratuity Act (PGA) 1972 : Prescribes five years of continuous service as the threshold for gratuity (with exceptions for death and disablement)

> **Mnemonic: "TDBIR"**
>
> **Two Forty | Deemed | Breaks | Interruptions | Reckoning**

Two Forty | Deemed | Breaks | Interruptions | Reckoning

Two Forty

If an employee has actually worked for not less than 240 days in the preceding 12 months, the employee is deemed to have been in continuous service throughout that period. This 240-day threshold converts intermittent or irregular employment into deemed continuous service for statutory purposes.

Deemed

The concept of "deemed" service means that actual continuity of employment is not required: gaps, breaks, and interruptions do not defeat continuity provided the 240-day threshold is met. The legal fiction treats interrupted service as continuous, protecting workers with seasonal, contractual, or casual employment patterns.

Breaks

Authorised leave, sickness, temporary layoffs, lockouts, and periods of accident or disease covered by maternity or medical leave count towards the 240 days or are excluded from the computation of the 12-month period (meaning they do not break continuity). The SCI in Surinder Singh Sibia v. UGC (1989) confirmed that authorised absences do not break continuous service.

Interruptions

Unauthorised absence (beyond a reasonable period) or voluntary abandonment of employment may break continuity. However, mere technical breaks (expiry and renewal of contracts, temporary gaps between engagements for the same employer) do not break service if the employee returns and completes 240 days in the aggregate.

Reckoning

For the purpose of the five-year computation, each year in which 240 days are worked counts as one year of continuous service. If in the final year the employee has worked six months or more (but less than 240 days), Section 4(2) rounds it up to a full year for gratuity computation. Thus four calendar years and 240+ days in the fifth year satisfies the five-year requirement.

Case Laws

Surinder Singh Sibia v. University Grants Commission (Supreme Court of India, 1989)

📋 Facts

An employee worked four years and 240 days but the employer denied gratuity, arguing five complete calendar years were not served.

🔨 Held

The SCI held that Section 2A's deemed service mechanism governs: 240 days in a year equals one year of continuous service, making four years and 240 days equal to five years.

💡 Principle

The five-year requirement is assessed through Section 2A's deemed service formula, not by calendar reckoning: 240 days worked in any year counts as a full year.

Mettur Beardsell Ltd. v. Regional Labour Commissioner (Madras High Court, 2006)

📋 Facts

A contract worker employed through successive short-term contracts (11 months each, with 1-month breaks) claimed gratuity after five such cycles. The employer argued the breaks destroyed continuity.

🔨 Held

The Court held that where the breaks are artificial (designed to deny statutory benefits) and the worker is re-engaged by the same employer, continuity is not broken; total service is aggregated.

💡 Principle

Artificial breaks inserted to defeat the 240-day computation are disregarded: the substance of the employment relationship, not the form of the contracts, determines continuous service.

The 240-Day Rule as a Pro-Worker Legal Fiction Converting Irregular Work Into Continuous Service

Section 2A of the PGA 1972 ensures that the five-year threshold is assessed by substance (days actually worked) rather than form (calendar continuity), protecting irregular, seasonal, and contract workers from artificial denial of gratuity rights.

End of Unit IV | Part A | 5 Answers | Frequency-ordered

LABOUR LAW II | UNIT V: FACTORIES, CHILD LABOUR & EQUAL REMUNERATION

Part A | 6-Mark Short Answers

Q1. Child Labour / Rights of Child

PRIORITY: ★★★ | PART: A | FREQ: 7

Constitutional and Statutory Prohibition on Child Labour

Child labour is the employment of children below 14 years in any occupation or process, prohibited absolutely under Article 24 of the Constitution of India and the Child Labour (Prohibition and Regulation) Act (CLPRA) 1986 (as amended in 2016). The amendment of 2016 converted the Act from a regulation-focused statute to a near-total prohibition, banning employment of children below 14 in all occupations and restricting adolescents (14 to 18) from hazardous occupations.

Legal Foundation

- Article 24, Constitution of India, 1950 : Prohibits employment of children below 14 years in any factory, mine, or other hazardous employment
- Section 3, Child Labour (Prohibition and Regulation) Act (CLPRA) 1986 (as amended 2016) : Prohibits employment of any child below 14 in any occupation or process, with exception only for family enterprises and audio-visual entertainment

> **Mnemonic: "APCHF"**
>
> **Article 24 | Prohibition | CLPRA | Hazardous | Fourteen**

Article 24 | Prohibition | CLPRA | Hazardous | Fourteen

Article 24

Article 24 of the Constitution is a fundamental right: "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." Unlike directive principles, this is directly enforceable. The SCI in M.C. Mehta v. State of Tamil Nadu (1996) directed the establishment of a Child Labour Rehabilitation Fund, holding that Article 24 creates a positive obligation on the State.

Prohibition

The CLPRA 2016 Amendment imposes a complete ban on employment of children below 14 in all occupations and processes (not merely hazardous ones as under the original 1986 Act). The only exception is participation in family enterprises (non-hazardous) or the audio-visual entertainment industry with specified conditions. Consent of parents is no defence under the Act.

CLPRA

The Child Labour (Prohibition and Regulation) Act 1986 was the first comprehensive central legislation on child labour. The 2016 Amendment transformed it: Section 3 now prohibits all child employment; Section 3A restricts adolescent (14 to 18) employment to non-hazardous occupations. Penalties were enhanced: imprisonment of 6 months to 2 years and fine of Rs.20,000 to Rs.50,000 for first offence.

Hazardous

For adolescents (14 to 18), employment is prohibited in hazardous occupations and processes listed in the Schedule to the Act. These include mining, explosives, construction involving scaffolding, and any process involving exposure to toxic substances. The Central Government may add occupations to the Schedule by notification.

Fourteen

The age of 14 is the universal threshold across constitutional text (Article 24), statutory law (CLPRA), and international conventions (ILO Convention 138). Below 14: total prohibition. Between 14 and 18: restricted employment (non-hazardous only, with prescribed conditions of work, hours, and rest). The SCI in PUDR v. Union of India (1982) held that employment of children below minimum wage also constitutes exploitation prohibited under Article 23.

Case Laws

M.C. Mehta v. State of Tamil Nadu (Supreme Court of India, 1996)

📋 Facts

Children were employed in match factories in Sivakasi, Tamil Nadu, exposed to hazardous chemicals and fire risks. A PIL was filed seeking enforcement of Article 24.

🔨 Held

The SCI directed: (a) employers to deposit Rs.20,000 per child in a rehabilitation fund, (b) State to provide alternative education to rescued children, and (c) one adult family member to be given employment in place of the child.

💡 Principle

Article 24 creates both a prohibition and a positive obligation: the State must not merely punish child labour but rehabilitate affected children and provide economic alternatives to families.

People's Union for Democratic Rights (PUDR) v. Union of India (Supreme Court of India, 1982)

📋 Facts

Children were employed in construction for the Asian Games at wages below minimum. The employer argued voluntary engagement and parental consent.

🔨 Held

The SCI held that employment of children in construction is prohibited under Article 24 and constitutes forced labour under Article 23; parental consent is irrelevant.

💡 Principle

Parental consent does not legitimise child labour: Article 24 is an absolute prohibition that cannot be waived by consent of any party.

Article 24 as an Absolute Fundamental Right Prohibition Undefeatable by Consent or Custom

Child labour prohibition under Article 24 and the CLPRA 2016 is total for children below 14, restricted for adolescents 14 to 18, and parental consent provides no defence.

Q2. Welfare of Labour / Labour Welfare

PRIORITY: ★★★ | PART: A | FREQ: 7

Statutory Welfare Obligations Under the Factories Act

Labour welfare refers to the statutory amenities and facilities that an employer is obligated to provide for the health, safety, comfort, and general well-being of workers beyond mere wages. Chapter V of the Factories Act 1948 (Sections 42 to 50) prescribes mandatory welfare provisions in every factory employing the specified number of workers.

Legal Foundation

- Sections 42 to 50, Factories Act 1948 : Prescribe mandatory welfare provisions: washing facilities, storing/drying clothing, sitting facilities, first aid, canteens, shelters, creches, and welfare officers
- Article 42, Constitution of India, 1950 : Directs the State to make provision for securing just and humane conditions of work

> **Mnemonic: "WCCSF"**
>
> **Washing | Canteen | Creche | Shelter | First Aid**

Washing | Canteen | Creche | Shelter | First Aid

Washing

Section 42 mandates adequate and suitable washing facilities, separately for male and female workers, conveniently accessible and kept clean. These must be provided in every factory regardless of size. The provision ensures hygiene and dignity in the workplace.

Canteen

Section 46 mandates a canteen in every factory employing 250 or more workers. The canteen must serve food at subsidised rates during working hours. The State Government may prescribe the standards of food, charges, furniture, and equipment. Management of the canteen may be through a canteen committee with worker representation.

Creche

Section 48 mandates a creche in every factory employing 30 or more women workers. The creche must be adequately equipped, maintained clean, and staffed with trained attendants. Women workers are allowed to visit the creche during prescribed intervals for feeding. The 2017 Amendment to the MBA extended the creche mandate to all establishments with 50+ employees.

Shelter

Section 47 mandates rest shelters and lunch rooms in every factory employing 150 or more workers. These must be sufficiently lighted, ventilated, and maintained at comfortable temperature. The purpose is to ensure that workers have a dignified space for rest during breaks.

First Aid

Section 45 mandates first-aid boxes or cupboards equipped with prescribed contents, readily accessible during working hours, at the ratio of one box per 150 workers. In factories employing 500 or more workers, an ambulance room with a qualified medical practitioner must be maintained.

Case Laws

Consumer Education and Research Centre v. Union of India (Supreme Court of India, 1995)

📋 Facts

Workers in asbestos factories were exposed to health hazards without adequate welfare provisions (medical facilities, health monitoring, or protective equipment).

🔨 Held

The SCI held that the right to health and welfare at the workplace is integral to Article 21 (right to life); employers must comply with all welfare provisions and provide health monitoring.

💡 Principle

Labour welfare provisions are not discretionary administrative requirements but constitutional obligations flowing from Article 21: non-compliance violates the worker's fundamental right to life.

Bandhua Mukti Morcha v. Union of India (Supreme Court of India, 1984)

📋 Facts

Workers in stone quarries were denied basic welfare facilities: no drinking water, no washing facilities, no medical aid, no rest shelters.

🔨 Held

The SCI directed immediate compliance with all welfare provisions under the Factories Act and equivalent legislation, holding that denial of basic welfare constitutes violation of human dignity.

💡 Principle

Statutory welfare provisions represent the minimum standards of human dignity in the workplace: their denial reduces workers to conditions violating Articles 21 and 23.

Welfare Provisions as Constitutionally Mandated Minimum Standards of Workplace Dignity

Chapter V of the Factories Act 1948 creates non-negotiable welfare obligations: canteen (250+ workers), creche (30+ women), shelters (150+ workers), first aid (all factories), and washing facilities (all factories), enforced as constitutional requirements under Articles 21 and 42.

Q3. Equal Remuneration / Equal Pay for Equal Work

PRIORITY: ★★☆ | PART: A | FREQ: 3

The Statutory and Constitutional Right to Equal Pay

Equal remuneration is the right of men and women workers to receive equal pay for the same work or work of a similar nature, codified under the Equal Remuneration Act (ERA) 1976 and constitutionally anchored in Articles 14, 15, 16, and 39(d) of the Constitution. Section 4 of the ERA prohibits any employer from paying to any worker remuneration at rates less favourable than those at which remuneration is paid to workers of the opposite sex for the same or similar work.

Legal Foundation

- Section 4, Equal Remuneration Act (ERA) 1976 : Prohibits discrimination in remuneration between men and women for same work or work of similar nature
- Article 39(d), Constitution of India, 1950 : Directs the State to ensure that there is equal pay for equal work for both men and women

> **Mnemonic: "SDRCW"**
>
> **Same Work | Discrimination | Rate | Constitutional | Women**

Same Work | Discrimination | Rate | Constitutional | Women

Same Work

Section 2(h) of the ERA defines "same work or work of a similar nature" as work where the skill, effort, and responsibility required are the same, with any differences in working conditions being not of practical importance. The test is functional similarity, not identical job titles.

Discrimination

Section 4 prohibits discrimination in basic wages, DA, and other terms of remuneration between male and female workers performing the same or similar work. The employer cannot create gender-based pay disparities through classification, designation, or nomenclature differences where the work performed is functionally identical.

Rate

The ERA mandates not merely equal total pay but equal rates: the basic wage, DA, and all components must be equalized. The SCI in Mackinnon Mackenzie v. Audrey D'Costa (1987) held that gender-based classification of identical work into different categories (to justify pay differences) violates Section 4.

Constitutional

Article 39(d) (Directive Principle) mandates equal pay for equal work. The SCI in Randhir Singh v. Union of India (1982) elevated this to an enforceable right by reading it into Articles 14 and 16. The ERA gives statutory flesh to this constitutional directive.

Women

While the ERA focuses on gender-based pay discrimination, the SCI in D.S. Nakara v. Union of India (1983) extended the principle of equal pay for equal work beyond gender to cover all arbitrary classifications. However, the ERA specifically targets gender discrimination and provides dedicated enforcement machinery.

Case Laws

Mackinnon Mackenzie & Co. v. Audrey D'Costa (Supreme Court of India, 1987)

📋 Facts

Female stenographers were classified as "lady stenographers" and paid less than male stenographers doing identical work. The employer argued the classification justified the pay difference.

🔨 Held

The SCI held that reclassification of identical work into gender-based categories to justify pay disparity violates the ERA; the work being same, the pay must be equal.

💡 Principle

Artificial classification cannot mask gender-based pay discrimination: where the work is the same, the pay must be equal regardless of how the posts are labelled.

Randhir Singh v. Union of India (Supreme Court of India, 1982)

📋 Facts

Drivers in different government departments performing identical work received different pay scales. A driver in a lower-paid department challenged the disparity.

🔨 Held

The SCI held that "equal pay for equal work" is a constitutional right enforceable under Articles 14 and 16; identical work must receive identical remuneration regardless of departmental classification.

💡 Principle

Equal pay for equal work transcends gender: it is a general constitutional principle prohibiting all arbitrary pay disparities for identical work.

Equal Remuneration as Both Gender-Specific Statute and Universal Constitutional Principle

The ERA 1976 prohibits gender-based pay discrimination for same or similar work, while the constitutional principle (Articles 14, 16, 39(d)) extends equal pay for equal work beyond gender to all arbitrary classifications.

Q4. Hazardous Activity

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Regulation of Hazardous Processes Under the Factories Act

Hazardous activity under the Factories Act 1948 refers to any process or operation declared as "hazardous" by the State Government under Section 2(cb), where such process involves: handling toxic substances, risk of fire or explosion, generation of dust or fumes injurious to health, or any other process which the State Government may declare as dangerous to life, safety, or health of workers. Chapter IVA (Sections 41A to 41H) was inserted by the 1987 Amendment to specifically regulate factories engaged in hazardous processes.

Legal Foundation

- Section 2(cb), Factories Act 1948 : Defines "hazardous process" as any process or activity in relation to an industry specified in the First Schedule where workers are likely to be exposed to hazards
- Section 41A, Factories Act 1948 : Mandates constitution of Site Appraisal Committees before establishing factories involving hazardous processes

> **Mnemonic: "TSEMH"**
>
> **Toxic | Schedule | Emergency Plan | Medical Examination | Health Records**

Toxic | Schedule | Emergency Plan | Medical Examination | Health Records

Toxic

Hazardous processes involve handling, manufacturing, or exposure to toxic substances (chemicals, fumes, dust, radiation) that pose risks of chronic or acute health damage. The First Schedule to the Factories Act lists 29 categories of hazardous processes, including handling asbestos, lead, mercury, benzene, and radioactive substances.

Schedule

The First Schedule enumerates specific industries and processes deemed hazardous: electroplating, ceramic manufacture, lead smelting, manufacture of pesticides, and 26 others. The State Government may add processes to the Schedule by notification. Any factory carrying on a scheduled process is subject to the enhanced regulatory regime under Chapter IVA.

Emergency Plan

Section 41B mandates that every occupier of a factory involving hazardous processes must prepare and maintain an on-site emergency plan and assist in the preparation of an off-site emergency plan by the District Emergency Authority. This is a post-Bhopal Gas Tragedy provision designed to prevent and manage industrial disasters.

Medical Examination

Section 41C mandates that workers employed in hazardous processes must undergo medical examinations at prescribed intervals (before employment and periodically thereafter). The results must be recorded and maintained as health records. Workers showing symptoms of occupational disease must be removed from hazardous exposure.

Health Records

Section 41H mandates maintenance of health records of workers employed in hazardous processes for a period of 40 years after the worker leaves employment. These records enable tracking of long-latency occupational diseases (cancer, asbestosis) that may manifest decades after exposure ceased.

Case Laws

M.C. Mehta v. Union of India (Oleum Gas Leak Case) (Supreme Court of India, 1987)

📋 Facts

Oleum gas leaked from a factory in Delhi causing harm to nearby residents and workers. The question was the standard of liability for factories engaged in hazardous activities.

🔨 Held

The SCI developed the principle of "absolute liability" (beyond strict liability): enterprises engaged in inherently dangerous activities owe an absolute duty of care and cannot plead any exception.

💡 Principle

Factories engaged in hazardous processes bear absolute liability for harm: no defence (Act of God, third party interference, due diligence) is available.

Consumer Education and Research Centre v. Union of India (Supreme Court of India, 1995)

📋 Facts

Workers exposed to asbestos (a hazardous process under the First Schedule) developed lung diseases. They claimed the employer failed to conduct medical examinations or maintain health records.

🔨 Held

The SCI directed compliance with all Chapter IVA provisions and held that the right to occupational health in hazardous industries is part of the right to life under Article 21.

💡 Principle

Chapter IVA obligations (medical examination, health records, emergency plans) are constitutional imperatives in hazardous process factories, not optional administrative requirements.

Hazardous Processes as a Separate Regulatory Regime with Absolute Liability

Chapter IVA of the Factories Act (Sections 41A to 41H) creates an enhanced regulatory framework for hazardous process factories: Site Appraisal Committees, emergency plans, mandatory medical examination, 40-year health records, and absolute liability for any escape of hazardous material.

Q5. Safety and Welfare of Labour

PRIORITY: ★☆☆ | PART: A | FREQ: 1

Safety Provisions as Mandatory Employer Obligations Under the Factories Act

Safety of workers in factories is governed by Chapter IV of the Factories Act 1948 (Sections 21 to 41), which prescribes mandatory safety measures regarding fencing of machinery, work on or near machinery in motion, employment of young persons on dangerous machines, and safety precautions against fire, explosion, and toxic substances. These provisions are non-negotiable: breach attracts criminal liability on the occupier and manager.

Legal Foundation

- Section 21, Factories Act 1948 : Mandates fencing of every dangerous part of any machinery in every factory (moving parts, revolving machinery, pinch points)
- Section 40B, Factories Act 1948 : Mandates appointment of Safety Officers in factories employing 1,000 or more workers or in factories involving hazardous processes

> **Mnemonic: "FEMHO"**
>
> **Fencing | Employment of Young Persons | Machinery | Hoists | Officers**

Fencing | Employment of Young Persons | Machinery | Hoists | Officers

Fencing

Section 21 mandates that every moving part of a prime mover, every flywheel connected to a prime mover, and every dangerous part of any machinery shall be securely fenced. The fencing must be of substantial construction and constantly maintained in position while the parts are in motion or use. The occupier's duty to fence is absolute for listed parts.

Employment of Young Persons

Section 23 prohibits employment of any young person (below 18) on dangerous machinery unless fully instructed of the dangers and trained, or under adequate supervision by a person with thorough knowledge. This is a specific safety provision targeting the vulnerability of young workers to machinery hazards.

Machinery

Sections 24 to 27 prescribe specific machinery safety measures: striking gear and devices for cutting off power (Section 24), self-acting machines (Section 25), casing of new machinery (Section 26), and prohibition of women and children from cleaning, lubricating, or adjusting moving machinery (Section 27). Each section targets a specific machinery risk.

Hoists

Section 28 mandates that every hoist and lift in a factory must be of good mechanical construction, sound material, and adequate strength. They must be inspected by a competent person at prescribed intervals. Section 29 similarly regulates lifting machines, chains, ropes, and lifting tackles used in factories.

Officers

Section 40B mandates appointment of Safety Officers in factories employing 1,000 or more workers. Safety Officers are responsible for: conducting safety inspections, advising on safety measures, investigating accidents, maintaining safety records, and conducting safety training. In hazardous process factories, Safety Officers are mandatory regardless of worker count.

Case Laws

Vellore Citizens Welfare Forum v. Union of India (Supreme Court of India, 1996)

📋 Facts

Tannery factories discharged untreated effluent causing environmental and worker health hazards. Workers were exposed to chemicals without adequate safety measures.

🔨 Held

The SCI directed compliance with all safety and environmental provisions, applying the precautionary principle and the polluter pays principle to factories violating safety norms.

💡 Principle

Safety obligations under the Factories Act are both worker-directed and environmentally directed: non-compliance with safety norms attracts liability for harm to workers and the environment.

M.C. Mehta v. Union of India (Oleum Gas Leak) (Supreme Court of India, 1987)

📋 Facts

Gas leaked from a chemical factory due to inadequate safety measures and fencing of hazardous equipment.

🔨 Held

The SCI held that the occupier of a factory has an absolute and non-delegable duty to ensure safety: the duty under Chapter IV is strict, and failure attracts absolute liability.

💡 Principle

Safety duties under the Factories Act are non-delegable and absolute: the occupier cannot escape liability by delegating safety functions or pleading employee fault.

Safety Provisions as Non-Delegable Absolute Duties of the Factory Occupier

Chapter IV of the Factories Act 1948 imposes mandatory, non-delegable safety obligations on the occupier: fencing, machinery safeguards, hoist inspection, young person protection, and Safety Officer appointment, with criminal liability for breach.

End of Unit V | Part A | 5 Answers | Frequency-ordered

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