

# The payment of Minimum Wages Act 1948

Minimum Wages Act 1948 came into force in India when India had recently gained its freedom. Labor laws made by the Britishers were exploitative in nature. Wages were low and different in every part of the country. There was no such thing as "Minimum Wages" and times were pretty bad for sweat labor.

## Constitutional Validity of the Act

The Act is constitutionally valid and it can be ascertained from the following pointers:

- The Act does not violate Article 19 of the Constitution: The constitutional validity of the Act was challenged in the cases of *U. Unichonoy vs State of Kerala* and *Gulmuhammad Tarasaheb vs State of Bombay*. The parties challenged that this law restricted their Article 19(1)(g), as it puts a restriction on freedom of trade. But the court held in favour of the Act. It was held that, in the absence of any such Act, the employers will pay wages, arbitrarily.
- The Act does not violate Article 14 of the Constitution: It was contended that the Act violates the 'equal protection of laws' clause. However, the court ruled that the Act does not violate Article 14 in the case of *Bhikusa Yamas Kshatriya vs Sangammar Akola Bidi Kamgar Union*.

## Scope and Objective of the Minimum Wages Act

- To safeguard that the employee has a basic physical necessity, proper health, and comfort.
- Ensure that the labor gets fair wages.
- To ensure that the labor lives a decent life and have a respectable name in society.

The Minimum Wages Act 1948 is an Act of Parliament concerning Indian labour law that sets the minimum wages that must be paid to skilled and unskilled labours.

The Indian Constitution has defined a 'living wage' that is the level of income for a worker which will ensure a basic standard of living including good health, dignity, comfort, education and provide for any contingency. However, to keep in mind an industry's capacity to pay the constitution has defined a 'fair wage'. Fair wage is that level of wage that not just maintains a level of employment, but seeks to increase it keeping in perspective the industry's capacity to pay.

Minimum Wages are fixed according to the following criteria

- **Time Rate:** The minimum rate is fixed according to the duration of the work done by the labor.
- **Piece Rate:** Here the minimum wage is fixed by the total number of pieces manufactured in the factory.
- **Overtime Rate:** Here the minimum rate is fixed by the overtime done by the labor regardless of the time or piece rate.

To achieve this in its first session during November 1948, the Central Advisory Council appointed a Tripartite Committee of Fair Wage. This committee came up with the concept of a minimum wage, which not only guarantees bare subsistence and preserves efficiency but also provides for education, medical requirements and some level of comfort.

India introduced the Minimum Wages Act in 1948, giving both the Central government and State government jurisdiction in fixing wages. The act is legally non-binding, but statutory. Payment of wages below the minimum wage rate amounts to forced labour. Wage boards are set up to review the industry's capacity to pay and fix minimum wages such that they at least cover a family of four's requirements of calories, shelter, clothing, education, medical assistance, and entertainment.

Under the law, wage rates in scheduled employments differ across states, sectors, skills, regions and occupations owing to difference in costs of living, regional industries' capacity to pay, consumption patterns, etc. Hence, there is no single uniform minimum wage rate across the country and the structure has become overly complex. The highest minimum wage rate as updated in 2012 was Rs. 322/day in Andaman and Nicobar and the lowest was Rs. 38/day in Tripura. In Mumbai, as of 2017, the minimum wage was Rs. 348/day for a safai karmachari (sewage cleaner and sweeper), but this was rarely paid.

### **Composition of committees**

Section 9 of the Act consists of the composition of the committees. It is mentioned that the committee shall comprise of members, who are elected by the employees of the scheduled employment. This committee will also contain the members from the scheduled employees but that must not exceed one-third of the total number of committee members.

### **Correction of errors**

The appropriate government is provided with the liberty of correcting arithmetic and clerical errors. The correction will be published immediately in the official gazette. The notice will also be provided to the advisory board. The notice will also be up for suggestions.

### **Wages in kind**

Minimum wages in this Act will be paid in cash only. However, if there are any concessions that are provided to the stakeholders by the government, shall be paid in the prescribed manner according to this Act. Section 11 of the Act prescribes the manner.

### **Payment of minimum rates of wages**

The payment shall be made to the employees in order which is prescribed by law under this Act. However, it is also mentioned that nothing in this Act can affect the provisions laid down in the Payment of Wages Act, 1936 (4 of 1936). Section 12 of the Act fixes the payment of minimum wage.

### **Fixing hours of normal working days**

Section 13 provides for the fixing of normal working hours in a working day. The fixation of normal working hours includes:

1. The fixed number of working hours will include intervals from time to time.
2. The fixed period must also include a day of rest in every seven days.
3. The rest day must also be included in the pay, payment for not less than the overtime rate.

There are certain exceptions related to those employees whose work is of nature that is irregular. Such exceptions will be provided only after the consent of the appropriate government.

### **Overtime**

If any employee works for more than prescribed hours then that person is entitled to excess payment for that period. However, it is also mentioned that nothing in this Act must be prejudicial to Section 59 of the Factories Act, 1948. Section 14 of the Act provides for overtime.

### **Wages for two or more classes of work**

When two or more classes of work are performed by a single employee, the minimum wage will be altered according to the time invested in each class of work and remuneration provided in such work. Section 16 of the Act, this practice is mentioned.

### **Minimum time-rate wages of piece work**

The minimum time rate must be given to those who are employed on the piece-rate system. The system must not be a minimum piece rate but only minimum time rate. The minimum time rate is a system, where the wages are paid on the basis of the time worked. Section 17 of the Act provides for this clause.

### **Maintenance of registers and records**

The employers are supposed to maintain a record register in order to ascertain that all the employees are being minimum wages. This register also needs to be exhibited and must be available for perusal at all times. The authorities are supposed to check these registers. Section 18 of the Act provides for this clause.

### **Inspectors**

Inspectors are appointed by the appropriate government in order to make sure that the administration is carried out well. There are certain powers which are given to the inspectors, which are listed below:

1. The inspectors may enter any premises in order to carry out investigations regarding the minimum wage remuneration.
2. The inspectors may examine or give any information important to the investigation.
3. They also have the seize or make copies of any of the documents important to the investigation.

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The Act provides for fixing wage rate (time, piece, guaranteed time, overtime) for any industry.

1) While fixing hours for a normal working day as per the act should make sure of the following:

- The number of hours that are to be fixed for a normal working day should have one or more intervals/breaks included.
- At least one day off from an entire week should be given to the employee for rest.
- Payment for the day decided to be given for rest should be paid at a rate not less than the overtime rate.

2) If an employee is involved in work that categorises his service in two or more scheduled employments, the employee's wage will include respective wage rate of all work for the number of hours dedicated at each task.

3) It is mandatory for the employer to maintain records of all employee's work, wages and receipts.

4) Appropriate governments will define and assign the task of inspection and appoint inspectors for the same.

### **Fixation of Minimum Rates of Wages, Working Hours and Determination of Wages and Claims, etc.**

Section 3 of the Act mentions all the procedures. Section 3(2) suggests that the appropriate government shall fix the following keeping all the considerations in the formulation of policies:

- Minimum piece rate;
- Minimum time rate;
- Overtime rate; This must be a substitution of the rate which was pre-decided by the employer;
- Guaranteed time rate system.

The government has to revise the minimum rates. In order to do that, the following things need to be kept in mind:

- The rates vary from every locality, Scheduled Employment, apprentices, children, adolescents and adults.
- The rates may be fixed, monthly, weekly, daily or hourly. This time may be fixed for a longer wage period as well.

### **Fixation of minimum rates of wages**

The policy formulation regarding minimum wage happens only after due deliberation on the following:

- The minimum wages must be in compliance with the cost-of-living index of the employees.
- The basic wage rate with or without the cost-of-living allowance along with the authorised cash value of concessions pertaining to the supply of essential basic commodities at subsidized rates.
- Comprehensive basic wage rate will include the cash value of the concessions, cost of living and the basic rate.

### **Procedure for fixing and revising minimum wages**

Section 5 of the Act gives the procedure for fixing and revising the minimum wages. The appropriate government shall appoint committees and subcommittees that may be able to advise on the fixation of minimum wages. The appropriate government is also supposed to publish the minimum wage fixation in the newspapers so as to inform the stakeholders regarding the changes implemented. This publication has to be done at least before two months of the implementation. The stakeholders may also raise issues if any after the publication. The ascertainment of the minimum wage is then published in the Official Gazette. There may also be consultations regarding the revision of wages, with the Advisory Board. One may wonder, what constitutes an Advisory Board. Let us know what is it and its constitution.

### **Advisory Board**

Section 7 of the Act suggests the formation of the Advisory Board. The government requires advice regarding the living cost indices, the requirements etc. An advisory board helps with the same requirements that were mandated under Section 5 of the Act.

### **Central Advisory Board**

The Act also provides for the formation of a Board of Boards, for the management and regulation of all the Advisory Boards of India. This board shall comprise of members elected by the Central Government and the employees of the advisory boards. The formation of this board is given in Section 8 of the Act.

## Claims

Claims are heard by the authorities appointed under subsection 1 of Section 20 of the Act. Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908). Claims can be made to the appropriate authority so that the appropriate action may be taken as soon as possible.

### Single application in respect of the number of employees

The maximum level of compensation provided may not exceed 10 times the total excess of the aggregate. The single application in respect of a number of employees has to comply with Section 21(1) of the Act.

## Miscellaneous

### Penalties for certain offences

Section 22 of the provides for certain penalties that may be charged if:

1. The employers pay less than minimum wage than specified;
2. The employer does not comply with the provisions given in Section 13 of the Act

The penalties will also be considered if it can be proved that the offence has been committed by the negligence of the director or secretary or manager of the company.

### General provisions for punishment of other offences

Section 22A states that the offenders will have to pay fines and may have to land up in jail if the offences are proved under this Act. The offenders may be granted a jail for a term which can extend to 6 months and/or be imposed with a fine that may extend to 500 rupees.

### Cognizance of offences

The courts are not allowed to take cognizance unless there has been an application in front of the appropriate government. The court can also take cognizance when there is a complaint from the inspectors.

### Offences by companies

Section 22C states that the penalties will also be considered if it can be proved that the offence has been committed by the negligence of the director or secretary or manager of the company.

### Payment of undisbursed amounts due to employees

Section 22D also states about the amount that is due to be paid. The employees may also approach the court for this relief. If the employer does not pay the given amount in due time, then the authorities have the power to disburse the amount to the employees in the prescribed manner.

### Protection against attachment of assets of the employer with Government

The employers have to detach their personal property for the security of the employees working. The amount that is kept as security with the government shall be used for the payment of contracts with the employees. This can be done under any decree by any competent court.

### Application of Payment of Wages Act, 1936 to scheduled employments

The inspectors are responsible for the application of the Payment of Wages Act, 1936 to scheduled employments. This may be done by the notification in the Official Gazette.

### Exemption of employer from liability

The employer may be exempted from liability if he or she is able to satisfy the court regarding the following contentions:

1. The person took due diligence before taking the action.
2. The action was done without his or her consent or knowledge.

If the employer is discharged from the liability then the person whose fault was that will be held liable.

### Bar of suits

The suits shall not be maintained if:

If the complaint has already been made in the court's cognizance under Section 20 of the Act.

The sum has already formed a direction in the plaintiff's favour.

Has already been adjudged that the sum will not be awarded in that circumstance.

Could have been recovered by an application under that section.

### **Exemptions and exceptions**

The appropriate government may impose such conditions on the employers as they deem fit. Such official notification may be granted in the official gazette. The employer does not have to comply with these norms given in the Act if the employee is a family member.

### **Power of State Government to add to Schedule**

The appropriate Government, after giving a notification in the Official Gazette at least three months' notice before its intention may by notification, add to either Part of the Schedule any employment in respect of which minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly. Section 27 of the Act provides for that power to the state.

### **Power of the Central Government to give directions**

The central government has the power to give directions for the smooth functioning of implementation of the minimum wages throughout the country. Section 28 of the Act mentions about this power.

### **Power of the Central Government to make rules**

Along with the power to give directions, the Central government has also got the power to formulate rules in favour of the functioning of the Act. The Central Government may make rules by publishing the news in the official gazette. The rules may be regarding prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling casual vacancies in membership or the quorum necessary for the transaction of business of the Central Advisory Board.

### **Power of the appropriate Government to be laid before the Parliament**

The Parliament of India has the authority that whenever such a rule is made regarding this Act, the same shall be laid before parliament for approval by the majority. This must happen within a period of 30 days.

### **Validation of fixation of certain minimum rates of wages**

The fixed minimum rates of wages shall be valid until the appropriate government revises this minimum rate of wages. This is provided under Section 31 of the Act. This Act also provides for the maintenance of itself. The rules and regulations are sufficient for its own sustenance.

# Payment of Wages Act 1936

The **Payment of Wages Act, 1936** regulates payment of wages to employees (direct and indirect). The act is intended to be a remedy against unauthorized deductions made by employer and/or unjustified delay in payment of wages. The main objective for the introduction of the Payment of Wages Act, 1936, is to avoid unnecessary delay in the payment of wages and to prevent unauthorized deductions from the wages.

## Purpose of the Act

The main objective of the Act is to avoid unnecessary delay in the payment of wages and to prevent unauthorized deductions from the wages. Every person employed in any factory, upon any railway or through sub-contractor in a railway and a person employed in an industrial or other establishment. The State Government may by notification extend the provisions to any class of persons employed in any establishment or class of establishment. The benefit of the Act prescribes for the regular and timely payment of wages (on or before 7th day or 10th day of after wage period is greater than 1000 workers) and Preventing unauthorized deductions being made from wages and arbitrary fines.

Section 2 of the Payment of Wages Act, 1936 offers the definition of wages and many other important terms as follows:

## Appropriate Government

According to section 2(i) of the Act, Appropriate Government means:

- The Central Government in relation to railways, air transport service, mines, and oilfields
- The State Government in relation to all other cases

## Employed Person

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According to section 2(ia) of the Act, an employed person also includes the legal representative of the deceased employed person.

## Employer

According to section 2(ib) of the Act, an employer also includes the legal representative of the deceased employer.

## Factory

According to section 2(ic) of the Act, a factory means a factory which the clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) defines. Further, it includes any place to which the provisions of the Act have been applied under sub-section (1) of Section 85 thereof.

## Industrial or Other Establishment

According to section 2(ii) of the Act, an Industrial or Other Establishment means any:

- A motor transport service or tramway service which carries passengers or goods or both by road for hire or reward;
- Air transport service other than that belonging to or exclusively employed in the military, naval, or air forces of the Union or the Civil Aviation Department of the Government of India.

## Mine

According to section 2(ii)(a) of the Act, a Mine has the meaning that clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952) assigns to it.



## Plantation

According to section 2(iii) of the Act, a Plantation means 'Plantation' defined under clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951).

## Prescribed

According to section 2(iv) of the Act, prescribed means prescribed by the rules made under this Act.

## Railway Administration

According to section 2(v) of the Act, Railway Administration has the meaning that clause (32) of Section 2 of the Indian Railways Act, 1889 assigns to it.

## Wages

According to section 2(vi) of the Act, wages mean all remunerations expressed in terms of money or are capable of being so expressed.

These are either by way of salary allowances or otherwise. Further, the remunerations are payable to the person employed on the fulfillment of the terms of employment, express or implied. These remunerations include:

### Inclusions in Wages

- Any amount which is payable under any award or settlement between the parties or an order of the court.
- Amounts that the employee is entitled to with respect to working overtime or on holidays or any leave period.
- Any additional remuneration as per the terms of employment – bonus, incentive, etc.
- The sum of money that the employee must receive due to the termination of his employment. Further, this sum is either payable under law or contract or instrument which specifies the payment of such a sum. Also, this may or may not include deductions. It also does not specify the time within which the firm needs to make the payment.
- Any sum to which the employee is entitled under any scheme that is framed under any law in force. However, it does not include:

1. Any bonus which does not form a part of the remuneration payable under the terms of employment. Or, a bonus which is not payable under any award or settlement between parties or an order of a court.
2. The value of any house accommodation or the supply of water, light, medical attendance or any service which is excluded from the computation of wages under an order of the Government.
3. The employer's contribution to any pension or provident fund and also the interest accrued thereon.
4. Any traveling allowance or traveling concessions
5. Any sum that the employee receives to defray special expenses due to the nature of his employment
6. Gratuity was payable on the termination of employment in cases other than those specified in sub-clause (d).

## Salary statics

Wages are averaging less than Rs. 6500.00 per month only are covered or protected by the Act by the amendment in 2005 by {Section 1(6)}. Wages means contractual wages and not overtime wages. They are not to be taken into account for deciding the applicability of the Act in the context of section 1(6) of the Act. Wages must be paid in current coin or currency notes or in both and not in kind. It is, however, permissible for an employer to pay wages by cheque or by crediting them in the bank account if so authorized in writing by an employed person.

## Summary of the provisions of the Act

The provisions of the Act regarding the imposition of fines on the employed person are as follows such as, The employer must exhibit on his premises a list of acts or omissions for which fines can be imposed, Before imposing a fine on an employed person he must be given an opportunity of showing cause against the fine, The amount of fine must not exceed 3 percent of the wages, A fine cannot be imposed on an employed person who is under the age of 15 years, A fine cannot be recovered by installments or after 90 days from the day of the act or omission for which it is imposed, The moneys realized from fines must be applied to purposes beneficial to employed persons.

Subsection 8(3), 10(1-A) & Rule 15} deals with Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss shall explain personally or in writing to the said person the act or omission, or damage or loss in respect of which the fine or deduction is proposed to be imposed, and the amount of fine or deduction, which it is proposed to impose, and shall hear his explanation in the presence of at least one other person, or obtain it in writing.

The Payment wages act is a regulation drawn up to protect the employee's rights from being infringed by the employer. The employee should be paid on time and should not be harassed against anything during the employment. It has however given a lot of protections to employees and will continue to do so in the future as well.

### Responsibility for payment of wages [Section 3].

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

- In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
- In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
- In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
- In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages.

### Deductions which may be made from wages

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

- Stoppage of the increment of employee.
- Stoppage of the promotion of the employee.
- Stoppage of the incentive lack of performance by employee.
- Demotion of the employee
- Suspension of the employee

The above said actions taken by the employer should have good and sufficient cause.

# Payment of Bonus Act 1965

The **Payment of Bonus Act, 1965** provides for the payment of bonus to persons employed in certain establishments, employing 20 or more persons, on the basis of profits or on the basis of production or productivity and matters connected there with.

The minimum bonus of 8.33% is payable by every industry and establishment under section 10 of the Act. The maximum bonus including productivity linked bonus that can be paid in any accounting year shall not exceed 20% of the salary/wage of an employee under the section 31 A of the Act.

## Applicability

- Payment of Bonus Act, 1965 extends to whole of India.
- Payment of Bonus Act, 1965 applies to every factory and to every other establishment in which 20 or more persons are employed on any day during an accounting year;
- The Government may also apply the act on any factory or establishment in which has less than 20 but not less than 10 persons are employed;
- Payment of Bonus Act, 1965 is applicable on every employee whether doing any skilled, unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward and whether the terms of employment are express or implied.

## Eligibility

- Payment of Bonus Act, 1965 is applicable on employees drawing wages / salary up-to 10,000/- per month.
- Only those employees are entitled for bonus, who have worked for at least 30 working days in an accounting year.

## Rate of Bonus

- 33% of the salary or wages earned by an employee in a year or Rs. 100/-, whichever is higher.
- In case allocable surplus exceeds the amount of provision of minimum bonus, the employer shall be bound to pay maximum bonus not exceeding 20% of the salary or wages earned by employees.
- In case allocable surplus exceeds the maximum bonus (20% of the salary or wages earned by employees), the excess surplus shall be carried forward for being set on in the succeeding accounting years up to and inclusive of the 4th accounting year.

This act applies to:

- Every Factory
- Every Establishment in which 20 or more persons are employed on any day during an accounting year
- If less than 20, then this act can be applied by 'Appropriate Government' by way of notification in the official gazette

Once The Payment of Bonus Act 1956 is applicable, then its 'Forever Applicable' even the number of persons falls below 20.

## Accounting Year, means (section 2(1))

- Corporation: The Year ending day on which the books of accounts are closed and balanced
- Company: The period in respect of which the Profit and Loss A/c is prepared
- Others: Financial year 1st April to 31st March

## Employee, means (section 2(2))

- Any person (other than apprentice)
- Person who receives Salary or Wage or any remuneration
- Not exceeding Bonus wage Rs.21,000/- per month
- In any Industry
- To do any work
- For hired on reward
- Whether the terms of employment are expressed or implied

#### **Employer, means (section 2(14))**

- Salary Includes: Basic and Dearness Allowance
- Salary Excludes: All Other Allowances, Variable Allowance, Commission, Bonus, Travelling concession, Ex-gratia Payments, etc.

#### **When is Employee Eligible under Bonus Act (section 8)**

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty (30) working days in that year.

#### **When will Employee Disqualification under this Act (section 9)**

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An employee is disqualified for bonus, if

- If he has been dismissed from Services
- If the reason for dismiss are:

- 1) Fraud,
- 2) Riotous or violent behaviour while on the premises of the establishment,
- 3) Theft, misappropriation or sabotage of any property of the establishment.

#### **What should be the minimum Bonus payable (section 10)**

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If Employee is 15 years old or more;

- 33% of salary or wage, or
- 100
- Whichever is Higher

If Employee is below 15 years old;

- 33% of salary or wage, or
- 60
- Whichever is Higher

#### **Ceiling on Salary or on Wage (section 12)**

If the salary or wage exceed Rs.7,000/- per month or Minimum Wages whichever is higher, it shall be taken as Rs.7,000/- or M.W. (higher amount) per month for computing Bonus.

#### **Working days computed for Bonus (Section 14)**

While calculating the number of working days, the following shall be treated as 'Deemed working Days'

- Laid off under Industrial Dispute Act
- Paid Leave Salary
- Maternity Leave
- Absent due to temporary disablement

### **Special Provision with respect to NEW Establishment (section 16)**

For first 5 years, the Payment of Bonus is NOT compulsory for such establishment, only in respect of the accounting year in which the employer had not derived any profit.

### **Bonus Adjusted (Section 17)**

If in account year the employer had already paid

- Puja Bonus
- Interim Bonus
- Any Other Bonus

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

### **Employer deduct certain amount from Bonus Payable (Section 18)**

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

### **Time-Limit of Payment of Bonus (Section 19)**

Within a period of eight months from the close of the accounting year.

# Payment of Gratuity Act 1972

The Payment of Gratuity Act, 1972 is an act that provides a scheme for the payment of gratuity to employees working in railways, ports, factories, oilfields, plantations, mines, shops or other establishments and for matters connected therewith or incidental thereto.

## Background

In India, gratuity is a type of retirement benefit. It is a payment made with the intent of monetarily helping an employee after his or her retirement. It was held by the Supreme Court of India in Indian Hume Pipe Co Ltd v Its Workmen that the general principle underlying a gratuity scheme is that by service over a long period the employee is entitled to claim a certain amount as retirement benefit.

The Payment of Gratuity Act was passed by the Parliament of India on 21 August 1972 and it came in force from 16 September 1972.

## Application and extent

The act applies to the whole of India. Including the two new Union territories earlier this law was not applicable for Jammu and Kashmir. The act applies to all factories, mines, oilfields, plantations, ports and railway companies. But in the case of shops or establishments, other than those stated before, it applies to those organisations with 10 or more persons are employed on any day of the preceding 12 months. Under Section 1(3-A), if in case of any shop and establishment to which the act applies, the number of employees reduces below 10, it shall continue to be governed by the act irrespective of the number of employees. Thus, no employer will be able to refuse gratuity under this act by reducing the number of employees. Under Section 2(e), nothing in this act applies to apprentices and persons who hold civil posts under the Central Government or State Governments and are subjected to any other act or rule other than this act.

## Payment of gratuity: Eligibility and calculation

Under Section 4, payment of gratuity is mandatory. Gratuity shall be payable to an employee on termination of employment after he has rendered continuous service for not less than 5 years in a single organisation. The termination can be due to: Superannuation, Retirement or resignation, and Death or disablement due to accident or disease. As per Section 4(1), the completion of continuous service of 5 years is not required where termination of employment is due to death or disablement. In such case mandatory gratuity is payable.

Gratuity is paid at a rate of 15 days' wages for every completed year of service or part thereof in excess of six months. The wages here mean wages last drawn by the employee. The "15 days' wages" will be calculated by dividing the last drawn wages by 26 and multiplying the result with 15. But under Section 4(3), the maximum gratuity that is payable is fixed at ₹20,00,000. Any gratuity amount paid in excess of ₹20,00,000 is taxable in the employee's hands.

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Gratuity is paid when an employee:

- Is eligible for superannuation
- Retires
- Resigns
- Passes away or is rendered disabled due to accident or illness (if an employee passes away, gratuity will be paid to the employee's nominee).

## Payment

The employer shall arrange to pay the amount of gratuity within 30 days from the date it is billed to the person to whom the gratuity is allocated.

If the amount of gratuity payable under the section is not paid by the employer within the period specified, he will have to pay simple interest on it from the date on which the gratuity becomes payable at the rate not exceeding the rate stipulated by the federal government.

Gratuity should be paid in cash, or if so desired by the payee, by demand draft or bank check to the eligible employee, nominee, or legal heir.

### **Forfeiture**

The gratuity payable to an employee shall be wholly forfeited if:

- The service of such employee has been terminated for his or her lawless or disorderly conduct or any other act of violence on his or her part; or
- The service of such employee is terminated for any act which constitutes an offense involving moral turpitude, provided that such offense is committed by him or her in the course of his or her employment.

In order to forfeit gratuity of an employee, there must be a termination order containing charges as established to the effect that the employee was guilty of any of the aforesaid misconducts. In one case, it has been held that in the absence of a termination order containing any of the above allegations, the gratuity of an employee cannot be forfeited.

### **Compulsory Insurance**

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Section 4A of the Act provides for the compulsory insurance to every employer other than those belonging to the Central Government or State Government through Life Insurance Corporation. However, those employers are exempted from this provision who have an established and registered gratuity fund in their company. The government may also make rules for the enforcement of this section as and when necessary. Violation of this provision by anyone may lead to penalty.

### **Power to Exempt**

The Act provides the power to exempt to the appropriate government by notification to declare any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted from gratuity if the government is of the opinion that the establishment has favourable benefits not less than what this Act has been providing. The same law applies to any employee or class of employees.

### **Nomination**

According to this Act, it is necessary for the employee to prescribe for the name/names of the nominee soon after completing one year of service. In case of a family, the nominee should be one among the family members of the employee and other nominees shall be void. Any alteration or fresh nomination must be conveyed by the employee to the employer who shall keep the same in his safe custody.

### **Determination of the Amount of Gratuity**

The person entitled to receive the gratuity amount shall send an application in writing to the employer. The employer shall calculate the gratuity amount and provide notice in writing to the concerned employee and the controlling authority. The payment should be made within 30 days from the date payable to the employee. Failure of payment within the prescribed limit will result in payment of simple interests. However, if the delayed payment is because of the employee then the employer is not entitled to pay the simple interests.

In a landmark case of *Y.K. Singla v. Punjab National Bank*, the highest court of India, the Supreme Court had to decide whether an employee whose gratuity has been withheld under Regulation 46 of the Punjab National Bank (Employees) Pension Regulations is entitled to get interests because of the delay after the completion of the proceeding? The court held that even though the provisions of the 1995 Regulations, are silent on the issue of payment of interest, the appellant would be entitled to interest, on account of delayed payment under the Payment of Gratuity Act for the benefit of the employee.

The disputes arising between the employee and employer shall be referred to the controlling authority and proceeding for the resolution presided by the controlling authority shall be considered to be judicial proceeding. The controlling authority has the authority to enforce the presence of any person and examine his oath, production of relevant documents and issuing commissions for the examination of witnesses if required. After due inquiry and giving the parties a reasonable opportunity of being heard, the controlling authority may determine the matters and pass appropriate orders. The aggrieved party can apply for appeals to the government.

## Inspectors Appointed for the Purpose of this Act and their Powers

The government may appoint an inspector or inspectors who are deemed to be a public servant under Section 21 of Indian Penal Code for the purpose of ascertaining whether any of the provisions of this Act are being violated or not complied with and take necessary measures to ensure the fulfilment of all the provisions of this Act.

## Recovery of Gratuity

If the employer delays in the payment of gratuity amount under the prescribed time limit, then the controlling authority shall issue the certificate to the collector on behalf of the aggrieved party and recover the amount including the compound interest decided by the central government and pay the same to the person. However, these provisions are under two conditions:

The controlling authority should give the employer a reasonable opportunity to show the cause of such an Act.

The amount of interest to be paid should not exceed the amount of gratuity under this Act.

## Penalties

Violation of the provisions of the Act shall entail certain penalties. They are:

For avoiding any payment, if someone makes a false representation or false statement shall be punishable with imprisonment for 6 months or fine up to Rs. 10,000 or both.

Failure to comply with the provisions of this Act shall be punishable for a minimum of 3 months which may extend upto 1 year or a fine of Rs. 10,000 which may extend upto 20,000.

Non-payment of gratuity under the Act will lead to offence and the employer shall be punishable with imprisonment for at least 6 months and which may extend upto 2 years unless the court provides for the sufficient reason for less payment.

## Exemption of Employer from Liability

An employer if charged with any offence punishable under this Act, shall be exempted from any liability, if he provides sufficient reasons for his conduct of the act or some other person doing that act without his knowledge. The other person if found guilty will be charged with the same punishment as an employer shall be charged.

## Cognizance of Offences

The court cannot take cognizance of the offences punishable under this Act unless the amount of gratuity to be paid has not been paid or recovered within 6 months from the expiry of the prescribed time. In such cases, the government shall authorise the controlling authority to make a complaint where the authority has to make a complaint to the metropolitan magistrate or judicial magistrate of first class within 15 days of the authorisation.

## Protection of action taken in good faith

The controlling authority shall not be under any legal proceeding if the acts done by him is in good faith or under any rule or any order.

## Protection of Gratuity

No exempted gratuity which is payable under this Act to the employee by the employer shall be liable to the attachment of any order or decree by any court.

## Act to override other enactments

Since the Payment of Gratuity Act is complete in itself, therefore, this Act has an overriding effect on all provisions, regulations and statutes relating to gratuity. The landmark case for this provision is University Of Delhi vs Ram Prakash And Ors. which states that any provision which is more beneficial for the employees should be considered to be having overriding effect.

## Power to make rules

The power to make rules in the Payment of Gratuity Act, 1927, shall rest with the appropriate government and declare by notification.

## Validation of amendments made in this Act

The rules made has to be presented before both the houses of the parliament when in session. If both the houses are in conformity for the annulments or the modifications, then it shall be applicable immediately otherwise such modifications will have no effect.

## Conclusion

The Payment of Gratuity Act, 1927, is a welfare statute provided for the welfare of the employees who are the backbone of any organisation, company or startups. The gratuity amount encourages the employee to work efficiently and improve productivity. Recently, by the Payment of Gratuity (Amendment) Act, 2018, the central government has tried to promote social welfare by providing leverage to the female employees who are on maternity leave from 'twelve weeks' to 'twenty six weeks'.