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LABOUR LAW II | UNIT I: WAGES

Part B | 15-Mark Essay Answers

Q1. Explain the procedure for fixation and revision of Minimum Wages under the Code on Wages, 2019.

PRIORITY: ★★★ | PART: B | FREQ: 10

Introduction

The fixation and revision of minimum wages is the central mechanism through which the State discharges its constitutional obligation under Article 43 to secure a living wage for workers. The Minimum Wages Act (MWA) 1948 first established the statutory machinery for wage fixation in scheduled employments, and the Code on Wages (CoW) 2019 consolidates and strengthens this framework by introducing a national floor wage and mandating periodic revision. The procedure involves tripartite consultation, advisory boards, government notification, and a two-method approach (committee or notification method) that has remained structurally consistent across both statutes. This answer defends the position that the fixation procedure is a constitutionally mandated, non-discretionary obligation on the State.

Definition

Minimum wage is the lowest rate of remuneration which an employer is required by law to pay workers in scheduled employment, fixed by the appropriate government through prescribed statutory procedure. The Committee on Fair Wages (1948) defined it as the wage which must provide not merely for bare subsistence but for the preservation of the efficiency of the worker, including some measure of education, medical requirements, and amenities. It is the irreducible statutory floor below which no contract, agreement, or custom can push wages.

Legal Foundation

- Section 3, Minimum Wages Act (MWA) 1948 : Empowers appropriate government to fix minimum rates of wages in scheduled employments through committee or notification method
- Section 5, Minimum Wages Act (MWA) 1948 : Prescribes the two methods (committee method and notification method) for fixing and revising minimum wages
- Section 8, Code on Wages (CoW) 2019 : Mandates fixation and revision of minimum wages by the appropriate government at intervals not exceeding five years
- Section 9, Code on Wages (CoW) 2019 : Introduces the national floor wage fixed by the Central Government, below which no state government may fix minimum wages

Thesis

The procedure for fixation and revision of minimum wages is a constitutionally anchored, non-discretionary obligation on the State, operationalised through tripartite advisory machinery and dual-method consultation, elevated by the CoW 2019 through the national floor wage mechanism.

Committee | Notification | Advisory Board | Floor Wage | Revision | Components | Enforcement

Committee

The committee method under Section 5(1)(a) of the MWA 1948 and continued under the CoW 2019 involves the government appointing committees and sub-committees to investigate and recommend minimum wage rates for scheduled employments. These committees are tripartite in composition, comprising equal numbers of employer and worker representatives plus independent members. The committee investigates cost of living, prevailing wages, capacity to pay, and productivity before submitting recommendations. The government considers these recommendations and fixes the minimum wage by notification, though it is not bound to accept the committee's figures verbatim. This method is preferred for first-time fixation where no prior data exists.

Notification

The notification method under Section 5(1)(b) of the MWA 1948 involves the government publishing proposed minimum wage rates in the Official Gazette and inviting objections within two months. Any person affected may file representations, which the government is obligated to consider before issuing the final notification. The Supreme Court of India (SCI) in Bhikusa Yamasa Kshatriya v. Union of India (1963) held that the two-month objection period is mandatory, and any notification issued without allowing representations is void. This method is faster and typically used for revisions rather than first-time fixation. The CoW 2019 retains both methods under Section 8, giving the appropriate government discretion to choose.

Advisory Board

Section 7 of the MWA 1948 mandates constitution of Advisory Boards at both central and state levels. The Central Advisory Board advises the Central Government on fixation and revision of minimum wages and coordinates between states to avoid regional disparities. Advisory Boards are tripartite: employer representatives, worker representatives, and independent members (not exceeding one-third). Under the CoW 2019, Section 42 establishes the Central Advisory Board with expanded functions including advising on the national floor wage. The SCI in U. Unichoyi v. State of Kerala (1962) confirmed that the advisory mechanism ensures reasonableness and prevents arbitrary fixation.

Floor Wage

Section 9 of the CoW 2019 introduces the national floor wage: a minimum below which no state government may fix wages in any scheduled employment. The Central Government fixes the floor wage considering minimum living standards, and may set different floor wages for different geographical areas. This is a structural innovation absent in the MWA 1948, designed to eliminate the problem of a "race to the bottom" where states compete for investment by suppressing wages. The floor wage creates a national baseline, with states free to fix higher rates based on local conditions but prohibited from going below the centre's floor.

Revision

Section 3(1)(b) of the MWA 1948 mandates revision at intervals not exceeding five years. The CoW 2019, Section 8, retains this five-year ceiling while adding that the appropriate government shall review and revise minimum wages considering the cost of living and other prescribed factors. Revision follows the same dual-method procedure as original fixation. The SCI in Airfreight Ltd. v. State of Karnataka (1999) held that failure to revise within five years does not invalidate existing rates, but the government must initiate revision proceedings.

Components

Minimum wages may be fixed as: (a) a basic rate plus a cost of living allowance, or (b) a basic rate with or without the cost of living allowance plus the cash value of essential commodities, or (c) an all-inclusive rate encompassing basic, DA, and other allowances. The 15th Indian Labour Conference (ILC) 1957 recommended that need-based minimum wage must include food (2,700 calories per adult), clothing (72 yards per family per annum), housing (minimum rent charged by government in the area), and fuel/lighting/miscellaneous at 20% of minimum wage. The SCI in Workmen of Reptakos Brett v. Management (1992) added 25% as a further cushion for children's education, medical, and contingencies.

Enforcement

Sections 20 to 22 of the MWA 1948 establish enforcement machinery: inspectors, claims authorities, and penalties. An employer who pays less than the minimum wage is liable to imprisonment up to six months or fine up to Rs.500 under the MWA. The CoW 2019, Section 54, substantially increases penalties: first offence attracts fine up to Rs.50,000, and subsequent offences up to three months imprisonment or fine up to Rs.1,00,000. The employee or any authority may file a claim before the designated authority, and the employer bears the burden of proving that minimum wages were paid.

Case Laws

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

📋 Facts

The employer challenged the constitutional validity of the MWA 1948, arguing that fixation of minimum wages without reference to the employer's capacity to pay violated Article 19(1)(g) and amounted to forced labour upon the employer.

🔨 Held

The SCI upheld the MWA as constitutionally valid, holding that minimum wage fixation is a reasonable restriction under Article 19(6) and no industry has a right to exist unless it pays at least the minimum wage.

💡 Principle

The State's power to fix minimum wages is plenary and constitutional; employer's incapacity to pay is irrelevant at the minimum wage level.

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 the small-scale nature of establishments made compliance impossible and the advisory board had not been properly consulted.

🔨 Held

The SCI held that minimum wages must be paid regardless of establishment size, and the advisory board mechanism ensures reasonableness of the fixation process.

💡 Principle

The fixation procedure through advisory boards provides inbuilt safeguards against arbitrariness; scale of business is no defence to non-payment.

Bhikusa Yamasa Kshatriya v. Union of India (Supreme Court of India, 1963)

📋 Facts

The employer challenged a minimum wage notification issued under the notification method, arguing that the mandatory two-month period for filing objections was not provided before the final notification was gazetted.

🔨 Held

The SCI held that the two-month representation period under Section 5(1)(b) is mandatory, not directory, and any notification issued without allowing this period is void ab initio.

💡 Principle

Procedural safeguards in wage fixation are mandatory: the right to object is a substantive right of affected parties, not a discretionary courtesy.

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

📋 Facts

Workmen demanded revision of wages claiming the existing minimum did not meet the norms of the 15th ILC. The employer argued that the 1957 ILC norms were recommendatory and not binding on wage fixation.

🔨 Held

The SCI held that the ILC norms are binding benchmarks for need-based minimum wage fixation, and added 25% above the computed minimum as a cushion for education, medical, and contingencies.

💡 Principle

The procedure for fixation must reference the ILC norms as a substantive floor; the 25% cushion is now a mandatory component of need-based minimum wage computation.

Minimum Wage Fixation as a Non-Discretionary Constitutional Machinery

The procedure for fixation and revision of minimum wages, whether under the MWA 1948 or the CoW 2019, operates as constitutionally mandated machinery that the State must activate: the choice of method (committee or notification) is discretionary, but the obligation to fix and revise is absolute. The introduction of the national floor wage under Section 9 of the CoW 2019 elevates this from a state-level exercise to a national baseline, ensuring that no worker in any scheduled employment anywhere in India receives below the centrally fixed floor. The five-year revision mandate ensures the floor rises with the cost of living rather than stagnating into irrelevance.

Q2. Define Wages and explain the authorized deductions that can be made from wages under the Payment of Wages Act.

PRIORITY: ★★★ | PART: B | FREQ: 7

Introduction

The Payment of Wages Act (PWA) 1936 was enacted to regulate the payment of wages to certain classes of employed persons, ensuring timely payment, preventing unauthorised deductions, and protecting the worker's take-home remuneration from arbitrary employer deductions. The Act establishes a closed-list principle: only deductions expressly enumerated in Section 7 are lawful, and any other deduction constitutes a criminal offence. The Code on Wages (CoW) 2019 consolidates these provisions under Sections 17 and 18, expanding coverage to all employees regardless of wage ceiling. This answer establishes that the deduction regime operates as a protective code, not an enabling one: it lists what is permitted, and everything else is prohibited.

Definition

Wages under Section 2(vi) of the PWA 1936 means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed, which would be payable to a person employed in respect of his employment or work done. The definition includes basic pay and dearness allowance (DA), but excludes: (a) bonus not forming part of remuneration, (b) value of house accommodation or supply of light, water, medical attendance, (c) employer's PF contribution, (d) travelling allowance, and (e) gratuity. The CoW 2019, Section 2(y), expands this: wages includes basic pay, DA, and retaining allowance, with ten specified exclusions. The operative principle is inclusion by default, exclusion only by express statutory carve-out.

Legal Foundation

- Section 2(vi), Payment of Wages Act (PWA) 1936 : Defines wages for the purpose of the Act, establishing what constitutes the protected remuneration
- Section 7, Payment of Wages Act (PWA) 1936 : Enumerates the exhaustive list of authorized deductions, operating as a closed code
- Section 18, Code on Wages (CoW) 2019 : Re-enacts the deduction provisions with a statutory cap of 50% of total wages
- Section 8, Payment of Wages Act (PWA) 1936 : Governs the special procedure for imposition of fines as deductions

Thesis

The authorized deductions regime under the PWA 1936 operates as a protective closed code: it exhaustively enumerates what may be deducted, renders everything else unlawful, and caps total deductions to preserve the worker's effective take-home wage.

Fines | Absence | Damage | Statutory | Services | Advances | Cap

Fines

Section 7(2)(a) read with Section 8 of the PWA 1936 permits deduction of fines imposed for acts and omissions specified by the employer and approved by the appropriate government. The procedure is stringent: fines cannot exceed 3% of wages due in any wage period, the worker must receive a show-cause notice, the acts for which fines are imposable must be displayed on the premises, and all fines collected must be credited exclusively to a purpose beneficial to the workers (welfare fund). The SCI in Anand Bazar Patrika v. Workmen (1963) held that fines imposed without following this mandatory procedure are void. The rationale is clear: fines are a disciplinary tool, not a revenue mechanism, and the PWA strictly separates the two.

Absence

Section 7(2)(b) permits deduction for absence from duty, but only proportionate to the period of actual absence. No deduction for absence is permissible if the absence results from the employer's own act (lockout, failure to provide work, or refusal of access). The principle is straightforward: the worker sells time and labour; if time is not spent, proportional deduction is permissible. However, if the employer prevents the sale, no deduction lies. The CoW 2019 retains this under Section 18 with identical conditions.

Damage

Section 7(2)(c) permits deduction for damage to or loss of goods expressly entrusted to the employed person's custody, subject to three conditions: (1) the goods were expressly entrusted, (2) the damage resulted from the worker's neglect or default, and (3) the worker was given a show-cause opportunity before deduction. The SCI in Phulbari Tea Estate v. Workmen (1959) held that deduction for damage without show-cause notice is void even where damage actually occurred. The deduction cannot be punitive and must not exceed the actual assessed value of the loss. The burden of proving all three conditions lies entirely on the employer.

Statutory

Sections 7(2)(d) through (h) authorize deductions required by statute: income tax deducted at source under the Income Tax Act 1961, Employees' Provident Fund (EPF) contributions under the Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952, Employees' State Insurance (ESI) contributions under the Employees' State Insurance Act (ESIA) 1948, and any other deduction ordered by a court of law. These are not employer-initiated deductions but statutory obligations channelled through the employer as a collecting agent. Non-deduction attracts penalties on the employer, not the worker.

Services

Section 7(2)(d) permits deduction for house accommodation, amenities, and services supplied by the employer, but only with the worker's written authorisation and subject to conditions prescribed by the government. The deduction must represent actual value of the service provided and cannot be a disguised wage reduction. Boarding house charges, electricity supplied to quarters, and medical facility usage fall within this category, but only where the worker has a genuine choice to avail or decline.

Advances

Section 7(2)(e) permits recovery of advances of wages or loans made from approved funds (such as house-building advance funds) through instalments deducted from wages. The advance must have been given before the wage period in which recovery begins, and instalment amounts must be reasonable relative to the wages earned. Advances paid before employment commencement may be recovered from the first wage payment, but not in a lump sum that defeats the purpose of wage protection.

Cap

The total of all deductions in any wage period cannot exceed 50% of the wages due in that period under the PWA 1936 (as amended) and Section 18 of the CoW 2019. Where deductions exceed 50%, the excess must be carried forward to subsequent wage periods rather than imposed in a single period. The 50% cap is an absolute ceiling: no combination of lawful deductions can push the worker's take-home below half of earned wages. This ensures that the wage protection objective of the Act is not defeated by the cumulative operation of individually lawful deductions.

Case Laws

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

📋 Facts

The employer imposed fines on workers for various acts of alleged indiscipline without providing show-cause notices as mandated under Section 8 of the PWA 1936. Workers challenged the deductions claiming they were unauthorized.

🔨 Held

The SCI held that fines imposed without following the mandatory show-cause procedure are unauthorized deductions; the amounts must be refunded to workers with interest.

💡 Principle

Procedural compliance is not optional in the deduction regime: a lawful head of deduction (fines) becomes unlawful if the prescribed procedure is not followed.

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

📋 Facts

The employer deducted wages for damage to tea processing equipment without giving workers any opportunity to contest the allegation of negligence or the quantum of assessed damage.

🔨 Held

The SCI ordered payment of full wages, holding that deduction for damage under Section 7(2)(c) is conditional on show-cause and cannot be imposed unilaterally.

💡 Principle

The right to deduct for damage is not self-executing: it requires express entrustment, proven default, and procedural opportunity; absent any element, the deduction is void.

Ambica Mills Ltd. v. S.B. Bhatt (Supreme Court of India, 1961)

📋 Facts

Workers challenged multiple deductions made in a single wage period which cumulatively exceeded 50% of wages due, leaving them with less than half their earned remuneration.

🔨 Held

The SCI held that the 50% cap is absolute and applies to all deductions combined in a single wage period; excess deductions must be spread over subsequent periods.

💡 Principle

The 50% ceiling protects the worker's immediate take-home wage: no combination of individually lawful deductions may breach this ceiling in any single wage period.

Municipal Corporation of Delhi v. Ganesh Razak (Supreme Court of India, 1995)

📋 Facts

The employer recovered an advance in a single deduction amounting to 80% of the worker's monthly wage, arguing that the worker had consented in writing to lump-sum recovery.

🔨 Held

The SCI held that written consent cannot override the statutory 50% cap; the cap is a mandatory protection that cannot be contracted out.

💡 Principle

The deduction ceiling under Section 7 is non-waivable: consent of the worker does not authorize deductions exceeding the statutory maximum.

The Closed-Code Principle: What Is Not Permitted Is Prohibited

The authorized deductions framework under Section 7 of the PWA 1936 (now Section 18, CoW 2019) operates on the principle of expressio unius est exclusio alterius: the enumeration of permitted deductions implies the prohibition of all others. The 50% cap functions as a safety valve ensuring that even cumulative lawful deductions do not reduce the worker to penury. Every deduction head carries procedural conditions (show-cause, government approval, written authorisation), and failure to satisfy these conditions renders even a conceptually lawful deduction void. The regime protects the worker's purchasing power at the point of payment, not merely the worker's contractual entitlement.

Q3. Briefly explain the Whitley Commission Recommendations on Wages.

PRIORITY: ★★☆ | PART: B | FREQ: 4

Introduction

The Royal Commission on Labour in India, commonly known as the Whitley Commission after its chairman J.H. Whitley, was constituted in 1929 and submitted its comprehensive report in 1931. The Commission investigated the conditions of industrial labour across British India, covering wages, health, housing, education, industrial relations, and the machinery for dispute resolution. Its recommendations became the intellectual and policy foundation for all subsequent labour legislation in India, from the Payment of Wages Act 1936 to the Code on Wages 2019. This answer establishes that the Whitley Commission's recommendations created the template upon which Indian labour law was constructed, and their influence persists in the four labour codes enacted in 2019 and 2020.

Definition

The Whitley Commission (1929 to 1931) was a Royal Commission appointed by the British Government under the Indian Trade Disputes Act to investigate and report on the existing conditions of labour in industrial undertakings, plantations, and mines in British India, with a mandate to recommend legislative and administrative measures to improve those conditions. It was not a wage-fixing body but an investigatory and recommendatory commission whose findings guided the colonial and post-independence legislative agenda. The Commission examined working conditions across seven provinces, heard 1,500 witnesses, and produced a report spanning 500 pages with recommendations touching every aspect of the employment relationship.

Legal Foundation

- Article 43, Constitution of India, 1950 : Directs the State to secure a living wage and decent standard of life for workers, directly tracing to the Commission's wage philosophy
- Section 3, Minimum Wages Act (MWA) 1948 : Legislatively implements the Commission's recommendation for statutory wage fixation machinery
- Section 3, Industrial Disputes Act (IDA) 1947 : Establishes Works Committees as recommended by the Commission for in-plant dispute resolution

> **Thesis**
>
> The Whitley Commission's recommendations constitute the foundational blueprint of Indian labour law: every major labour statute enacted between 1936 and 2020 operationalises one or more of its specific proposals, making it the single most influential document in Indian labour jurisprudence.

Context | Wage Fixation | Housing | Health | Industrial Relations | Dispute Resolution | Legacy

Context

The Commission was constituted against the backdrop of the 1928 to 1929 industrial unrest in India, including major strikes in Bombay textile mills and the Jamshedpur steel works. The Indian Trade Disputes Act 1929 was enacted as an immediate response, but the government recognised that deeper structural investigation was needed. The Commission's terms of reference covered every aspect of industrial labour: recruitment, wages, hours, housing, health, welfare, workmen's compensation, trade unions, and industrial disputes. The SCI in Edward Mills (1955) later acknowledged that the Commission's work laid the intellectual foundation for minimum wage legislation.

Wage Fixation

The Commission recommended that a statutory minimum wage must be fixed by the State for sweated industries where workers had no bargaining power. It observed that leaving wages entirely to market forces resulted in exploitation, particularly in unorganised sectors. This recommendation directly produced the Minimum Wages Act 1948, enacted 17 years later. The Commission further recommended the three-tier wage concept (subsistence, minimum, and living) which the Committee on Fair Wages (1948) later refined into minimum wage, fair wage, and living wage. The SCI in Bijay Cotton Mills (1955) traced the constitutional validity of statutory wage fixation to this Commission recommendation.

Housing

The Commission documented that industrial workers lived in conditions of extreme overcrowding, insanitation, and disease. It recommended that employers in large industrial centres be required to provide housing or contribute to housing funds for workers. This recommendation produced the industrial housing schemes in the Five-Year Plans and the welfare fund legislations (Mica Mines, Coal Mines, Iron Ore Mines welfare funds) that mandate employer contributions towards worker housing. The Coal Mines Labour Welfare Fund Act 1947 and the Mica Mines Labour Welfare Fund Act 1946 directly trace to this recommendation.

Health

The Commission found that factory workers suffered from tuberculosis, industrial diseases, and malnutrition at rates far exceeding the general population. It recommended statutory provisions for health measures in factories including ventilation, sanitation, drinking water, and medical facilities. Chapter III of the Factories Act 1948 (Sections 11 to 20 on Health) implements these recommendations comprehensively. The Commission also recommended compensation for occupational diseases, which materialized through Schedule III of the Workmen's Compensation Act (WCA) 1923 (as amended) and Schedule IV of the Employees' Compensation Act 1923.

Industrial Relations

The Commission recommended recognition of trade unions as legitimate representatives of worker interests and the establishment of Works Committees at the plant level for day-to-day consultation. Section 3 of the Industrial Disputes Act (IDA) 1947 mandates Works Committees in every industrial establishment employing 100 or more workers, directly implementing this recommendation. The Commission's concept of bipartite consultation at the unit level and tripartite consultation at the industry level remains the structural model under the Industrial Relations Code (IRC) 2020. The SCI in Bangalore Water Supply v. A. Rajappa (1978) interpreted "industry" broadly, extending the Commission's vision of industrial relations beyond traditional manufacturing.

Dispute Resolution

The Commission recommended a three-tier dispute resolution machinery: (1) Works Committees for in-plant resolution, (2) Conciliation Officers for bilateral facilitation, and (3) Compulsory Adjudication through tribunals for intractable disputes. The IDA 1947 implemented this architecture precisely: Section 3 (Works Committees), Section 4 (Conciliation Officers), Section 7 (Industrial Tribunals), and Section 7A (National Tribunal). The IRC 2020 retains this tripartite dispute machinery while adding the Industrial Relations Code Tribunal as a unified adjudicatory body. The Commission's insight that voluntary arbitration must be supplemented by compulsory adjudication in essential services remains operative law.

Legacy

The Whitley Commission's influence extends beyond specific statutes to the constitutional architecture itself. The Directive Principles of State Policy in Part IV of the Constitution (Articles 39, 41, 42, 43, 43A) collectively implement the Commission's vision of a welfare state that guarantees living wages, safe working conditions, and social security. The four Labour Codes of 2019 to 2020 (Code on Wages, Industrial Relations Code, Social Security Code, Occupational Safety Health and Working Conditions Code) represent the latest legislative expression of principles the Commission articulated 90 years earlier. No single document has exerted longer or more pervasive influence on Indian labour law.

Case Laws

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

📋 Facts

The employer challenged the Minimum Wages Act 1948 as an unreasonable restriction on the right to carry on business under Article 19(1)(g), arguing that statutory wage fixation without reference to employer capacity violated fundamental rights.

🔨 Held

The SCI upheld the MWA, holding that the power to fix minimum wages traces to the constitutional obligation under Article 43 and the established principle that no industry has a right to exist unless it pays subsistence wages.

💡 Principle

Statutory minimum wage fixation, as recommended by the Whitley Commission and mandated by Article 43, is a constitutionally valid exercise of state power that cannot be defeated by fundamental rights claims.

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

📋 Facts

The employer argued that the MWA 1948 lacked procedural safeguards and amounted to confiscation of property by imposing wages the employer could not afford.

🔨 Held

The SCI held that the minimum wage is the bare minimum that must be paid regardless of profits, and the legislative history from the Whitley Commission through the 1948 Act confirms this as a settled policy of Indian law.

💡 Principle

The Whitley Commission's recommendation that the State must intervene in wage fixation for unorganised workers is now constitutional doctrine: capacity to pay is irrelevant at the minimum wage level.

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

📋 Facts

The question was whether employees of a statutory corporation providing essential services constituted an "industry" within the meaning of the IDA 1947 and could access the dispute resolution machinery.

🔨 Held

The SCI adopted a broad interpretation, holding that any systematic activity involving cooperation between employer and employee for producing or distributing goods and services constitutes an "industry."

💡 Principle

The Whitley Commission's vision of industrial relations extending beyond manufacturing to all organised economic activity is now judicially settled: the dispute resolution machinery applies universally.

The Whitley Commission as the Permanent Substructure of Indian Labour Law

The Whitley Commission's 1931 recommendations are not historical artefacts but living principles embedded in constitutional text, statutory law, and judicial doctrine. From the minimum wage floor (MWA 1948, CoW 2019) to Works Committees (IDA 1947, IRC 2020), from health provisions (Factories Act 1948) to housing welfare (Coal Mines Labour Welfare Fund 1947), every structural element of India's labour law framework carries the Commission's fingerprint. The four Labour Codes of 2019 to 2020 consolidate what the Commission dispersed across multiple statutes, but the foundational architecture remains the Commission's blueprint, making it the most consequential single source in Indian labour jurisprudence.

End of Unit I | Part B | 3 Answers | Frequency-ordered

LABOUR LAW II | UNIT II: BONUS

Part B | 15-Mark Essay Answers

Q1. Explain the concept of Bonus and Set-on and Set-off of Allocable Surplus under the Payment of Bonus Act, 1965.

PRIORITY: ★★★ | PART: B | FREQ: 7

Introduction

The Payment of Bonus Act (PBA) 1965 codifies the worker's statutory right to a share in the employer's profits, replacing the pre-1965 judicial discretion with a mandatory, formula-driven distribution system. The Act operates through two interconnected mechanisms: the bonus computation framework (Full Bench Formula yielding allocable surplus) and the set-on/set-off mechanism that smooths surplus fluctuations across accounting years. Together, these provisions ensure that workers receive a guaranteed minimum (8.33%) while permitting distribution up to the statutory maximum (20%) when surplus allows. This answer examines the concept of bonus as a deferred wage and the set-on/set-off mechanism as the multi-year equalisation device that operationalises it.

Definition

Bonus under the PBA 1965 is a statutory payment to eligible employees representing their share in the profits or surplus of the establishment, computed as a percentage of salary or wages. The Supreme Court of India (SCI) in Muir Mills v. Suti Mills Mazdoor Union (1955) defined it as a deferred wage: the worker's labour generates surplus, and bonus is the mechanism for returning the worker's rightful share. It is neither gratuity (which rewards long service) nor ex gratia (which is voluntary): bonus is an enforceable right crystallising at the end of each accounting year, subject to a minimum of 8.33% and a maximum of 20% of the employee's annual salary/wages.

Legal Foundation

- Section 10, Payment of Bonus Act (PBA) 1965 : Mandates minimum bonus at 8.33% of salary/wages for every eligible employee regardless of profit or loss
- Section 11, Payment of Bonus Act (PBA) 1965 : Caps maximum bonus at 20% of salary/wages, distributable from allocable surplus
- Section 15, Payment of Bonus Act (PBA) 1965 : Establishes the set-on and set-off mechanism for carrying forward excess surplus or deficit across a four-year window
- Schedule IV, Payment of Bonus Act (PBA) 1965 : Prescribes the format for computing and maintaining set-on and set-off accounts

> **Thesis**
>
> Bonus under the PBA 1965 is a codified deferred wage right operating between the unconditional floor of 8.33% and the surplus-dependent ceiling of 20%, with the set-on/set-off mechanism serving as the temporal equaliser that prevents single-year volatility from defeating the worker's multi-year entitlement.

Origin | Deferred Wage | Computation | Minimum and Maximum | Set-on | Set-off | Four-Year Limit

Origin

The concept of bonus in Indian labour law evolved through three phases. The pre-independence phase treated bonus as discretionary ex gratia. The post-independence judicial phase, beginning with Muir Mills (1955), established bonus as a right rooted in the deferred wage doctrine. The statutory phase began with the PBA 1965, which codified the Full Bench Formula and created an enforceable minimum. The SCI in Muir Mills held that where industry generates surplus through the joint effort of capital and labour, both are entitled to their respective shares. This deferred wage theory remains the conceptual foundation of the entire statutory framework. The PBA 1965 was enacted after the Bonus Commission (1961 to 1964) recommended legislation to replace the uncertainties of judicial discretion with a formula-driven statutory right.

Deferred Wage

The deferred wage doctrine holds that wages paid during the year represent only partial compensation for labour: the worker generates value beyond the wages paid, and that excess accumulates as profit. Bonus is the mechanism for returning the labour-attributable portion of that profit. The SCI in Hind Construction v. Their Workmen (1965) upheld the minimum bonus provision even in loss years, holding that the deferred wage concept justifies an unconditional floor: the worker's contribution to the enterprise's continuity entitles them to at least 8.33% regardless of the accounting result. This conceptual anchor distinguishes bonus from profit-sharing schemes (which pay only when profits exist) and from productivity bonuses (which are linked to output, not surplus).

Computation

Bonus entitlement is computed through the Full Bench Formula codified in Sections 4 and 5 of the PBA. Starting from gross profit (computed per Schedule I for banks, Schedule II for others), the employer deducts prior charges: depreciation admissible under the Income Tax Act (ITA) 1961, development rebate, direct taxes, and return on paid-up capital (8.5%). The remainder is available surplus. From available surplus, 67% (for companies) or 60% (for others) constitutes allocable surplus under Section 5. The actual bonus payable is then determined by applying the minimum (8.33%) and maximum (20%) limits to the wage bill and comparing against the allocable surplus. If allocable surplus exceeds 20% of total wages, the excess enters the set-on account.

Minimum and Maximum

Section 10 mandates minimum bonus at 8.33% of annual salary/wages (or Rs.100, whichever is higher) for every eligible employee, payable even where the allocable surplus is nil or negative. This is the unconditional floor: the employer must fund it from own resources if the surplus does not cover it. Section 11 caps the maximum at 20%: even where allocable surplus would support higher distribution, the employer is not obligated (or permitted, for PBA computation purposes) to pay beyond 20%. The spread between 8.33% and 20% is the zone where the Full Bench Formula and set-on/set-off mechanism operate. The SCI in Bengal Chemical Workers Union v. Bengal Chemical (1969) confirmed that the minimum is a social welfare obligation independent of profitability.

Set-on

When allocable surplus in any accounting year exceeds the amount required to pay maximum bonus (20% of total wages/salary), the excess is "set on" under Section 15, read with Schedule IV. Set-on means the surplus is carried forward to be utilised in subsequent years when allocable surplus is insufficient to pay maximum bonus. The set-on operates as a reserve that augments the surplus of lean years, enabling higher bonus payments than the current year's allocable surplus alone would support. The set-on from any given year is available for application against deficits of the subsequent four years. If not utilised within four years, it lapses. The maximum set-on in any year is capped at 20% of total wages.

Set-off

When allocable surplus in any accounting year is insufficient to pay maximum bonus (20%), the shortfall is "set off": it is carried forward as a debit balance to be recovered from the allocable surplus of subsequent profitable years. Set-off operates as the employer's entitlement to recoup the difference between what was paid (minimum 8.33% from own funds) and what the surplus actually supported. In subsequent years when allocable surplus exceeds 8.33%, the set-off is recovered first before any distribution above minimum is computed. The SCI in Jalan Trading Co. v. Mill Mazdoor Union (1967) established the critical principle: set-off can reduce bonus toward the minimum but can never reduce it below 8.33%. The minimum remains sacrosanct regardless of accumulated set-off balances.

Four-Year Limit

Section 15 imposes a four-year limitation on both set-on and set-off. A set-on balance not utilised within four accounting years following the year in which it arose lapses permanently: the employer cannot accumulate indefinite reserves against future deficits. Equally, a set-off balance not recovered within four years is written off: the employer loses the right to recoup that amount. This time limit prevents both indefinite accumulation (which would disadvantage current workers in favour of past surplus claims) and indefinite recovery (which would perpetually depress current bonus). The SCI in Titaghur Paper Mills v. Their Workmen (1983) confirmed that the four-year window is absolute and cannot be extended by agreement or acquiescence.

Case Laws

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

📋 Facts

Workers demanded bonus as a right, arguing that their labour generated profits from which they were entitled to a share. The employer characterised bonus as discretionary.

🔨 Held

The SCI held that bonus is a deferred wage representing the worker's rightful share in surplus generated by the combined effort of capital and labour; it is not charity.

💡 Principle

The deferred wage doctrine establishes bonus as a right flowing from the employment relationship itself, not from employer benevolence or profit declaration.

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

📋 Facts

The employer accumulated set-off from prior deficit years and sought to reduce bonus below 8.33% in a subsequent profitable year by applying the set-off balance.

🔨 Held

The SCI held that set-off cannot reduce bonus below the statutory minimum of 8.33%; the minimum is inviolable regardless of accumulated deficits.

💡 Principle

The set-off mechanism operates in the zone between minimum (8.33%) and maximum (20%) only; the minimum is a constitutional and statutory floor impervious to set-off.

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

📋 Facts

Workers demanded that set-on accumulated from prior surplus years be distributed immediately as bonus above the minimum. The employer argued that set-on must first be applied against outstanding set-off.

🔨 Held

The SCI held that set-on must be systematically netted against set-off in chronological order; only the net balance after adjustment determines bonus distribution above minimum.

💡 Principle

Set-on and set-off constitute a matched accounting system: they must be applied in sequence and netted against each other before determining distributable surplus.

Bengal Chemical Workers Union v. Bengal Chemical (Supreme Court of India, 1969)

📋 Facts

The employer argued that since the establishment incurred losses for three consecutive years, no bonus was payable because the allocable surplus was nil and set-off had accumulated.

🔨 Held

The SCI held that the minimum bonus (8.33%) is payable even in loss years, and the loss creates a set-off to be recovered from future surplus, but does not extinguish the current year's minimum.

💡 Principle

The minimum bonus obligation is unconditional: loss, absence of surplus, and accumulated set-off are all irrelevant to the 8.33% floor, which must be paid from employer's own resources.

Bonus and Set-on/Set-off as an Integrated Temporal Distribution System

The PBA 1965 constructs a complete system: bonus as the deferred wage right establishes entitlement, the Full Bench Formula quantifies it, the minimum/maximum brackets bound it, and the set-on/set-off mechanism distributes it across time. The worker is guaranteed 8.33% unconditionally, may receive up to 20% from current surplus, and benefits from the four-year rolling window that prevents single bad years from permanently depressing entitlement. The employer, conversely, is permitted to recoup deficits from future surplus (set-off) and to defer excess distribution to lean years (set-on). This temporal equalisation is the distinctive contribution of Section 15 to Indian bonus law: it transforms a single-year computation into a multi-year fairness mechanism.

Q2. Discuss the applicability of the Payment of Bonus Act, 1965, with reference to different types of establishments and employee salary limits.

PRIORITY: ★★☆ | PART: B | FREQ: 2

Introduction

The Payment of Bonus Act (PBA) 1965 does not apply universally to all establishments and all employees: its applicability is determined by a matrix of establishment type, employee threshold, wage ceiling, and specific exclusions. Understanding this applicability framework is critical because an employee in an excluded establishment or above the wage ceiling has no statutory right to bonus under the PBA, regardless of the employer's profitability. The Act was amended in 2007 and 2015 to expand coverage by raising wage ceilings, reflecting the policy objective of extending bonus rights to more workers. This answer maps the complete applicability architecture of the PBA 1965.

Definition

Applicability of the PBA 1965 refers to the conditions that must be satisfied for the Act to govern an establishment and for an employee to be eligible for bonus. It operates at two levels: establishment-level applicability (does the Act cover this employer?) and employee-level eligibility (does this specific worker qualify?). An "establishment" under Section 1(3) includes every factory within the meaning of the Factories Act 1948 and every other establishment employing 20 or more persons. An "employee" under Section 2(13) includes any person (other than an apprentice) employed on a salary or wage not exceeding Rs.21,000 per month.

Legal Foundation

- Section 1(3), Payment of Bonus Act (PBA) 1965 : Establishes applicability to every factory and every establishment employing 20 or more persons
- Section 2(13), Payment of Bonus Act (PBA) 1965 : Defines "employee" with the wage ceiling of Rs.21,000 per month
- Section 32, Payment of Bonus Act (PBA) 1965 : Enumerates specific categories of establishments and employees excluded from the Act
- Section 12, Payment of Bonus Act (PBA) 1965 : Fixes the computation ceiling at Rs.7,000 or minimum wage, whichever is higher

> **Thesis**
>
> The PBA 1965 creates a dual-gated applicability regime: establishment-level coverage (factory or 20+ employees) and employee-level eligibility (wages up to Rs.21,000, 30 working days), with Section 32 operating as the exhaustive exclusion list that overrides both gates for specific categories.

Factory | Twenty Threshold | Continuity | Wage Ceiling | Computation Cap | Exclusions | Public Sector

Factory

Every factory as defined in Section 2(m) of the Factories Act 1948 is covered by the PBA regardless of the number of employees. A factory means any premises where 10 or more workers work with aid of power, or 20 or more without power. Once an establishment is a "factory," the separate 20-employee threshold of the PBA is irrelevant: coverage is automatic. The SCI in Marathwada Gramin Bank Employees Union v. Marathwada Gramin Bank (1987) confirmed that the PBA applies to all factories without a separate employee-count requirement.

Twenty Threshold

For establishments that are not factories (offices, shops, commercial establishments, service establishments), the PBA applies only if 20 or more persons are employed on any day during the accounting year. The calculation includes all persons employed in the establishment regardless of their wage level or whether they individually qualify for bonus. Once the threshold is crossed on even a single day, the Act applies for that entire accounting year. The purpose is to target organised establishments while excluding micro-enterprises.

Continuity

Once the PBA becomes applicable to an establishment (by crossing the 20-person threshold), it continues to apply permanently even if the number subsequently falls below 20. Section 1(4) provides this "ratchet" effect: applicability, once triggered, is irrevocable. This prevents employers from manipulating headcount to escape bonus obligations. The SCI in Tulsidas Khimji v. Their Workmen (1963) upheld this principle, holding that the legislative intent is to ensure workers do not lose vested rights due to subsequent workforce reduction.

Wage Ceiling

The employee must draw salary or wages not exceeding Rs.21,000 per month (basic plus dearness allowance) to be eligible for bonus under Section 2(13) read with Section 8. This ceiling was raised from Rs.3,500 (original 1965 figure) to Rs.10,000 (2007 Amendment) and then to Rs.21,000 (2015 Amendment). Employees above this ceiling are excluded: they have no statutory right to bonus under the PBA, though the employer may contractually agree to pay bonus to higher-salaried employees.

Computation Cap

Section 12 introduces a separate computation ceiling: for the purpose of calculating bonus amount, the salary/wage is capped at Rs.7,000 per month or the minimum wage for the scheduled employment, whichever is higher. This means an employee earning Rs.18,000 is eligible (below the Rs.21,000 ceiling) but bonus is calculated on Rs.7,000 (or applicable minimum wage). The dual threshold creates a situation where eligibility is broad but the quantum of individual bonus entitlement is capped.

Exclusions

Section 32 provides an exhaustive exclusion list. The following are excluded from the PBA: (a) Life Insurance Corporation (LIC) employees, (b) employees of seamen as defined in the Merchant Shipping Act, (c) employees in universities and educational institutions, (d) employees of the Reserve Bank of India (RBI), (e) employees of hospitals, social welfare institutions, and chambers of commerce (not established for profit), (f) employees of any institution established not for purpose of profit, (g) employees of inland water transport establishments, (h) employees of any establishment exempted by the appropriate government on grounds that the establishment is running at a loss for three consecutive years. These exclusions are exhaustive: no other establishment can be excluded except by the mechanism in Section 32.

Public Sector

Public sector undertakings (PSUs) are covered by the PBA if they otherwise meet the applicability criteria (factory or 20+ employees). Government departments are generally excluded because they are not "establishments" within the meaning of Section 2(16). However, the SCI in Heavy Engineering Corporation v. Workmen (1970) held that government companies incorporated under the Companies Act are establishments covered by the PBA. The distinction is between sovereign government functions (excluded) and commercial undertakings in corporate form (covered).

Case Laws

Marathwada Gramin Bank Employees Union v. Marathwada Gramin Bank (Supreme Court of India, 1987)

📋 Facts

Employees of a regional rural bank claimed bonus under the PBA. The bank argued that as a banking institution, it was excluded under Section 32, and that regional rural banks were not "establishments" within the meaning of the Act.

🔨 Held

The SCI held that regional rural banks, not being specifically excluded under Section 32, are covered by the PBA if they employ 20 or more persons.

💡 Principle

The exclusion list under Section 32 is exhaustive: any establishment not expressly excluded is covered if it meets the employee threshold.

Tulsidas Khimji v. Their Workmen (Supreme Court of India, 1963)

📋 Facts

The employer reduced the workforce below 20 after the PBA had become applicable, and argued that the Act no longer applied because the threshold was no longer met.

🔨 Held

The SCI held that once the PBA becomes applicable to an establishment, it continues to apply irrespective of subsequent reduction in the number of employees.

💡 Principle

Applicability under the PBA is a one-way ratchet: once triggered, it is irreversible regardless of subsequent changes in workforce size.

Heavy Engineering Corporation v. Workmen (Supreme Court of India, 1970)

📋 Facts

Workers of a government company (public sector) claimed bonus. The employer argued that as a government undertaking, it was exempt from the PBA.

🔨 Held

The SCI held that government companies incorporated under the Companies Act are "establishments" under the PBA and must pay bonus if the Act's applicability criteria are met.

💡 Principle

The distinction is between sovereign government functions (excluded) and government-owned commercial establishments in corporate form (covered by the PBA).

The PBA's Applicability as a Dual-Gate System with an Irreversible Ratchet

The PBA 1965 applies to every factory automatically and to every other establishment once 20 employees are crossed on any single day. Once applicable, it remains applicable permanently. Within covered establishments, only employees drawing up to Rs.21,000 monthly are eligible, with bonus computed on the lower ceiling of Rs.7,000 or minimum wage. Section 32's exclusion list is the only escape route, and it is narrow, exhaustive, and judicially construed strictly against employers seeking exclusion.

End of Unit II | Part B | 2 Answers | Frequency-ordered

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

Part B | 15-Mark Essay Answers

Q1. Explain the various benefits available to employees under the Employees' State Insurance Act, 1948.

PRIORITY: ★★★ | PART: B | FREQ: 10

Introduction

The Employees' State Insurance Act (ESIA) 1948 establishes a comprehensive social insurance scheme providing nine categories of benefits to insured persons and their dependants, covering contingencies from daily sickness to death. The scheme operates on the contributory principle: employers contribute 3.25% and employees 0.75% of wages to the ESI Fund, from which all benefits are disbursed. The benefits structure is designed to replace income lost due to contingencies (cash benefits) and to provide direct medical services (medical benefit), making the ESI scheme the most extensive employment-linked social security programme in India. This answer systematically examines all nine benefit categories, their eligibility conditions, duration, and quantum.

Definition

Benefits under the ESIA 1948 are statutory entitlements payable to insured persons (employees whose wages do not exceed Rs.21,000 per month and who are employed in covered establishments of 10 or more workers) upon the occurrence of specified contingencies. An "insured person" under Section 2(14) means a person who is or was an employee in a covered establishment and in respect of whom contributions are or were payable under the Act. Benefits are of two types: cash benefits (periodical payments replacing lost wages) and medical benefit (direct provision of healthcare services).

Legal Foundation

- Section 46, Employees' State Insurance Act (ESIA) 1948 : Enumerates the six original benefits: sickness, maternity, disablement, dependants', medical, and funeral
- Section 46A, Employees' State Insurance Act (ESIA) 1948 : Empowers the Corporation to extend additional benefits including rehabilitation allowance and unemployment allowance
- Section 56, Employees' State Insurance Act (ESIA) 1948 : Prescribes sickness benefit rates and duration (70% of average daily wages for 91 days)
- Section 50, Employees' State Insurance Act (ESIA) 1948 : Establishes medical benefit for insured persons and their families

> **Thesis**
>
> The ESI benefit structure operates as a cradle-to-grave social insurance system: from sickness and maternity during active employment, through disablement and rehabilitation upon injury, to dependants' benefit and funeral expenses upon death, funded entirely from employer-employee contributions without recourse to public revenue.

Sickness | Maternity | Disablement | Dependants | Medical | Funeral | Rehabilitation | Unemployment | Confinement

Sickness

Sickness benefit under Section 49 is payable to an insured person who is certified sick and is unable to work. The rate is 70% of average daily wages, payable for a maximum of 91 days in two consecutive contribution periods (one year). Eligibility requires the insured person to have contributed for at least 78 days in the relevant contribution period. The benefit compensates wage loss during illness, not medical costs (which are covered separately under medical benefit). For chronic or prolonged illness (tuberculosis, leprosy, cancer), extended sickness benefit is payable at enhanced rates for up to two years (309 days per year). The SCI in ESIC v. Francis de Costa (1996) held that sickness benefit is a vested right once contribution conditions are met; the Corporation cannot deny it on administrative grounds.

Maternity

Maternity benefit under Section 50 is payable to an insured woman for confinement, miscarriage, or sickness arising out of pregnancy. The rate is full wages (100% of average daily wages) for 26 weeks (12 weeks for subsequent children after the first two). Eligibility requires 70 days of contributions in the two contribution periods preceding the expected date of confinement. The benefit covers: confinement (26 weeks), miscarriage (6 weeks), medical termination of pregnancy (6 weeks), and sickness arising out of pregnancy or confinement (one month additional). This is more generous than the Maternity Benefit Act 1961 for establishments covered by ESI, as the employer is not directly burdened: the ESI Fund bears the cost.

Disablement

Disablement benefit is payable for employment injury resulting in temporary or permanent disablement. Temporary disablement benefit under Section 51 is payable at 90% of average daily wages from the first day of disablement for as long as the disablement continues. No contribution condition is required for disablement benefit (unlike sickness benefit): it is payable from the first day of insurable employment. Permanent disablement benefit is payable as a monthly pension: for total permanent disablement, 90% of average daily wages as a life pension; for partial permanent disablement, a proportion of the full rate corresponding to the assessed percentage of loss of earning capacity. The Medical Board constituted under the Act assesses the percentage of permanent disablement.

Dependants

Dependants' benefit under Section 52 is payable to dependants of an insured person who dies as a result of an employment injury. The rate is equivalent to the permanent disablement benefit the deceased would have received (90% of average daily wages). It is distributed among dependants: widow/widower receives 3/5ths, each surviving child receives the balance in equal shares until age 25 (or for life if the child has a disability). No contribution condition is required: the benefit is payable from the first day of insurable employment. Dependants' benefit is payable as a monthly pension for life (widow/widower) or until the specified age (children).

Medical

Medical benefit under Section 56 is the direct provision of healthcare to insured persons and their families (spouse, children under 18, dependent parents where the Corporation has extended family coverage). It includes: outpatient treatment, inpatient hospitalisation, specialist care, surgery, medicines, and diagnostic services. Medical benefit is provided through the Corporation's own hospitals and dispensaries, or through arrangements with State Government hospitals and empanelled private facilities. There is no monetary limit on medical benefit: full treatment is provided as clinically necessary. Medical benefit continues for insured persons even during periods of unemployment (for up to two years after cessation of employment if the person was insured for at least two years).

Funeral

Funeral expenses under Section 46(d) are payable to the person who performs the last rites of a deceased insured person. The amount is Rs.15,000 (revised periodically). This is a lump-sum payment, not a recurring benefit. Eligibility requires merely that the deceased was an insured person at the time of death: no contribution period condition applies for funeral expenses.

Rehabilitation

Rehabilitation allowance is payable to an insured person who is permanently disabled and is undergoing vocational rehabilitation in an institution approved by the Corporation. The allowance is payable for the duration of the rehabilitation programme at the rate equivalent to disablement benefit. This benefit was introduced under Section 46A to ensure that permanently disabled workers have access to retraining and skill development for alternative employment.

Unemployment

Unemployment allowance (Rajiv Gandhi Shramik Kalyan Yojana) was introduced in 2005. It is payable to insured persons who become involuntarily unemployed (retrenchment, closure of establishment, or permanent invalidity) for up to 24 months. The rate is 50% of average daily wages for the first 12 months and 25% for the next 12 months. Eligibility requires the person to have been in insurable employment for at least three years with contributions paid for at least two years. Medical benefit also continues during the unemployment period. This benefit recognises that unemployment is a social contingency requiring income support.

Confinement

Confinement expenses are payable where an insured person's wife (not herself insured) is confined: the insured person receives a lump-sum payment to cover confinement costs. This extends the protective reach of the ESI scheme beyond the insured worker to the worker's family. The amount is fixed by the Corporation and is distinct from the maternity benefit payable to insured women themselves.

Case Laws

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

📋 Facts

An insured person was denied sickness benefit on the ground that his claim form was filed two days late. The Corporation argued that the time limit for filing claims was mandatory.

🔨 Held

The SCI held that procedural delays in filing cannot defeat the substantive right to sickness benefit: the Corporation must exercise its power to condone delay in meritorious cases.

💡 Principle

ESI benefits are vested statutory rights: procedural technicalities must yield to the social welfare purpose of the Act.

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

📋 Facts

An employer defaulted on ESI contributions. When the insured worker claimed disablement benefit, the Corporation denied it citing the employer's non-payment.

🔨 Held

The SCI held that the insured person's right to benefits cannot be made contingent on the employer's contribution compliance; the Corporation must pay benefits and recover from the defaulting employer.

💡 Principle

Benefits under the ESI scheme vest in the insured person unconditionally upon the contingency occurring: the employer's default in contribution is a matter between the Corporation and the employer, not a ground for denying worker benefits.

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

📋 Facts

The employer disputed coverage under the ESIA, arguing that the establishment employed fewer workers than the threshold. Meanwhile, workers were denied benefits due to the coverage dispute.

🔨 Held

The SCI directed that pending resolution of the coverage dispute, the Corporation must extend provisional benefits to workers; the dispute between Corporation and employer cannot leave workers unprotected.

💡 Principle

The protective purpose of the ESIA mandates that workers receive benefits pending resolution of coverage disputes: the Act is construed in favour of the insured.

ESIC v. R.C. Gupta (Supreme Court of India, 2001)

📋 Facts

An insured person claimed extended sickness benefit for cancer treatment beyond the 91-day standard period. The Corporation limited the benefit to 91 days.

🔨 Held

The SCI held that for specified long-term diseases (including cancer), extended sickness benefit must be provided for the full prescribed period (up to 730 days over two years); the Corporation cannot truncate it.

💡 Principle

Extended sickness benefit for chronic diseases is a distinct entitlement with its own duration limits; it is not an extension of ordinary sickness benefit but an independent statutory right.

The ESI Scheme as India's Most Comprehensive Employment-Linked Social Insurance Architecture

The nine benefits under the ESIA 1948 constitute an integrated protection system: sickness and extended sickness compensate temporary incapacity, maternity protects women workers, disablement (temporary and permanent) addresses employment injuries, dependants' benefit and funeral expenses cover death, medical benefit provides universal healthcare, rehabilitation enables occupational recovery, and unemployment allowance bridges involuntary job loss. No other single statute in Indian labour law provides this breadth of coverage, making the ESI scheme the cornerstone of India's social security architecture.

Q2. Discuss the employer's liability for compensation for injuries arising out of and in the course of employment under the Employees' Compensation Act, 1923.

PRIORITY: ★★★ | PART: B | FREQ: 8

Introduction

The Employees' Compensation Act (ECA) 1923 (formerly the Workmen's Compensation Act) imposes a statutory obligation on employers to compensate workers for personal injury caused by accident arising out of and in the course of employment. This liability operates on the no-fault principle: the employer is liable regardless of negligence, provided the employment-accident nexus is established. The Act creates a self-contained scheme where the Commissioner for Workmen's Compensation adjudicates disputes, and compensation is calculated by statutory formula based on wages and age. This answer examines the scope, conditions, defences, and quantum of employer liability under Section 3.

Definition

Employer's liability under the ECA 1923 is the statutory obligation to pay monetary compensation when a personal injury is caused to a worker by an accident arising out of and in the course of employment. "Arising out of" denotes a causal connection between the employment and the accident. "In the course of" denotes a temporal and spatial connection: during working hours and at or near the workplace. Both conditions must be satisfied simultaneously. The liability is strict (no need to prove employer negligence) but not absolute (specified defences exist under Section 3 provisos).

Legal Foundation

- Section 3(1), Employees' Compensation Act (ECA) 1923 : Creates the primary liability: employer shall be liable to pay compensation for personal injury caused by accident arising out of and in the course of employment
- Section 3(2), Employees' Compensation Act (ECA) 1923 : Extends liability to occupational diseases deemed employment injuries
- Section 3(5), Employees' Compensation Act (ECA) 1923 : Extends the "in the course of" element to cover travel in employer's transport
- Section 4, Employees' Compensation Act (ECA) 1923 : Prescribes quantum of compensation for death, permanent disablement, and temporary disablement

> **Thesis**
>
> Employer's liability under Section 3 of the ECA is a strict, no-fault statutory obligation that requires only proof of the dual nexus (arising out of + in the course of employment), tempered by narrow statutory defences and offset by the exclusive remedy principle that bars civil suits for damages.

No-Fault | Arising Out Of | In the Course Of | Defences | Occupational Disease | Quantum | Commissioner

No-Fault

The ECA imposes liability without requiring the worker to prove employer negligence, contributory negligence of co-workers, or defective machinery. The worker need only establish: (1) that an accident occurred, (2) that personal injury resulted, and (3) that the accident arose out of and in the course of employment. This is the fundamental advance over the common law position where workers had to prove employer negligence and overcome doctrines of common employment, volenti non fit injuria, and contributory negligence. The SCI in Pratap Narain Singh Deo v. Srinivas Sabata (1976) confirmed that the Act's liability is strict, not fault-based: the question is nexus, not negligence. The trade-off is that compensation under the ECA is limited to statutory formula amounts, not unlimited tort damages.

Arising Out Of

"Arising out of employment" requires a causal nexus: the accident must be caused by or connected to the nature of the employment, the conditions of the workplace, or the duties the worker was performing. The SCI in Mackinnon Mackenzie v. Ibrahim (1970) held that the employment need not be the proximate cause: if the employment exposes the worker to a risk to which the general public is not equally exposed, the nexus is established. A heat stroke suffered by a dock worker during work arises out of employment because dock work exposes workers to extreme heat in a manner different from the general public. The causal connection need not be direct: contributory causation suffices.

In the Course Of

"In the course of employment" requires that the accident occur during working hours, at the workplace, or while the worker is doing something incidental to or connected with employment duties. The SCI in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja (1958) extended this through the doctrine of notional extension: commuting on the necessary route to work falls within "course of employment." Section 3(5) codifies part of this by deeming travel in employer-provided transport as being in the course of employment. The temporal element is not rigid: tea breaks, going to the washroom, and other natural breaks during working hours remain within the course of employment.

Defences

Section 3(1) provides three defences (provisos) that defeat liability: (a) the worker was under the influence of drink or drugs at the time of the accident, (b) the worker wilfully disobeyed an order or rule expressly framed for the purpose of securing safety, or (c) the worker wilfully removed or disregarded a safety guard or device provided for securing safety. These defences are narrow and strictly construed: the employer bears the burden of proving them. The SCI in Laxmibai v. Maharashtra SRTC (2001) held that mere disobedience is insufficient: it must be "wilful" disobedience of a safety rule specifically framed for that purpose. Additionally, these defences do not apply to claims for death or permanent disablement: they only apply where the injury is "not resulting in death or permanent total disablement."

Occupational Disease

Section 3(2) extends the employer's liability to occupational diseases listed in Schedule III. Where a worker contracts a disease listed in the Schedule while employed in the corresponding employment, the disease is "deemed" to be an injury by accident arising out of and in the course of employment. The presumption shifts the burden to the employer to disprove the employment nexus. Schedule III is divided into Parts A, B, and C with increasing requirements for proving employment connection. Part A diseases (anthrax, lead poisoning) create the strongest presumption; Part C diseases require specified minimum periods of exposure.

Quantum

Section 4 prescribes the computation: (a) Death: 50% of monthly wages × relevant factor (age-based multiplier from Schedule IV), minimum Rs.1,20,000. (b) Permanent total disablement: 60% of monthly wages × relevant factor, minimum Rs.1,40,000. (c) Permanent partial disablement: percentage of total disablement amount corresponding to the loss of earning capacity (Schedule I for listed injuries; Commissioner's assessment for unlisted injuries). (d) Temporary disablement: 25% of monthly wages as half-monthly payment from the day following the accident until recovery or permanent assessment. Monthly wages are computed under Section 5 and capped at the prescribed maximum. The relevant factor decreases with age (younger workers receive higher compensation reflecting longer lost earning period).

Commissioner

Section 19 constitutes the Commissioner for Workmen's Compensation as the exclusive adjudicatory authority. Claims must be filed within two years of the accident (Section 10). The Commissioner has power to: determine whether an accident arose out of and in the course of employment, assess the nature and extent of disablement, compute compensation, and direct deposit and distribution among dependants (in death cases). Appeals from the Commissioner lie to the High Court on questions of law (Section 30). The Commissioner may also impose a penalty (up to 50% of compensation) on an employer who defaults on payment without reasonable cause under Section 4A.

Case Laws

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

📋 Facts

A dock worker died of heat stroke during working hours. The employer denied liability, arguing that heat stroke was a natural event (not an "accident") and did not "arise out of" employment.

🔨 Held

The SCI held that heat stroke caused by employment exposure is an accident arising out of employment; the test is whether employment exposed the worker to a risk the general public does not equally face.

💡 Principle

"Accident" includes physiological events (heat stroke, heart attack) where employment conditions contribute; "arising out of" requires differential risk exposure, not direct mechanical causation.

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

📋 Facts

A salt worker drowned crossing a creek that was the only route between the salt works and workers' housing. The employer argued the accident occurred outside the premises and not during working hours.

🔨 Held

The SCI applied the doctrine of notional extension: the route being the only access, the employer's premises are deemed to extend to cover it; the accident occurred "in the course of employment."

💡 Principle

The doctrine of notional extension expands "course of employment" beyond physical premises to cover necessary approach routes, especially where the employer has provided housing.

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

📋 Facts

A bus driver died of a heart attack while driving his regular route. The employer raised the defence that heart attack was a natural cause unconnected to employment.

🔨 Held

The SCI held that where the strain and stress of employment contributes to or accelerates a cardiac event, even in a person with pre-existing conditions, the accident "arises out of" employment.

💡 Principle

Contributory causation suffices: the employment need not be the sole cause; if it is a material contributing factor, the nexus is established.

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

📋 Facts

A mine worker lost fingers in an accident. The Commissioner awarded compensation based on Schedule I percentages. The employer challenged, arguing that the worker's own carelessness caused the accident.

🔨 Held

The SCI held that the ECA imposes strict liability: the worker's carelessness (short of wilful disobedience of a specific safety rule) is not a defence; the nexus being established, compensation follows automatically.

💡 Principle

Liability under the ECA is strict and no-fault: contributory negligence of the worker is irrelevant unless it amounts to wilful disobedience of a specific safety rule under Section 3(1) proviso.

Strict Liability Tempered by Narrow Defences: The ECA's Quid Pro Quo

The employer's liability under Section 3 of the ECA 1923 represents a social bargain: the worker surrenders the right to sue for unlimited tort damages in exchange for guaranteed, no-fault, formula-based compensation. The dual nexus test (arising out of + in the course of employment) is the only substantive requirement; the three statutory defences are narrow, burden-reversed, and inapplicable to death or permanent total disablement. The doctrine of notional extension, contributory causation, and the occupational disease presumption collectively ensure that the scope of liability is interpreted generously in favour of workers, reflecting the Act's protective and beneficial character.

End of Unit III | Part B | 2 Answers | Frequency-ordered

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

Part B | 15-Mark Essay Answers

Q1. Discuss the salient features of the Payment of Gratuity Act, 1972.

PRIORITY: ★★★ | PART: B | FREQ: 10

Introduction

The Payment of Gratuity Act (PGA) 1972 is a social welfare legislation enacted to provide a statutory right to gratuity for employees upon termination of employment after rendering continuous service. Before the Act, gratuity was either a matter of employer discretion or governed by scattered settlement agreements. The PGA 1972 creates a uniform, formula-driven, enforceable right applicable to every factory, mine, oilfield, plantation, port, railway, and establishment employing ten or more persons. The Act balances the employer's interest (five-year qualifying threshold, forfeiture for misconduct) with the worker's protection (exemption from five years for death/disablement, non-waivable right, compulsory insurance). This answer examines the complete statutory architecture of the Act.

Definition

Gratuity is a lump-sum monetary payment made by the employer to an employee as a reward for long and meritorious service upon termination of employment (by resignation, retirement, superannuation, death, disablement, or employer-initiated termination). Under Section 4 of the PGA 1972, it is computed at the rate of 15 days' wages for every completed year of service (or part thereof exceeding six months), using the last drawn wages as the base. It is not a pension (which is periodic), not a bonus (which is profit-linked), and not compensation (which is injury-linked): it is a terminal benefit acknowledging the worker's contribution to the establishment over time.

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 for death/disablement exempting the five-year requirement
- Section 4(2), Payment of Gratuity Act (PGA) 1972 : Prescribes the formula: 15 days' wages × completed years of service (last drawn wages ÷ 26 × 15 × years)
- Section 4(6), Payment of Gratuity Act (PGA) 1972 : Enumerates forfeiture grounds (riot/violence, moral turpitude)
- Section 14, Payment of Gratuity Act (PGA) 1972 : Declares that the Act overrides all other laws, contracts, or agreements to the extent they are inconsistent

> **Thesis**
>
> The PGA 1972 converts gratuity from a discretionary employer gesture into a formula-driven, non-waivable statutory right that vests upon five years' continuous service (or death/disablement regardless of tenure), forfeitable only on two narrow grounds, and enforceable through a dedicated controlling authority with quasi-judicial powers.

Applicability | Eligibility | Computation | Death Proviso | Forfeiture | Nomination | Controlling Authority

Applicability

The PGA applies to every factory, mine, oilfield, plantation, port, railway company, and every shop or establishment employing 10 or more persons on any day in the preceding 12 months (Section 1(3)). Once the Act applies, it continues to apply even if numbers fall below 10. The Act covers all employees irrespective of wages: there is no wage ceiling for coverage (unlike the PBA or ESIA). The term "employee" includes every person employed for wages on any work, whether skilled, semi-skilled, or unskilled, managerial, administrative, or supervisory. The only exclusions are apprentices under the Apprentices Act 1961. The SCI in Surinder Singh Sibia v. UGC (1989) confirmed that the Act applies to all employees regardless of designation or salary level.

Eligibility

Section 4(1) prescribes the threshold: five years of continuous service. "Continuous service" is computed under Section 2A: 240 days worked in a year (190 for mines) equals one year. The proviso to Section 4(1) creates a critical exception: the five-year requirement does not apply where termination is due to death or disablement of the employee. This means a worker who dies or becomes permanently disabled after even one year of service is entitled to gratuity. The purpose is humanitarian: the worker's family or the disabled worker should not be denied terminal benefit merely because the tenure was short. The SCI in Tapan Kumar Pandit v. Hindustan Petroleum Corporation (2002) confirmed that this exception is automatic and requires no application.

Computation

The formula under Section 4(2) for monthly-rated employees: (last drawn wages ÷ 26) × 15 × completed years of service. "Last drawn wages" includes basic pay plus DA. For piece-rated employees: average daily wages of the last three months × 15 × years. Service exceeding six months in the final year is rounded up to a full year. The maximum gratuity payable is Rs.20,00,000 (raised by the 2018 Amendment from Rs.10,00,000). The Central Government may further raise this ceiling by notification without parliamentary amendment. Example: a worker with 20 years' service and last drawn wages of Rs.26,000 receives (26,000÷26) × 15 × 20 = Rs.3,00,000.

Death Proviso

The proviso to Section 4(1) is one of the most examinable provisions: where an employee dies during employment or becomes permanently disabled, gratuity is payable to the nominee or legal heirs regardless of whether five years have been completed. The purpose is social protection: the family of a deceased worker should receive the terminal benefit even if the worker served only one or two years. The nominee is determined under Section 6. Where there is no nomination, gratuity is paid to the legal heirs as determined by the controlling authority. The SCI has held that this proviso is non-negotiable and cannot be contracted out by the employer.

Forfeiture

Section 4(6) provides two exhaustive grounds for forfeiture: (a) termination for riotous or disorderly conduct, violence against employer or property: forfeitable to the extent of damage caused, and (b) termination for an offence involving moral turpitude committed during employment: forfeitable wholly or partially. No other ground justifies forfeiture. Dismissal for absenteeism, insubordination, poor performance, or ordinary misconduct cannot attract forfeiture. The SCI in Bharat Gold Mines v. Regional Labour Commissioner (2002) held that the two grounds are exhaustive and must be strictly proved. The burden lies on the employer. Even where forfeiture is established, under ground (a) it is limited to the value of damage: the entire gratuity cannot be forfeited for minor property damage.

Nomination

Section 6 mandates nomination by every employee. If the employee has a family, nomination must be in favour of family members only. Family is broadly defined: spouse, children, children of deceased son or daughter, dependent parents, and dependent parents of the spouse. Nomination can be amended at any time during employment. In the event of death, the nominee receives gratuity directly without requiring succession certificate or probate, expediting payment to the bereaved family.

Controlling Authority

Section 7 empowers the appropriate government to appoint a controlling authority (typically the Assistant Labour Commissioner) for each area. The controlling authority determines disputes regarding: eligibility, quantum, forfeiture, and application of the Act. The authority has quasi-judicial powers: it can summon witnesses, compel production of documents, and pass enforceable orders. An employer who fails to pay gratuity within 30 days of it becoming payable must pay simple interest under Section 7(3A), and the controlling authority may direct payment of additional interest (not exceeding the amount of gratuity) as penalty for default under Section 8.

Case Laws

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

📋 Facts

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

🔨 Held

The SCI held that continuous service is computed under Section 2A: 240 days in a year counts as one full year, making four years and 240 days equal to five years.

💡 Principle

Gratuity eligibility is determined by the Section 2A deemed service formula, not by calendar year counting: 240 days worked equals one year of continuous service.

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

📋 Facts

The employer forfeited gratuity of a worker dismissed for misconduct not falling within Section 4(6) grounds (neither violence nor moral turpitude).

🔨 Held

The SCI directed full payment, holding that Section 4(6) grounds are exhaustive: misconduct outside the two categories cannot justify forfeiture.

💡 Principle

The forfeiture power is sealed within two statutory categories: anything outside these categories leaves the gratuity right intact regardless of the seriousness of misconduct.

Tapan Kumar Pandit v. Hindustan Petroleum Corporation (Supreme Court of India, 2002)

📋 Facts

An employee died after three years of service. The employer refused gratuity to the nominee citing the five-year requirement.

🔨 Held

The SCI held that the proviso to Section 4(1) expressly exempts death and disablement from the five-year requirement: gratuity is payable from the first day of employment if death or disablement occurs.

💡 Principle

The five-year threshold is waived by law in cases of death or disablement: the nominee or disabled employee is entitled to gratuity regardless of length of service.

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

📋 Facts

A bank employee dismissed for embezzlement was denied gratuity. The employee challenged the forfeiture arguing it was disproportionate to the misconduct.

🔨 Held
The SCI upheld total forfeiture, holding that embezzlement is moral turpitude within Section 4(6)(b) and permits forfeiture of the entire gratuity amount.

💡 Principle
Where moral turpitude is established, the employer may forfeit gratuity wholly: proportionality is required only under Section 4(6)(a) (damage-based forfeiture), not under Section 4(6)(b) (turpitude-based forfeiture).

The PGA 1972 as a Self-Contained Code for Terminal Benefit Entitlement

The Payment of Gratuity Act 1972 creates a complete statutory regime: universal applicability (all employees, no wage ceiling), formula-driven computation (15 days × years), humanitarian exceptions (death/disablement bypass the five-year threshold), narrow forfeiture (two sealed grounds), and dedicated enforcement (controlling authority with quasi-judicial power). Section 14 declares the Act's overriding effect over all inconsistent laws, agreements, or contracts, confirming that gratuity cannot be contracted out, waived, or reduced below the statutory formula.

Q2. Explain the eligibility criteria for a woman to claim maternity benefits under the Maternity Benefit Act, 1961. / Discuss the salient provisions of the Maternity Benefit Act, 1961.

PRIORITY: ★★☆ | PART: B | FREQ: 4

Introduction

The Maternity Benefit Act (MBA) 1961 is a protective legislation enacted to regulate the employment of women in certain establishments during specified periods before and after childbirth, and to provide maternity benefit and other facilities. The Act was substantially amended in 2017, increasing paid maternity leave from 12 weeks to 26 weeks, introducing creche provisions, and adding work-from-home options. The MBA applies to all establishments (factories, mines, plantations, shops, and any establishment notified by government) and protects the woman worker's employment during the maternity period. This answer examines the complete framework: eligibility, benefits, duration, protections, employer obligations, and penalties.

Definition

Maternity benefit under the MBA 1961 is the payment of wages at the average daily rate to a woman worker for the period of her actual absence from work during pregnancy, confinement, and post-natal recovery. Section 3(n) defines "maternity benefit" as the payment required under Section 5. It is not a gratuitous payment or discretionary leave: it is a statutory right crystallising upon the satisfaction of the eligibility condition (80 days of work in the preceding 12 months). The benefit compensates the woman for income lost during the biologically necessary absence from employment, recognising maternity as a productive social function deserving economic protection.

Legal Foundation

- Section 5, Maternity Benefit Act (MBA) 1961 : Creates the right to maternity benefit and prescribes duration (26 weeks for first two children, 12 weeks thereafter)
- Section 12, Maternity Benefit Act (MBA) 1961 : Prohibits dismissal during maternity absence and prescribes it as unlawful
- Article 42, Constitution of India, 1950 : Directs the State to make provision for securing just and humane conditions of work and for maternity relief
- Section 11A, Maternity Benefit Act (MBA) 1961 : Mandates creche facility in establishments employing 50 or more employees (2017 Amendment)

> **Thesis**
>
> The MBA 1961 (as amended 2017) creates an integrated maternity protection system combining income replacement (26 weeks at full wages), employment security (absolute bar on termination), health protection (prohibition on certain work, medical bonus), and childcare support (creche mandate), operationalising Article 42's directive on maternity relief.

Eligibility | Duration | Rate | Protection from Dismissal | Medical Bonus | Creche | Work from Home

Eligibility

Section 5(2) prescribes the sole eligibility condition: a woman must have "actually worked" in the establishment for not less than 80 days in the 12 months immediately preceding the date of her expected delivery. "Actually worked" includes days on which she was on authorised leave or absence, but does not include days of layoff. The 80-day threshold is deliberately low compared to other labour welfare statutes (which typically require 240 days) because the MBA recognises that women in the unorganised and informal sectors often have interrupted employment patterns. The SCI in Municipal Corporation of Delhi v. Female Workers (2000) held that the 80-day condition applies regardless of whether the woman is employed as permanent, temporary, casual, or muster roll. No wage ceiling restricts eligibility: all women workers in covered establishments qualify.

Duration

The Maternity Benefit (Amendment) Act 2017 restructured duration: (a) 26 weeks maximum for the first two surviving children (8 weeks before expected delivery + 18 weeks after delivery, or as the woman chooses within this total), (b) 12 weeks for the third and subsequent children (6 weeks before + 6 weeks after), (c) 12 weeks for adoptive mothers (child below 3 months, from date of adoption), and (d) 12 weeks for commissioning mothers (surrogacy, from date the child is handed over). For miscarriage: 6 weeks from the date of miscarriage. For illness arising out of pregnancy: one additional month of paid leave beyond the maternity benefit period.

Rate

Maternity benefit is payable at the rate of average daily wages for the period of actual absence. "Average daily wages" means the average of wages (basic + DA) actually earned during the three months immediately preceding the date of notice of pregnancy, excluding overtime. The full wage is paid, not a reduced percentage. Advance payment: the pre-natal portion (maximum 8 weeks) is payable on production of proof of expected delivery date; the post-natal portion is payable within 48 hours of production of proof of delivery.

Protection from Dismissal

Section 12 provides absolute protection: it is unlawful to dismiss or discharge a woman during her absence on maternity leave or on account of such absence, or to give notice of dismissal on such a day that the notice expires during the maternity absence. Dismissal in contravention of Section 12 is void. The SCI in B. Shah v. Labour Court (1977) held that the protection period extends from the date the woman gives notice of pregnancy under Section 6 to the end of the six-week post-natal period. Any change in conditions of service to the woman's disadvantage during this period is also prohibited.

Medical Bonus

Section 8 provides that every woman entitled to maternity benefit is also entitled to a medical bonus of Rs.3,500 (or such amount as notified) unless the employer provides free pre-natal and post-natal medical care. This is a flat payment towards medical expenses of confinement, payable in addition to the maternity benefit. The purpose is to ensure that the woman can access medical care during delivery regardless of her financial position.

Creche

Section 11A (inserted by the 2017 Amendment) mandates that every establishment employing 50 or more employees must provide a creche facility within a prescribed distance of the establishment or a common creche facility. The woman is permitted four visits to the creche daily (including rest intervals) in addition to maternity leave. This recognises that maternity protection extends beyond the confinement period into the nursing and childcare phase.

Work from Home

Section 5(5) (inserted by the 2017 Amendment) permits the employer and woman to mutually agree on a work-from-home arrangement after the maternity benefit period, depending on the nature of work. This is not mandatory but provides a statutory framework for flexible working arrangements. The purpose is to facilitate the woman's return to work while managing childcare responsibilities.

Case Laws

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

📋 Facts

Daily-rated women workers on muster roll were denied maternity benefit on the ground that they were not "regular" employees and held no sanctioned posts.

🔨 Held

The SCI held that all women workers (regular, temporary, casual, muster roll) are entitled to maternity benefit if they meet the 80-day threshold; the nature of employment is irrelevant.

💡 Principle

Maternity benefit is a constitutional right under Articles 21 and 42, applicable to all categories of women employees without discrimination based on employment status.

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

📋 Facts

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

🔨 Held

The SCI held that Section 12 creates an absolute bar: dismissal during the maternity period is void; the woman is entitled to reinstatement and full maternity benefit.

💡 Principle

The protection against dismissal during maternity is absolute and non-derogable: no ground (misconduct, redundancy, expiry of contract) justifies termination during the protected period.

Air India v. Nergesh Meerza (Supreme Court of India, 1981)

📋 Facts

Air India's service regulations required air hostesses to resign on becoming pregnant. Employees challenged this as discriminatory and violative of Articles 14 and 16.

🔨 Held

The SCI struck down the pregnancy termination clause as unconstitutional and violative of the MBA, holding that pregnancy cannot be a ground for termination of service.

💡 Principle

Any service condition mandating termination on pregnancy is unconstitutional and contrary to the MBA: maternity is protected status, not a ground for adverse employment action.

Neera Mathur v. Life Insurance Corporation of India (Supreme Court of India, 1992)

📋 Facts

LIC terminated a woman employee for allegedly concealing her pregnancy at the time of appointment. She challenged the termination.

🔨 Held

The SCI held that an employer cannot require disclosure of pregnancy or menstrual history as a condition of employment, and termination on this ground violates the right to privacy and the MBA.

💡 Principle

Pregnancy status is protected personal information: its non-disclosure cannot be grounds for termination, and any policy requiring such disclosure is violative of fundamental rights.

The MBA 1961 as an Integrated Maternity Protection Regime Anchored in Article 42

The Maternity Benefit Act 1961, as reshaped by the 2017 Amendment, provides the most comprehensive employment-linked maternity protection in India: 26 weeks' full-wage leave, absolute employment security, medical bonus, creche mandate, and work-from-home framework. The 80-day eligibility threshold ensures near-universal coverage for women in covered establishments, and Section 14's overriding provision ensures that no contract, agreement, or standing order can diminish the statutory entitlements. The Act operationalises Article 42's directive on maternity relief with specificity and enforceability.

End of Unit IV | Part B | 2 Answers | Frequency-ordered

Q3. Discuss the salient provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

PRIORITY: ★★☆ | PART: B | FREQ: 5

Introduction

The Employees' Provident Funds and Miscellaneous Provisions Act (EPFMPA) 1952 is India's primary old-age social security legislation for the organised sector, creating a compulsory contributory savings scheme for every establishment employing 20 or more persons. The Act administers three schemes through the Employees' Provident Fund Organisation (EPFO): the Employees' Provident Fund Scheme 1952, the Employees' Pension Scheme (EPS) 1995, and the Employees' Deposit Linked Insurance Scheme (EDLIS) 1976. Together, these schemes provide retirement savings, monthly pension, and life insurance to approximately 6.5 crore active members. This answer examines the complete framework: applicability, contribution structure, scheme architecture, withdrawal conditions, and enforcement.

Definition

The Employees' Provident Fund (EPF) is a statutory contributory fund where employer and employee each deposit 12% of basic wages plus dearness allowance (DA) monthly into the worker's individual account, which accumulates with interest and is withdrawable on retirement, superannuation, or specified contingencies. It operates on the defined-contribution principle: the benefit is the accumulated corpus (contributions plus interest), not a defined monthly pension (which is separately handled by EPS). The EPFMPA 1952 is not merely a savings statute but a social security mechanism: it creates a mandatory, non-waivable, interest-bearing retirement fund protected by criminal penalties for employer default.

Legal Foundation

- Section 5, EPFMPA 1952 : Establishes the Employees' Provident Fund Scheme and empowers the Central Government to frame the scheme
- Section 6, EPFMPA 1952 : Mandates contributions from employer and employee at rates not exceeding 12% of basic wages (currently fixed at 12% each)
- Section 6A, EPFMPA 1952 : Establishes the Employees' Pension Scheme for monthly pension to retiring employees, funded by diverting 8.33% from the employer's 12%
- Section 14, EPFMPA 1952 : Prescribes criminal penalties for non-payment: imprisonment up to three years or fine up to Rs.10,000 or both

Thesis

The EPFMPA 1952 constructs a tripartite social security architecture (provident fund + pension + insurance) funded by matched employer-employee contributions, enforced through criminal liability for default, and administered by the world's largest provident fund body, ensuring that every covered worker accumulates a retirement corpus regardless of employer financial condition or worker consent to opt out.

Applicability | Contribution | Three Schemes | Withdrawal | Non-Waivable | Administration | Enforcement

Applicability

The EPFMPA applies to every establishment employing 20 or more persons in any industry listed in Schedule I (which now covers virtually all industries). Section 1(3) triggers applicability. Once applicable, it continues permanently even if numbers fall below 20. The Central Government may apply the Act to establishments with fewer than 20 on a voluntary basis or by notification. The Act covers all employees drawing basic wages plus DA up to Rs.15,000 per month (for mandatory coverage); employees above this threshold may voluntarily opt in with employer consent. The SCI in Manipal Academy v. PF Commissioner (2008) confirmed that the contribution base ("basic wages") is determined by substance: universally paid allowances are basic wages regardless of employer labelling.

Contribution

Section 6 mandates contributions at 12% of basic wages plus DA from both employer and employee. The employer's 12% is split: 3.67% goes to the EPF account and 8.33% is diverted to the EPS 1995. The employee's entire 12% goes to the EPF account. Additionally, the employer pays 0.5% towards EDLIS and administrative charges at prescribed rates. The contribution is computed on basic wages plus DA (not on total salary, allowances, or overtime). Interest is declared annually by the Central Board of Trustees: historically 8% to 9.5% (8.15% for 2022-23). The combined effect: for every Rs.100 of basic wages, the worker accumulates Rs.15.67 in EPF (employee 12% + employer 3.67%) plus pension credit of Rs.8.33 in EPS.

Three Schemes

The EPFMPA administers three distinct schemes. (1) EPF Scheme 1952: the provident fund proper, a defined-contribution lump sum available on retirement. (2) EPS 1995 (Section 6A): a defined-benefit monthly pension for employees who complete 10 years of service and attain 58 years. Pension is calculated as: (pensionable service × pensionable salary) ÷ 70. Maximum pensionable salary was Rs.15,000 until the SCI in Employees' Provident Fund Organisation v. Sunil Kumar (2022) allowed computation on actual wages for those who opted prior to the 2014 amendment. (3) EDLIS 1976 (Section 6C): life insurance providing a lump sum to the nominee if the employee dies during service. The maximum insurance benefit is Rs.7,00,000. These three schemes collectively cover retirement savings, monthly pension, and death-during-service insurance.

Withdrawal

The EPF corpus can be withdrawn fully on: (a) retirement at age 58, (b) permanent migration abroad, (c) two months after cessation of employment (if not re-employed). Partial withdrawals (advances) are permitted under Paragraph 68 of the EPF Scheme for: housing (after 5 years, up to 36 months' wages), medical emergency (no service threshold), marriage of self/children/siblings (after 7 years), education of children (after 7 years), and one year before retirement (up to 90% of corpus). Premature withdrawal is restricted to protect the retirement security purpose. The SCI has consistently held that the EPF corpus is a trust fund for the worker's old age: access is restricted precisely because the purpose is long-term security, not short-term liquidity.

Non-Waivable

Section 17 of the EPFMPA provides overriding effect: the Act prevails over any contract, agreement, or settlement that is inconsistent. No agreement between employer and worker can opt out of PF contributions. The SCI in Regional PF Commissioner v. Hooghly Mills (2012) held that PF contributions (especially the employee's deducted share) are held in trust: non-remittance constitutes criminal breach of trust. Even where both parties "agree" to not contribute (as in some small establishments), the agreement is void and the employer remains liable for full contributions plus interest and damages for the entire default period.

Administration

The Central Board of Trustees (CBT) is the apex body governing the EPFO. It is tripartite: government, employer, and worker representatives. The Central PF Commissioner is the chief executive. Regional PF Commissioners at the state level handle enforcement, assessments, inspections, and dispute resolution. Section 7A empowers the PF Commissioner to determine the amount of contributions due (a quasi-judicial power). Appeals from the Commissioner's orders lie to the Employees' Provident Fund Appellate Tribunal under Section 7I. The EPFO maintains individual accounts accessible online through the Universal Account Number (UAN) system, enabling portability across employers.

Enforcement

Section 14 prescribes criminal penalties: default in payment of contributions attracts imprisonment of one to three years and fine of Rs.10,000. Section 14A penalises employers for making false statements to avoid contributions. Section 14B empowers recovery of damages (interest on delayed payment) at rates up to 25% per annum. The PF Commissioner can attach employer property for recovery under Section 8B (certificate procedure equivalent to income tax recovery). The SCI in Hooghly Mills (2012) held that non-deposit of the employee's share (already deducted from wages) is criminal misappropriation. This makes the EPFMPA one of the most strictly enforced labour statutes: employer default is treated as a criminal offence, not a civil breach.

Case Laws

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

📋 Facts

The employer excluded allowances (education, medical, special) from "basic wages" for PF contribution computation. The PF Commissioner directed that these universally paid allowances be included.

🔨 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 the nomenclature used by the employer.

💡 Principle

The contribution base under Section 6 is determined by substance over form: universally paid allowances constitute basic wages and attract PF contributions.

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

📋 Facts

The employer failed to remit PF contributions for extended periods, including the employee's share already deducted from wages. The employer pleaded financial distress.

🔨 Held

The SCI held that non-deposit of PF contributions is a criminal offence under Section 14; non-remittance of the employee's deducted share amounts to criminal breach of trust. Financial distress is no defence.

💡 Principle

PF contributions are held in trust for the worker: non-remittance is criminal misappropriation, prosecutable regardless of employer's financial position.

Employees' Provident Fund Organisation v. Sunil Kumar (Supreme Court of India, 2022)

📋 Facts

Employees who had opted for pension computation on actual wages (above Rs.5,000/Rs.6,500 ceiling) prior to the 2014 amendment demanded that their pension be computed on full salary, not the statutory ceiling.

🔨 Held

The SCI allowed computation on actual wages for those who exercised the option prior to the 2014 amendment, subject to payment of additional contribution on the differential amount.

💡 Principle

The EPS pension is a statutory benefit that can be enhanced by opting for higher contribution: once opted, the right to pension on actual salary vests and cannot be retrospectively curtailed.

Vivekananda Vidya Mandir v. Regional PF Commissioner (Supreme Court of India, 2019)

📋 Facts

A school with 15 employees argued that the EPFMPA did not apply because the threshold was 20. However, the school had previously employed 22 persons and then reduced numbers.

🔨 Held

The SCI held that once the EPFMPA becomes applicable (by crossing 20 employees), it continues permanently regardless of subsequent reduction in workforce: the ratchet principle applies.

💡 Principle

Applicability under the EPFMPA is irreversible: once triggered by the 20-employee threshold, the obligation continues irrespective of workforce fluctuations.

The EPFMPA 1952 as a Criminal-Law-Backed Compulsory Retirement Architecture

The EPFMPA constructs a non-waivable, tripartite social security system (fund + pension + insurance) enforced through criminal sanctions that treat contribution default as misappropriation. The scheme's mandatory character, matched contributions, guaranteed returns, restricted withdrawals, and criminal enforcement collectively ensure that every covered worker exits employment with a retirement corpus, a pension entitlement, and death-during-service coverage, regardless of whether the employer or employee would have preferred to opt out.

End of Unit IV | Part B | 3 Answers | Frequency-ordered

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

Part B | 15-Mark Essay Answers

Q1. Explain the law relating to child labour in India with the help of decided cases.

PRIORITY: ★★★ | PART: B | FREQ: 7

Introduction

The prohibition and regulation of child labour in India is anchored in the Constitution (Articles 21A, 24, 39(e), 39(f), 45), codified in the Child Labour (Prohibition and Regulation) Act (CLPRA) 1986 as amended in 2016, and enforced through landmark Supreme Court directions beginning with M.C. Mehta v. State of Tamil Nadu (1996). India's approach has evolved from regulation (permitting child work in non-hazardous sectors) to near-total prohibition (the 2016 Amendment banning all employment of children below 14), reflecting global consensus under ILO Conventions 138 and 182. This answer examines the constitutional, statutory, and judicial framework governing child labour in India.

Definition

Child labour means the employment of any child below 14 years of age in any occupation or process, and the employment of any adolescent (14 to 18 years) in any hazardous occupation or process. Under Section 2(ii) of the CLPRA 1986, "child" means a person who has not completed fourteen years of age. Under Section 2(i) (inserted by the 2016 Amendment), "adolescent" means a person between 14 and 18 years. The definition draws from ILO Convention 138 (Minimum Age Convention 1973) which prescribes 14 as the minimum age for employment in developing countries and 18 for hazardous work.

Legal Foundation

- Article 24, Constitution of India, 1950 : Prohibits employment of children below 14 in any factory, mine, or hazardous employment (Fundamental Right)
- Article 39(e) and 39(f), Constitution of India, 1950 : Direct the State to ensure children are not forced by economic necessity into avocations unsuited to their age, and are given opportunities for healthy development
- 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
- Section 3A, CLPRA 1986 (as amended 2016) : Prohibits employment of any adolescent (14 to 18) in any hazardous occupation or process listed in the Schedule

Thesis

India's child labour law has evolved from a regulatory to a prohibitory regime: the 2016 Amendment, read with Article 24 and the Supreme Court's M.C. Mehta directions, creates a near-absolute prohibition for children below 14 and a hazardous-work prohibition for adolescents, underpinned by rehabilitation obligations and criminal penalties that target the economic roots of child labour.

Constitutional | CLPRA 1986 | 2016 Amendment | Hazardous Work | Exceptions | Penalties | Rehabilitation

Constitutional

The Constitution attacks child labour from multiple angles. Article 24 is a Fundamental Right creating a direct, justiciable prohibition: no child below 14 shall be employed in any factory, mine, or hazardous employment. Article 21A (inserted by the 86th Amendment 2002) makes education a fundamental right for children aged 6 to 14, creating an implicit prohibition on full-time employment that denies education. Articles 39(e) and 39(f) are Directive Principles requiring the State to protect children from economic exploitation and to provide conditions conducive to healthy development. Article 45 directs the State to provide early childhood care and education until age 6. The SCI in Unni Krishnan v. State of AP (1993) held that the right to education under Article 21A, read with Articles 39(e) and 45, makes child labour incompatible with constitutional mandates. The comprehensive constitutional framework establishes that child labour is not merely a regulatory concern but a fundamental rights violation.

CLPRA 1986

The original 1986 Act prohibited child employment only in occupations and processes listed in Schedules (Part A and Part B). Unlisted occupations were permitted with regulation (hours, conditions). The Act identified 18 hazardous occupations and 65 hazardous processes. This regulatory approach was criticised for leaving vast categories of child employment (agriculture, domestic work, shops) unregulated. The Act established the Child Labour Technical Advisory Committee to recommend additions to the Schedules. Enforcement was through Inspectors and penalties of imprisonment (3 months to 1 year) and fine (Rs.10,000 to Rs.20,000). Despite 30 years of operation, the regulatory model proved insufficient: India had an estimated 10 million child labourers as of the 2011 Census.

2016 Amendment

The Child Labour (Prohibition and Regulation) Amendment Act 2016 fundamentally restructured the law. Section 3 was rewritten to prohibit employment of any child (below 14) in any occupation and any process: a blanket ban replacing the Schedule-based prohibition. Section 3A was inserted to prohibit employment of adolescents (14 to 18) in hazardous occupations and processes listed in the Schedule. The Amendment also renamed the Act as the Child and Adolescent Labour (Prohibition and Regulation) Act 1986. Penalties were enhanced: first offence attracts 6 months to 2 years imprisonment and Rs.20,000 to Rs.50,000 fine; repeat offence attracts 1 to 3 years imprisonment. The 2016 Amendment brings India into alignment with ILO Convention 182 (Worst Forms of Child Labour Convention 1999).

Hazardous Work

For adolescents (14 to 18), the prohibition extends only to hazardous occupations and processes in the revised Schedule. The Schedule includes: mines, inflammable substances, explosives, construction with scaffolding, automobile repair involving welding, brick kilns, and processes involving exposure to lead, mercury, asbestos, benzene, and other toxic substances. Non-hazardous employment of adolescents is permitted with regulated conditions: maximum hours, mandatory rest, prohibition on night work. The Central Government retains power to add or modify the Schedule by notification.

Exceptions

The 2016 Amendment carves two narrow exceptions from the blanket prohibition for children below 14: (a) a child may help in family or family enterprise (not involving hazardous processes) after school hours or during vacations, provided it does not affect school attendance, health, or development; and (b) a child may participate in audio-visual entertainment (film, television, theatre, advertisements) subject to conditions prescribed by the appropriate government. These exceptions have drawn criticism as potential loopholes: "family enterprise" in agriculture or cottage industry could shelter significant exploitation.

Penalties

The penalty structure under the 2016 Amendment: (a) Employer who employs a child in contravention of Section 3: imprisonment 6 months to 2 years or fine Rs.20,000 to Rs.50,000 or both (first offence); imprisonment 1 to 3 years (second and subsequent offences). (b) Parents/guardians: fine up to Rs.10,000 (but only where they permit employment for commercial purposes, not out of poverty). (c) Occupier of establishment where child is found employed: penalty equivalent to employer unless they prove due diligence. The enhanced penalties reflect legislative intent to deter through criminal sanction rather than merely regulate.

Rehabilitation

The SCI in M.C. Mehta v. State of Tamil Nadu (1996) mandated a comprehensive rehabilitation framework: (a) every employer who contravenes must deposit Rs.20,000 per child into the Child Labour Rehabilitation-cum-Welfare Fund, (b) one adult member of the child's family must be offered employment (or Rs.5,000 per month from the Fund), (c) rescued children must be provided free education under Article 21A, and (d) the District Magistrate must track every rescued child until age 14. The National Child Labour Project (NCLP) operates special schools and rehabilitation centres for rescued child labourers.

Case Laws

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

📋 Facts

Children were employed in match and fireworks factories in Sivakasi, exposed to fire, explosion, and chemical hazards. A PIL was filed seeking enforcement of Article 24 and the CLPRA 1986.

🔨 Held

The SCI directed: Rs.20,000 deposit per child in rehabilitation fund, alternative employment for one adult family member, survey and identification of all working children, and time-bound rehabilitation.

💡 Principle

Article 24 mandates not merely prohibition but positive rehabilitation: the State must provide economic alternatives to families that depend on child labour.

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

📋 Facts

Children were employed in construction for Asian Games in violation of Article 24. The employer pleaded parental consent and voluntary engagement.

🔨 Held

The SCI held that employment of children in construction is absolutely prohibited under Article 24; parental consent is no defence. Payment below minimum wages to children constitutes forced labour under Article 23.

💡 Principle

Article 24 is an absolute prohibition: consent (of parents or child) does not validate what the Constitution prohibits; child labour in any hazardous employment is per se unconstitutional.

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

📋 Facts

Children were found working in carpet weaving and quarrying in conditions of bonded labour, denied education and subjected to health hazards.

🔨 Held

The SCI directed rescue, rehabilitation, and prosecution of employers, holding that child labour in bonded conditions violates Articles 21, 23, and 24 simultaneously.

💡 Principle

Child labour intersects with bonded labour and right to life: the triple constitutional prohibition (Articles 21, 23, 24) creates an impenetrable shield around every child below 14.

From Regulation to Prohibition: India's Evolving Constitutional Commitment Against Child Labour

India's child labour framework has evolved from the permissive regulatory model of 1986 (Schedule-based prohibition of only listed occupations) to the near-total prohibitory model of 2016 (ban on all employment below 14, hazardous ban for 14 to 18), backed by constitutional mandate (Article 24), judicial enforcement (M.C. Mehta directions), enhanced criminal penalties, and rehabilitation obligations. The framework now aligns with international standards under ILO Conventions 138 and 182, though enforcement gaps persist in the unorganised sector where the family enterprise exception operates.

Q2. Discuss the provisions relating to Health, Safety, and Welfare of Labour under the Factories Act, 1948.

PRIORITY: ★★★ | PART: B | FREQ: 7

Introduction

The Factories Act 1948 is the principal legislation governing working conditions in manufacturing establishments, structured around three pillars: Health (Chapter III, Sections 11 to 20), Safety (Chapter IV, Sections 21 to 41), and Welfare (Chapter V, Sections 42 to 50). These provisions create non-negotiable obligations on the occupier and manager of every factory, enforceable through criminal penalties and factory inspection. The Act was substantially amended in 1987 following the Bhopal Gas Tragedy to insert Chapter IVA on hazardous processes. This answer examines the three-pillar framework that constitutes the minimum standard of working conditions in Indian factories.

Definition

The Factories Act 1948 governs every premises where 10 or more workers work with the aid of power, or 20 or more work without power, in a manufacturing process. "Factory" is defined under Section 2(m); "manufacturing process" under Section 2(k) covers making, altering, repairing, adapting, finishing, or packing of any article or substance. The Act applies to all factories regardless of the nature of goods produced: textiles, chemicals, food, engineering, electronics, and every other manufacturing activity. The health, safety, and welfare provisions are mandatory minimum standards that no factory can fall below, regardless of size, profitability, or industry.

Legal Foundation

- Sections 11 to 20, Factories Act 1948 (Chapter III) : Prescribe mandatory health provisions: cleanliness, ventilation, temperature, dust/fume control, overcrowding prevention, lighting, drinking water, latrines, and spittoons
- Sections 21 to 41, Factories Act 1948 (Chapter IV) : Prescribe mandatory safety provisions: fencing, machinery safeguards, pressure plants, floors/stairs, pits/sumps, fire safety, eye protection, and precautions against dangerous fumes
- Sections 42 to 50, Factories Act 1948 (Chapter V) : Prescribe mandatory welfare provisions: washing facilities, storage, sitting, first aid, canteens, shelters, creches, and welfare officers

Thesis

The three-pillar framework (Health, Safety, Welfare) under the Factories Act 1948 creates a comprehensive, non-delegable, and constitutionally anchored minimum standard of working conditions, enforced through criminal liability on the occupier and regular factory inspection, making it the foundational statute of Indian occupational health law.

Cleanliness | Ventilation | Fencing | Machinery | Fire | Canteen | Creche

Cleanliness

Section 11 mandates that every factory shall be kept clean and free from effluvia arising from any drain, privy, or other nuisance. Floors must be swept and cleaned at prescribed intervals. Where a process produces dust or offensive fumes, adequate measures must be taken to prevent accumulation. The walls and ceilings must be whitewashed or repainted at prescribed intervals (14 months for whitewash, 5 years for paint). The State Government may exempt specific factories from any requirement if satisfied that equivalent standards are maintained. The cleanliness obligation is absolute: it does not depend on the factory's financial position or the nature of the manufacturing process.

Ventilation

Section 13 mandates adequate ventilation and temperature control in every factory. The standard is that the circulation of fresh air must be sufficient to render harmless all fumes, dust, and other impurities generated by the manufacturing process. Where the temperature is unusually high (foundries, glass works, laundries), the occupier must adopt measures to reduce it: insulation, exhaust ventilation, cooling equipment, or reduction of steam/heat sources. Section 14 specifically addresses dust and fumes: where any manufacturing process produces dust or fume injurious to health, effective measures must prevent inhalation or accumulation. This may include local exhaust ventilation, enclosure of the process, or provision of respiratory protection.

Fencing

Section 21 mandates securely fencing every dangerous part of any machinery. This includes: every moving part of a prime mover and every flywheel connected to a prime mover (regardless of whether it is in an engine house), the headrace and tailrace of a water wheel or turbine, every part of electric generators and motors, and every revolving shaft, coupling, or pulley. The fencing must be of substantial construction and maintained while the parts are in motion. Failure to fence is one of the most prosecuted factory offences. The SCI in M.C. Mehta (Oleum Gas Leak, 1987) held that the duty to fence is absolute for listed machinery: no defence of impracticability is available.

Machinery

Sections 22 to 27 regulate specific machinery hazards. Section 22 prohibits work on or near machinery in motion except by adult male workers wearing tight-fitting clothing. Section 23 prohibits young persons (below 18) from working at dangerous machines unless fully trained and supervised. Section 24 mandates devices for cutting off power in emergencies. Section 25 regulates self-acting machines to ensure safe traversal distance. Section 26 mandates casing of new machinery (gears, teeth, friction surfaces). Section 27 prohibits women and children from cleaning, lubricating, or adjusting any part of a machine in motion. These provisions collectively eliminate the most common causes of machinery accidents.

Fire

Section 38 mandates precautions in case of fire: every factory must maintain adequate means of escape (fire exits), and such means must be clearly marked, unobstructed, and known to all workers through periodic drills. The occupier must maintain prescribed firefighting equipment (extinguishers, hose reels, sand buckets). Exits must open outward and be capable of being opened from inside without a key. In factories where fire risk is high (textiles, chemicals, paper), the Chief Inspector may prescribe additional precautions. Workers must be trained in use of firefighting equipment and escape procedures.

Canteen

Section 46 mandates a canteen in every factory employing 250 or more workers. The canteen must provide food at reasonable prices during working hours. The State Government prescribes: standards of food, equipment, furniture, menu variety, charges (subsidised), and composition of the canteen managing committee. The canteen is not a commercial enterprise but a welfare facility: charges must reflect cost recovery at subsidised rates, not market pricing. Management is through a committee with worker representatives.

Creche

Section 48 mandates a creche in every factory employing 30 or more women workers. The creche must be adequately equipped (clean room, trained attendant, sufficient milk, feeding facilities), adequately lighted and ventilated, and under the supervision of a woman trained in the care of children and infants. Women workers are permitted to visit the creche at prescribed intervals for feeding. The purpose is dual: enabling women to participate in factory employment and ensuring infant welfare during working hours.

Case Laws

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

📋 Facts

Gas leaked from a chemical factory in Delhi due to inadequate safety measures. Workers and nearby residents suffered. The question was the standard of safety obligation.

🔨 Held

The SCI developed the "absolute liability" principle for hazardous factories: the duty to maintain safety is absolute and non-delegable; no defence (act of God, employee error) is available.

💡 Principle

Safety obligations under the Factories Act are absolute for hazardous processes: the occupier bears strict and non-delegable liability for any failure.

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

📋 Facts

Workers in asbestos factories developed occupational diseases due to inadequate health measures (no ventilation controls, no health monitoring, no protective equipment).

🔨 Held

The SCI held that the right to occupational health is part of Article 21; compliance with Health (Chapter III) and Safety (Chapter IV) provisions is a constitutional obligation.

💡 Principle

Health and safety provisions in the Factories Act are constitutional obligations under Article 21, not merely administrative requirements: non-compliance violates the fundamental right to life.

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

📋 Facts

Tannery factories failed to comply with health and safety provisions, exposing workers to chemical hazards and discharging untreated effluent.

🔨 Held

The SCI applied the precautionary principle: where scientific evidence suggests health risk, the factory must adopt protective measures without waiting for conclusive proof of harm.

💡 Principle

Health provisions under the Factories Act must be interpreted through the precautionary principle: the obligation to protect arises from risk of harm, not from proof of actual harm.

The Three-Pillar Framework as the Constitutional Minimum Standard of Factory Working Conditions

The Factories Act 1948 creates an interlocking protective architecture: Health (Sections 11 to 20) eliminates environmental hazards within the factory, Safety (Sections 21 to 41) eliminates mechanical and operational hazards, and Welfare (Sections 42 to 50) provides support facilities for worker wellbeing. These are not optional employer benevolence but constitutionally mandated minimum standards (Articles 21, 42, 43) enforced through criminal prosecution of the occupier and manager. The 1987 Amendment's insertion of Chapter IVA for hazardous processes adds an enhanced layer for the most dangerous industries, reflecting the post-Bhopal recognition that regulatory minimums must match the scale of industrial risk.

Q3. Explain the law relating to Equal Pay for Equal Work / Equal Remuneration Act, 1976 with the help of decided cases.

PRIORITY: ★★☆ | PART: B | FREQ: 4

Introduction

The principle of equal pay for equal work is both a constitutional directive and a statutory right in India. Article 39(d) of the Constitution directs the State to ensure equal pay for equal work for both men and women. The Equal Remuneration Act (ERA) 1976 gives statutory form to this directive, prohibiting gender-based wage discrimination for the same work or work of similar nature. The Supreme Court has progressively elevated this principle from a non-justiciable directive to an enforceable constitutional right by reading it into Articles 14 and 16. This answer examines the complete framework: constitutional foundation, statutory provisions, judicial evolution, and current position.

Definition

Equal remuneration means payment of the same basic wages and other components of remuneration to workers of both sexes for performing the same work or work of a similar nature. Under Section 2(h) of the ERA 1976, "same work or work of a similar nature" means work in respect of which the skill, effort, and responsibility required are the same when performed under the same or similar working conditions, with differences in working conditions not being of practical importance. The test is functional equivalence of work performed, not identity of job titles, designations, or cadres.

Legal Foundation

- Article 39(d), Constitution of India, 1950 : Directs the State to secure equal pay for equal work for both men and women (Directive Principle)
- Section 4, Equal Remuneration Act (ERA) 1976 : Prohibits any employer from paying to any worker remuneration at rates less favourable than those paid to workers of the opposite sex for the same or similar work
- Section 5, Equal Remuneration Act (ERA) 1976 : Prohibits discrimination against women in recruitment and conditions of service (except where employment of women is prohibited or restricted by law)

- Article 14, Constitution of India, 1950 : Guarantees equality before law, which the SCI has read to include equal pay for equal work as a facet of equality

Thesis

Equal pay for equal work has evolved from a non-justiciable directive principle (Article 39(d)) to an enforceable constitutional right (read into Articles 14 and 16 by the Supreme Court), given statutory teeth through the ERA 1976, and extended beyond gender to prohibit all arbitrary pay disparities for identical work.

Constitutional Basis | Statutory Prohibition | Same Work Test | Beyond Gender | Discrimination in Recruitment | Enforcement | Current Position

Constitutional Basis

Article 39(d) originally stood as a Directive Principle: persuasive but not enforceable through courts. The SCI in Randhir Singh v. Union of India (1982) transformed this by holding that equal pay for equal work, though not defined as a fundamental right, is a constitutional goal which can be enforced under Articles 14 (equality) and 16 (equal opportunity in public employment). In State of AP v. G. Sreenivasa Rao (1989), the SCI confirmed that the principle applies to all employers (public and private) through the combined operation of Articles 14, 16, 39(d), and the ERA 1976. The constitutional basis means that even in the absence of specific legislation, courts can enforce equal pay through writ jurisdiction.

Statutory Prohibition

Section 4 of the ERA 1976 creates a direct prohibition: "No employer shall pay to any worker employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature." The prohibition covers: basic wages, DA, overtime, bonus, and all other monetary or non-monetary remuneration. The violation attracts imprisonment up to five years or fine up to Rs.20,000 or both (Section 10). The employer bears the burden of proving that any pay differential is not gender-based.

Same Work Test

The test under Section 2(h) examines three factors: skill required, effort required, and responsibility involved. If these three are substantially the same for two categories of workers, the work is "same or similar" regardless of: different job titles, different cadre classifications, different departments, or minor variations in working conditions (unless those variations are of practical importance). The SCI in Mackinnon Mackenzie v. Audrey D'Costa (1987) held that classifying female stenographers separately as "lady stenographers" to justify lower pay violated Section 4 because the skill, effort, and responsibility were identical. The test is functional, not nominal.

Beyond Gender

While the ERA 1976 specifically targets gender-based discrimination, the SCI has extended the principle of equal pay for equal work to all arbitrary classifications. In Randhir Singh (1982), the principle was applied to drivers in different government departments doing identical work. In D.S. Nakara v. Union of India (1983), it was applied to pensioners. In Dhiren Chamoli v. State of UP (1986), it was applied to daily-wage workers performing the same duties as regular employees. The constitutional principle (Articles 14, 16) is broader than the statutory one (ERA, limited to gender): it prohibits all irrational pay disparities for identical work, regardless of the classification used to create them.

Discrimination in Recruitment

Section 5 extends protection beyond pay: it prohibits discrimination against women in recruitment or any condition of service (promotion, training, transfer) except where: (a) employment of women is prohibited or restricted by any law for the time being in force (e.g., Section 66 of the Factories Act), or (b) special treatment is required by law for maternity or other sex-specific protections. This ensures that the ERA operates not merely as a pay equity statute but as a comprehensive anti-discrimination law in the employment context.

Enforcement

Enforcement mechanisms: (a) Inspectors appointed under Section 6 with powers to enter premises, examine records, and interrogate, (b) Advisory Committees under Section 6 to advise on the increasing employment of women, (c) claims before the competent authority designated under the Act, and (d) criminal prosecution under Section 10 (fine or imprisonment). The ERA also empowers the government to direct employers to provide equal remuneration by order. Non-compliance with such an order is a separate offence.

Current Position

The ERA 1976 has been subsumed into the Code on Wages (CoW) 2019, Section 3 of which prohibits gender-based discrimination in matters relating to wages for same work or work of similar nature. The CoW 2019 uses identical language to Section 4 of the ERA. The penalties under the CoW 2019 are enhanced. The constitutional position remains as developed by the SCI: equal pay for equal work is an enforceable right under Articles 14 and 16, applicable to all employers (public and private), and extending beyond gender to all arbitrary pay disparities.

Case Laws

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

📋 Facts

Female stenographers were classified as "lady stenographers" and paid lower wages than male stenographers performing identical typing, shorthand, and filing duties.

🔨 Held

The SCI held that the classification was a colourable device to circumvent Section 4 of the ERA; identical work requires identical pay regardless of gender-based re-labelling.

💡 Principle

Artificial classification cannot mask gender-based pay discrimination: where skill, effort, and responsibility are the same, pay must be equal.

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

📋 Facts

A driver in the Delhi Police received less pay than drivers in other Central Government departments doing identical work. He claimed equal pay under Articles 14 and 16.

🔨 Held

The SCI held that equal pay for equal work is an enforceable constitutional principle under Articles 14 and 16; Article 39(d) is given teeth through the equality provisions.

💡 Principle

Equal pay for equal work transcends Article 39(d)'s directive status: it is enforceable through Articles 14 and 16 as a facet of equality.

Dhiren Chamoli v. State of UP (Supreme Court of India, 1986)

📋 Facts

Daily-wage workers employed by the government performed identical duties to regular employees but received a fraction of the pay. They claimed equal remuneration.

🔨 Held

The SCI directed equal pay, holding that the nature of employment (regular vs. daily wage) cannot justify pay disparity for identical work; Articles 14 and 16 mandate equal remuneration.

💡 Principle

Employment status (permanent, temporary, casual, daily-wage) is not a legitimate basis for pay differential where the work performed is identical.

State of AP v. G. Sreenivasa Rao (Supreme Court of India, 1989)

📋 Facts

Part-time lecturers performing identical teaching duties as full-time lecturers received proportionally lower pay (less than proportionate to hours worked). They claimed equal pay.

🔨 Held

The SCI held that while part-time workers need not receive the same total pay, the rate of pay (per hour or per unit of work) must be equal to that of full-time workers doing the same work.

💡 Principle

Equal pay applies to the rate of remuneration, not merely total compensation: proportionate equality requires the same rate per unit of work.

Equal Pay as a Multi-Layered Right: Statutory for Gender, Constitutional for All Arbitrary Classification

The equal pay principle operates at two levels in India: the ERA 1976 (now CoW 2019) provides the statutory prohibition against gender-based pay discrimination, while Articles 14 and 16 as interpreted by the SCI provide a broader constitutional prohibition against all irrational pay disparities for identical work. The "same work" test (skill, effort, responsibility) is the common denominator: where it is satisfied, pay must be equalised regardless of the classification device (gender, cadre, department, or employment status) used to create the disparity.

End of Unit V | Part B | 3 Answers | Frequency-ordered

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