

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much

as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor



School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce. Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been

awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

EMPLOYEES PROVIDENT FUND

AUTHORED BY - UDIT SHARMA

Abstract

EPF is a type of Pension or post-retirement benefits. Basically, employees either from construction background or from service background both have some extent of exposure toward accidents and death. These scheme not only safeguard their future. But, it also help them from thinking about post-retirement problems. EPF is a fund made under a scheme named as EPS (Employment Provident Scheme). EPFO (Employment Provident Fund Organization) oversee the working and contribution under this scheme. EPF was launched from the act of 1952 named as THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952. Vision behind bringing this policy was to safeguarding the interest of employees who are prone to accident and from sudden stoppage of income. It also, protect employees' dependent interest through monetary benefits.

Today in this paper several things will be discuss about what is EPF and EPFO, and what is Social Security and what is the status Social Security in India. After that, we will see the history and evolution of act and scheme related employment provident fund. After than a detailed process (how and in what amount contribution will be made by employees and employers both). After that, Relevant judgment related to special allowance, Actus reus and Mens reus in defaulting the contribution by employer and, EPS para 11(3). After that, Facilities given by EPFO to their subscribers.

At the end paper will be concluded by the writer

Keywords-

- Employment Provident Fund
- Employees' Provident Fund organization
- Employment Provident Scheme
- the Employees Provident Fund and Miscellaneous Provisions Act of 1952
- Aadhar

INTRODUCTION-

The task of managing organizations and ensuring that they remain consistently aligned with the goal for which they were established is a tough one. Even when the reason for an organization's existence is stated in detail at the time it is founded, throughout the course of its existence, the functioning of the organization gradually deviates from the reason it was founded. This drift is caused by many factors, some of which are the environment, leadership, organizational structure, processes, insufficient deployment of ICT infrastructure, employee profile, incentive structure, organizational culture, bargaining power of customers, and level of competition.

The Employees' Provident Fund Organization, also known as EPFO, was established so that economically needy workers in India would have access to social security and welfare benefits. Nevertheless, as time went on, the organization began to engage in bureaucratic processes, documentation that did not add value, insufficient oversight and accountability, and poor monitoring on compliances.

EPFO (EMPLOYEES' PROVIDENT FUND ORGANIZATION)-

Employees' Provident Fund Organization is Established, Administered and work under Ministry of labour and Employment, Government of India. The purpose behind established this organization was ensuring the social security for Industrial Worker and social security for their dependents. If we see EPFO emerged as India's one of the Largest social Security organizations. "According NIRBADH released by Employees' Provident Fund Organization it was stated EPFO has on an average 69 million monthly Contributing member and over 7.1 million pensioners who receive their pension every month.¹"

"There is provision under this scheme that any employee who is earning less than Rs. 15,000 is entitled for an Employment provident scheme 1952, And their employer must Enrol them under this scheme²". Whereas, employees who earn above Rs. 15,000 can waive off this deposition at will.

¹ NIRBADH SEAMLESS SERVICE DELIVERY-

epfindia.gov.in/site_docs/PDFs/Updates/Nirbadh_EPFO_to_e%20EPFO.pdf (reported- 18-sep-2022)

² Employer Service- EPFO.GOV -

https://www.epfindia.gov.in/site_docs/PDFs/Updates/Presentation_ERservices062016.pdf (reported- 18-sep-2022)

EPF (EMPLOYMENT PROVIDENT FUND)-

Employees' Provident Fund is the scheme which is flourish by EPFO. EPF got its power for working from The Employees provident Fund and Miscellaneous provision Act, 1952. In this Scheme a certain percent of mandatory deduction from their basic salary of employee and apart from this Employers also need to contribute same amount as much as deducted from employee to this scheme. All this fund and contribution were collected and monitored by Employment Provident Fund Organization. Main purpose behind making these contributions under a scheme regulated by government is to give post-retirement benefits to the employees. The accumulation of provident fund is a long-term saving which as stated act as a post-retirement benefit. Several companies allowed their employees to withdrawn their EPF before retiring on behalf of giving a security in a face of loan for special reasons only which can be decided by the company only.

The Employees Provident Fund and Miscellaneous Provisions Act was constituted in 1952 with the objective of safeguarding the interest of employees after retirement and in case of death for the benefits of their dependents. EPF was implemented with the vision that it will safeguard the interest of the people when they retire or came in the age where they can't do any work and due to this or due to some other reason source of income stopped suddenly. Other than It was planned and implemented also that after the death of beneficiary their dependent or heirs will get the monetary benefits and other miscellaneous benefits also.

HISTORY OF EPF-

As part of a series of legislative initiatives in this direction, the Employees Provident Fund and Miscellaneous Provisions Act of 1952 was adopted by parliament and went into effect on March 14, 1952. The following three schemes are currently in effect under the law.

- Employees Provident Fund Scheme, established in 1952
- Employees Deposit Linked Insurance Scheme, established in 1976
- Employee Pension Scheme (Established in 1995) (replacing the employees Family Pension Scheme, 1971).

The EPF plan began in 1929 on the proposal of the Royal Commission of Labour, which emphasised the importance of establishing a provident fund for employees.

The Indian Labor Conference agreed in 1948 to implement a legal prediction plan for employees. The Conference of State Labor Ministers, meeting in January 1951, backed the hearing.

The EPF ordinance was promulgated by the President of India on November 15, 1951, and it was replaced by the EPF act on March 4, 1952. Except for the state of Jammu & Kashmir, it stretches throughout India.

Employers Duty to maintain a Provident Fund Account-

Employees provident Fund account proved to be very beneficial for both employers and employees at the time of contingencies that it not only safe-guard the interest and payment enjoyed by employees at the time of retirement or superannuation but employees provident fund account safeguard employers to face the contingencies and minimize the loss.

According to the Code on Social Security 2020. Sec 21 Government authorize the employer of certain establishment to form and maintain an employee provident fund account.

According to sub-section (1) of sec 21- Central Government on the application made to it regarding this by employer or by majority of employees in a establishment (employing more than 100 employees). Can authorize employer by an order in writing to maintain a provident fund account which will be related to the establishment. Manner, condition and terms regarding maintaining the account will be prescribed by the Central Government only. Prior to giving authorisation Central Government check whether Employer of such establishment made a default in payment of provident fund contribution or had committed any other offence under this code immediately preceding 3 years from the date of authorisation.

After establishment of provident fund account employer shall maintain such account, submit such return, deposit the contribution in a manner as prescribed by the Central Government. As mentioned under sub-section (2) employer shall maintain the account and employer shall also maintain the records that can help in the inspection of the accounts and apart from that also employer also need to pay administrative charges for the same. It is a duty of employer to follow and abide all other terms and conditions, which is specified in employee provident fund scheme. As authorisation is given to the employer it is a duty to abide the rules prescribed by the scheme and it is a duty of Central Government also that If employer fails to comply with and terms and condition of the scheme or authorisation or commits any offence provided under this code then Central Government may cancel the authorisation of the employer.

EPF PROCESS-

Eligibility-

1. Any person employed directly, through a contractor, or in connection with the establishment's job is referred to as an employee. There is no differentiation between regular employees and contractual/casual/daily wage/temporary/piece rated employees.
2. Either permanent or probationary employee all employee are eligible.
3. 10% of basic wage for enterprises with fewer than 10 employees; sick industries declared by authority; Jute, Beedi, Brick, Coir, and Guar gum Industries/factories.
4. Other industries max. 12% of basic pay.

Calculation-

1. Employee directly- 12%.
2. Employer- 12% out of which 8.33% EPF and balance 3.67% to PF A/c.
3. Admin charges on total wages by employer- 1.10%.
4. 0.50% EDLI calculated on total EDLI slab (Rs. 6500) wages by employer in EDLI fund.
5. 0.10% EDLI calculated on total EDLI slab (Rs. 6500) wages by employer.

Interest & Nomination-

- 1- Interest credited to members PF A/c on monthly running balance.
- 2- Interest set by CG with EEPF's central board of trustees annually in March/April.
- 3- Present Rate- 8.5%.
- 4- Members can nominate any person.
- 5- Nominated member details will be maintained by Regional Provident Fund Officer.

Annual Settlement and Full Settlement-

Annual settlement

- 1- Annual statement will be sent to member through establishment where the member was last employed after the close of each year.
- 2- Annual statement of Fund account shows- opening balance, interest credited, contribution done, closing balance.
- 3- In case of error, member must notify PF office through employer after 6 months of receiving statement.

Full Settlement-

- 1- PF A/c settled within two months when resignation from the services.

- 2- PF A/c settled immediately when- retirement (58 years), termination of service, retirement due to permanent incapacity, Permanent migration from India, Female member leaving service for getting married.

Employers Liability-

Monthly Return

- 1- filling of Monthly PF return to EFPO within 15 days of month's end.
- 2- Providing list of new employees joined in the establishment. Who are qualified to become member in fund (FORM-5).
- 3- Providing employees who are leaving service (FORM-10).

Annual Return-

- 1- Within one month of the end of the fiscal year, the employer must submit to the commissioner a consolidated annual contribution statement (FORM-6A) and an individual employee sheet (FORM-3A) detailing the contributions made by the employees and the employer.

Penalty-

- 1- 12-37% interest is charged for late contributions/administrative fees.

Employees Liability-

- 1- Apply for Transfer of PF A/c in case of already having one.
- 2- Contribution can be increase voluntarily after informing the employer (voluntary provident fund).
- 3- Checking the details maintained by employers periodically.
- 4- Do not approve to the employer deducting his portion of the contribution or administrative expenses that he is responsible for from the employee's wages.
- 5- At the time of entering the establishment, you will need to provide your personal and nominees' information (Form-2) for the pension and PF programme.

JUDGEMENTS-

HORTICULTURE EXPERIMENT STATION GONIKOPPAL, COORG VERSUS THE REGIONAL PROVIDENT FUND ORGANIZATION³

³ CIVIL APPEAL NO(S). 2136 OF 2012 WITH CIVIL APPEAL NO(S). 2121 OF 2012 WITH CIVIL APPEAL NO(S). 2135 OF 2012 WITH CIVIL APPEAL NO(S). 2141 OF 2012

In this case a plea was filed by a company for dismissing the damage imposed by High Court of Karnataka. The damage levied upon the company was for non-payment of contributed which need to be paid by the employers for the account of Employees' provident fund. Non- payment of the funds led company to be charged for the damages worth Rs. 85548 in addition to Rs. 74288. It was said that once a default in payment was done in the account of EPF then employer is under an obligation to pay the damages for delay in payment of contribution of EPF.

It was said by the court that- "Default or delay in payment of EPF contribution by the employer under the act is sine qua non for imposition of levy of damages under Section 14B of the Act 1952, and mens rea (criminal intent) or actus reus (criminal act) is not an essential element for imposing penalty for breach of civil obligation/liabilities. Default or delay in payment of EPF contribution by the employer under the act is sine qua non for imposition of levy of damages under Section⁴"
The Employees provident fund organisation & Etc

VERSUS

Sunil Kumar B. & Etc⁵

"This case was regarding Employment Provident Scheme 1995. In the para 11(3) of this scheme cap of Rs. 6,500 was given which was earlier a maximum pensionable salary. It was also given that anyone or anyone employee who exceed this cap can contribute upto 8.33% of their actual salary to the EPF.

Amendment came in the Para 11(3) which raise the cap from Rs. 6,500 to Rs. 15,000. But in the amendment it was also written that employees who were the member of EPS as on September 2014 will only be eligible to contribute in the pension fund.

High Court of Kerala quashed this amendment in the case of *P.Sasikumar & ors. Vs. Union Of India*⁶. This judgement was not complied by Central Govt. as well as by EPFO through this judgment Justice UU Lalit and Justice Joseph restrained the High Court of Kerala, Delhi and Rajasthan from initiating contempt proceeding against the Central govt. and EPFO and SC

⁴ EBID

⁵ W.P. (C) No.767/2021

⁶ W.P. (C) No. 13120 of 2015 decided on 12.10.2018

reinforced the judgement given by Kerala H.C. (removing date cut-off)⁷”

RPFC West Bengal

VERSUS

Vivekananda Vidyamandir and Ors.⁸

In this case the question which raise was “whether special allowances paid by an establishment to its employees would fall within the ambit of the expression 'basic wages' under section 2(b)(ii) read with section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**"), for computation of deduction towards provident fund contribution⁹.”

“While Deciding the case SC applied the ‘Rule of Universality’ to the allowances and said that if the special allowance is given for the purpose of special work which doesn’t come in normal working of the labour than that special allowance will not be counted in basic wages otherwise it will be counted. PF authority can question to the employer about any special allowance during assessment. Then employer need to produce records to the authorities.¹⁰”

FACILITIES TO BENEFICIARIES/SUBSCRIBERS-

- Registration of new subscribers- registration for new employees become feasible and easy. Registration can be done through online mode also and new employees could receive and apply for Aadhar-based UAN through online mode also. To become EPFO member employees need only Aadhar number, bank details and Contact mobile.
- Facilities for International workers- EPFO has done a bilateral Social Security agreement with 19 countries to protect the Indian professionals and skilled workers who are working in abroad. EPFO also facilitated an online portal for international worker who seek certificate fo coverage.

⁷ *EBID*

⁸ 2019 LLR 339

⁹ EPF- AFTERMATH of Vidyamandir case <https://www.mondaq.com/india/employment-litigation-tribunals/844118/employees39-provident-fund--aftermath-of-vidyamandir-case-and-epfo39s-caution> (reported- 19-sep-2022)

¹⁰ *SUPRA*

- Aadhaar-enabled digital life certificate- This initiative allows a pensioner to digitally submit proof of existence to EPFO (online) for annual pension continuity. Physically presenting and submitting paper-based certifications is no longer required.
- Self-certification of claims- Subscribers' access to medical advances and withdrawals from their EPF accounts have been simplified. Self-certification was implemented to eliminate the requirement for submitting medical certificates or other physical papers in order to obtain progress.

Transfer of Accounts -

As a beneficiary of employee provident fund scheme there are a lot of benefits which can be utilised by the employee after the termination or superannuation. But Transfer of accounts of an employee (beneficiary) from one establishment to another is proved to be more beneficial to the employee. According to sec 22 of Code on Social Security 2020- Transfer of accounts of and employees were done. There are two scenarios which can occur while transferring the accounts

- 1- When an employee employed in an establishment to which this chapter applies relinquishes his/her employment and therefore join in an establishment to which this chapter doesn't applies; Or,
- 2- Whereas, employee employed in an establishment to which this chapter doesn't applies and relinquishes his/her employment and therefore join in an establishment to which this chapter applies,

The in both the cases employee's accumulated amount in provident fund or pension account. Shall be transferred or dealt in a manner as may be specified in the Provident Fund Scheme or Pension Scheme.

CONCLUSION-

Working in an industrial setting affects the human body's natural ageing process. This supports a somewhat greater total pay package, which was common practise up until the early 1990s. Since the fifth and sixth pay commission recommendations were implemented, however, the ensuing years witnessed the industrial employees being brought on par with, or even placed below, the Government employees. This occurred as a result of the wage gap between the two groups. In the end, the Government came to the conclusion that the best way to handle its finances was to abolish the pension plan for its workers. Since 2004, government employees do not receive a pension benefit, unless the employee chooses to form a partnership with an insurance or financial

institution that offers a pension system on a private basis. The problem for those who work in manufacturing is made even worse by the fact that their pay is derived from the profits of the company, and most businesses do not update their wage and salary structures on a consistent basis, in contrast to the situation for those who work for the government. This pension is payable to the honourable members even if they serve for just term of five years, whereas industrial workers do not get the revision for their decades of service. It should be noted that members of parliament and members of state legislatures draw hefty pensions, despite the fact that by the very nature of their office they are supposed to be public representatives and not employees of the government.

