

DELIBERATIONS AND RECOMMENDATIONS OF THE AD-HOC COMMITTEE ON COVERAGE AND RELATED LITIGATION

EMPLOYEES'
PROVIDENT FUND
ORGANISATION
JULY 2022





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EXECUTIVE SUMMARY

Employees' Provident Funds Organisation (EPFO) provides Provident Fund, Pension, and Insurance benefits to its stakeholders (members, pensioners and establishments), through 138 Regional Offices and 21 Zonal Offices. Establishments with employment strength 20 or more and their employees drawing wages upto Rs 15,000 per month are required to mandatorily enrol with EPFO. EPFO serves about 6.54 lakh contributing establishments, about 6.50 crore members and about 70 lakh pensioners. Of the total contributory members about 83% are spread across twenty scheduled categories of establishments. The Expert Services category covers the highest, about 29% of the total membership.

Hon'ble Chairman, CBT EPF directed to constitute an Ad-hoc Committee from amongst members of the CBT EPF to give recommendations for enhancing coverage and reducing litigation. The committee was constituted vide order dated 27.11.2021.

Coverage of establishments and employees is linked to employee threshold, statutory wage ceiling and definition of excluded employees. Special emphasis is laid by the Committee on coverage of contractual workers through use of IT Tools and information sharing with other Government departments. India has ratified the ILO convention (No. 81) on Labour Inspections, hence to ensure coverage of all eligible establishment and employees a robust IT enabled inspections and compliance regime is essential. EPFO has approximately 31,000 ongoing cases in various courts across India of which in 73% of cases EPFO is respondent and in 27% cases petitioner.

For enhancing Coverage and reducing litigation following recommendations of the Committee were approved by CBT in its 230th meeting:

- (i) to ensure a universal social security coverage by enrolling all employees upto the wage ceiling;
- (ii) recommend to Central Government to frame and assign administration of scheme for Gig and platform workers, to EPFO;
- (iii) Regional Committees to be scheduled by a fixed calendar, to meet at least four times every year with standing agenda on coverage and litigations;
- (iv) to prepare a comprehensive legal framework for litigation management.
- (v) withdraw prosecutions related to non-filing of returns and/or non- submission of KYC; and
- (vi) rationalise the rate of damages.

However, on reducing coverage threshold Committee has endorsed the recommendations of two National Commissions on Labour (1962 and 2022) to reduce the same. Committee has also recommended aligning statutory EPF wage ceiling with an identifiable metric, such as minimum pay of Central Government employees, per-capita income, income exempt from personal income tax, GDP per capita or alternately contribution ceiling for employers and employees, as specified in Finance Act, beyond which interest on contribution is taxable. The Committee has in principle desired that a decision on employee threshold and wage ceiling be operationalised in near future.

For improving litigation management, Committee has recommended a mechanism for Alternate Dispute Resolution for providing avenues for amicable settlement of disputes. Capacity building of legal human resource is also recommended through suitable training and technical enhancements.



A top-down view of a wooden desk. A hand is resting on the desk in the upper right. To the left is a stack of books. In the lower left is a glass of water. In the lower right is a gavel on a wooden base. A clipboard with a white sheet of paper is in the middle right. A large white circle with a dark border is centered on the desk, containing the chapter title.

CHAPTER -1

INTRODUCTION



CHAPTER-1

INTRODUCTION

- 1.1 The Employees' Provident Fund Organization [EPFO] administers the Employees' Provident Funds and Miscellaneous Provisions Act 1952 [Act] and the Schemes framed thereunder. Every establishment employing 20 or more employees, drawing wages upto Rs 15,000 per month and falling in the schedule of establishments notified under the Act and the Scheme is required to register the establishment on its own. The Act applies on its own force and in all cases the statutory benefits to the employees are lawfully due from the date of their eligibility. The compliance under the Act is secured through employers of the establishments.
 - Average monthly contributory members per Zone is 22,13,960.
 - Average monthly contributory establishments per Zone is 29,723.
 - Bangalore Zone has the highest number of monthly contributory members at 49.59 lakh and J&K and Ladakh Zone has lowest monthly contributory members at 1.45 lakh.
 - Pune Zone has highest number of monthly contributory establishments at 57,331 and J&K and Ladakh Zone the lowest at 5,279.
 - Average monthly contributory members per Regional Office – 3,52,950.
 - Average monthly contributory establishments per Regional Office – 4,738
- 1.2 The registration of establishments [coverage] with EPFO has been simplified over the years. As on date the registration process is online and completely paperless. The establishments do not have to submit any paper for registration, nor do they have to visit any EPF office for same.
 - Pune (Cantt) has the highest number of monthly contributory members at 12.28 lakh and Ladakh has lowest monthly contributory members at 2,276.
 - Jaipur has highest number of monthly contributory establishments at 15,085 and Ladakh the lowest at 78.
- 1.3 **The coverage landscape of EPFO-** Data has been analyzed based on average remittances for the wage months August 2021 to February 2022 (data as on 19-05-2022). [Annexures 1.1, 1.2, 1.3]
 - EPFO services its stakeholders through 21 Zones and 138 Regional Offices.
 - Total average monthly contributory establishments are 6.54 lakh.
 - The average monthly contributing members are 4.87 crore
 - Of the total 6.54 lakh contributory establishments, 41% are Proprietary Firms, 23% Private Limited Companies, 17% Partnership Firms, 5% Registered Societies. 4% are Firms run by Trusts and 2% are Cooperative Societies.
 - Out of 4.87 crore contributing members 83% are concentrated in following 20 Industries

Expert Services (29%)	Trading Commercial establishments (8%)	Electrical, Mechanical or General Engineering products (8%)	Establishments engaged in manufacture, marketing servicing, usage of computers (6%)
Engineers - engineering contractors (4%)	Textiles (3%)	Others (3%)	Building and Construction industry (2%)
Beedi making (2%)	Heavy & Fine chemicals (2%)	Hospitals (2%)	University, College, School, etc. (2%)
Schools (2%)	Financial establishments (2%)	Garment making (2%)	Banks other than nationalised banks (2%)
Road Motor Transport (1%)	Establishments engaged in Cleaning, Sweeping services (1%)	Iron & Steel (1%)	Electricity (G, T, D) (1%)

- 1.4 There are occasional complaints about applicability of the Act and/or non-extension of benefits to eligible employees from their due dates. For handling non compliances the Act provides for assessment of dues [Section 7A], levy of interest on belated payments [Section 7Q], levy of penal damages for belated payments [Section 14B], recovery of assessed dues [Section 8] and prosecutions for various defaults [Section 14]. The officers of EPFO thus play the roles of adjudicating officers, recovery officers as well as prosecuting officers.
- 1.5 The Supreme Court vide order dated 14.12.1999 in the matter of RPFV vs Shiv Kumar Joshi held that EPFO comes under the purview of the Consumer Protection Act, 1986. Accordingly, cases are filed under the Consumer Protection Act, 1986 for services related issues under the schemes.
- 1.6 The assessment orders issued [Sections 7A & 14B] can be challenged before the Central Government Industrial Tribunals [CGITs]. Appeals are also filed against recovery actions and other matters relating to question of law before the various High Courts.
- 1.7 Therefore, litigation arises in routine course and are contested by EPFO through its panel advocates.
- 1.8 The Code on Social Security 2020 [Code] provides for Universal Social Security as well as Social Security through EPFO. The issues of non-coverage of establishments and employees and related litigations was raised in 229th CBT meeting held on 20-11-2021. The Hon'ble Union Minister for Labour & Employment and Chairman CBT therefore decided to constitute the *Ad hoc Committee on Coverage and Related Litigation (a sub-committee of CBT)* to review the related issues.





CHAPTER -2

**CONSTITUTION OF THE
AD-HOC COMMITTEE
ON COVERAGE AND
RELATED LITIGATION
(COMMITTEE)**



CHAPTER-2

CONSTITUTION OF THE AD-HOC COMMITTEE ON COVERAGE AND RELATED LITIGATION (COMMITTEE)

- 2.1 During the 229th meeting of CBT EPF held on 20-11-2022 members raised the issue of comprehensive review of issues related to coverage to increase enrolment under the Act. The members also raised the issue of ongoing litigation and emphasized the need to undertake comprehensive review of litigation landscape of EPFO. The Chairman accordingly directed constitution of the Ad-hoc Committee on Coverage & Related Litigation.
- 2.2 The Committee was constituted vide orders dated 27th November 2021 (annexure 2.1). The terms of reference of the committee are to give suggestions for:
- wider coverage of membership under EPFO in view of Social Security Code and.
 - steps to reduce litigation.
- 2.2 The Committee has the following constitution:

Chairman	Minister of State for Labour and Employment
Vice-Chairman	CPFC (ex-officio)
Government's representative	1. Joint Secretary (SS), Ministry of Labour and Employment 2. Joint Secretary & Director General Labour Welfare, Ministry of Labour and Employment
Employees' Representatives	1. Shri Hiranmay J. Pandya 2. Shri Sukumar Damle 3. Shri Dilip Bhattacharya
Employers' Representatives	1. Shri Michael Dias 2. Shri Sougata Roy Choudhury 3. Shri S. K. Sharma
Convener	Addi. Central PF Commissioner (HQ) Compliance

- 2.3 The orders advised the Committee to present its recommendations within three months before the Central Board, EPF. Further, Chairman of the Committee was authorised to co-opt or invite any person as special invitee during the proceedings of the Committee. The orders constituting the Committee state that the Committee will stand dissolved after submission of report unless extended by CBT.
- 2.4 The Committee held five meetings in Shram Shakti Bhawan, New Delhi:
- a) First meeting of the Committee was held on 10-12-2021
 - b) Second meeting of the Committee was held on 06-01-2022.
 - c) Third meeting of the Committee was held on 31-01-2022. Chairpersons of Regional Committees for the states of Maharashtra, Tamil Nadu, West Bengal and Haryana joined the meeting as special invitees.
 - d) Fourth meeting of the Committee was held on 07-03-2022.
 - e) Fifth meeting of the Committee was held on 21-07-2022
- 2.5 Minutes of these meetings are collectively appended as **annexure - 2.2.**

2.6 Summary of discussions held in meetings of the Committee are appended below:

<p>10.12.2021</p>	<ul style="list-style-type: none"> • Employees threshold for coverage in EPFO is 20 and ESIC 10 • Wage ceiling last enhanced in 2014 • Litigation management & cause analysis • Lower contribution for MSME 	<ul style="list-style-type: none"> • All employees do not get enrolled • Same threshold for coverage in EPFO & ESIC • Timeline for coercive action • Govt. subsidy schemes • Understanding litigation landscape with compliance & service delivery • Waiting period for attachments for recovery
<p>06.01.2022</p>	<ul style="list-style-type: none"> • Analysis of coverage data in recent past • Implication if Social Security for unorganized workers through EPFO • Alternate dispute resolution mechanism 	<ul style="list-style-type: none"> • Around 60% of employees become members, rest excluded. • SSC enables additional functions to CBT • Around 3% assessments go into litigation and around 80% of such assessments are upheld • Rationalization of Prosecution & damages
<p>31.01.2022</p>	<ul style="list-style-type: none"> • Interaction with State Labour Secretaries Maharashtra, Tamil Nadu, West Bengal and Haryana • Damages under the Act • Analysis of Court cases • Provision under Code for unorganized workers 	<ul style="list-style-type: none"> • Further extension of PE portal • Plea bargaining as ADR, further delegation of power to withdraw prosecution • Training of assessing officers • Regulation of 1925 Act of Provident Fund • Preparation of Legal framework for EPFO
<p>07.03.2022</p>	<p>Enhancing Coverage</p> <ul style="list-style-type: none"> • Reducing employee threshold. Recommendations of First and Second National Labour Commission on Labour exist (1962 & 2002) for same. • Linking wage ceiling to an identifiable metric • Enrolling all employees up to the wage ceiling 	<p>Reducing Litigation</p> <ul style="list-style-type: none"> • Strategic approach • Rationalizing rate of damages • Rationalizing Prosecution withdrawal process & ADR • Improving and automating claims settlement process - this is likely to eliminate most cases in consumer courts • No appellate mechanism in recovery proceedings – only recourse is appeal to High Courts. • EPFO has adopted the recovery procedures of Income Tax; these provide for internal appellate mechanism against recovery actions. Instructions be issued accordingly for EPFO also • Functions of compliance administration and compliance judicial (assessments) should be separate and distinct to ensure that biases do not creep in, in the assessment process.

21.07.2022	Draft report of the Committee presented	<ul style="list-style-type: none"> • The executive summary of the report of the Committee was presented and the same was approved by the Committee. • There was an agreement to reduce the threshold of employees to 10 and identify a suitable metric for specifying the wage ceiling. • Capacity building of human resources in Legal Branch in EPFO through training support from National Law School Bangalore.
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2.7 The Committee agreed to unanimously recommend, to rationalisation of rates of damages, statutory enrolment of all employees upto the wage ceiling, review of the cases of Prosecution filed due to non-filing of KYC, administration of social security schemes for self-employed workers and workers in the unorganised sector through EPFO, regular monitoring of issued related to coverage and litigation through Regional Committees, separation of functions of Compliance (Administration) from Compliance (Judicial) [quasi-judicial assessments], aligning the inspection regime with ILO conventions

and an internal appellate mechanism in recovery proceedings, as is there in the Income Tax Department.

2.8 On the issue of the need for modifying the statutory wage ceiling and linking it to an identifiable metric and for reducing the coverage threshold, there was an in-principle agreement in the Committee. It was, however felt that these issues may require more consultation, especially in view of business difficulties being faced by establishments due to Covid and other international events adversely affecting business environment.







CHAPTER -3

**COVERAGE UNDER
THE EMPLOYEES'
PROVIDENT FUNDS
AND MISCELLANEOUS
PROVISIONS
ACT 1952 (ACT)**



CHAPTER-3

COVERAGE UNDER THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT 1952 (ACT)

- 3.1 Coverage of establishments and enrolment of members under the Act is a contingent on fulfilment of three conditions:
- The establishment category / class should be mentioned in Schedule I to the Act.
 - The establishment should have 20 or more employees on its rolls. The stipulation of 20 employees has been brought into the Act with effect from 31st December 1960. Prior to that the requirement was of having 50 employees or more.
 - The employees eligible for enrolment as a member should have wages less than or equal to Rs 15,000/- per month. However, members can contribute to Employees' Provident Fund Scheme on wages exceeding the specified wage ceiling on joint request of the employer and employee and with prior permission from Commissioner. However, such an option does not exist for Employees Pension Scheme or Employees' Deposit Linked Insurance Scheme. The wage ceiling for statutory enrolment as member of EPF over the years was as under:

PERIOD	WAGE LIMIT (PER MONTH) IN Rs.
01-11-1952 to 31-05-1957	300/-
01-06-1957 to 30-12-1962	500/-
31-12-1962 to 10-12-1976	1,000/-
11-12-1976 to 31-08-1985	1,600/-
01-09-1985 to 31-10-1990	2,500/-
01-11-1990 to 30-09-1994	3,500/-
01-10-1994 to 31-05-2001	5,000/-
01-06-2001 to 31-08-2014	6,500/-
01-09-2014 onwards	15,000/-

- 3.2 At the same time the EPF Scheme excludes ab-initio an employee, whose wages are more than Rs 15,000/- on the date of joining.

Statutory Provisions

- 3.3 The preamble to the Act states that it is "an Act

to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments."

The Act seeks to mandatorily cover "factory" and "non-factory" establishments. Sub-

Section 3 of Section 1 provides the statutory framework for coverage under the Act. It reads as under:

Subject to the provisions contained in section 16, it applies:-

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and
- (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

The Act empowers the Central Government to extend the coverage to an establishment or a “class of establishments” having employment strength less than twenty. The Central Government can also exempt a class of establishments from operation of the Act for a specific period.

3.4 As mentioned above, Section 16 of the Act provides for exclusions, i.e., the type of establishments to which the Act shall not apply. The Act does not apply to:

- a) Cooperative societies registered under the relevant statute, having employment strength of less than 50 and working without the aid of power.
- b) Any establishment belonging to or under the control of Central or State Government and whose employees are entitled to Contributory Provident fund or old age pension.
- c) Any establishment set up under a Central or State Act and whose employees are entitled to Contributory Provident fund or old age pension.

Special Provisions for Coverage

3.5 The statutory framework for coverage has special provisions for Cine Workers,

Newspaper establishments and International Workers.

- i. An Apprentice is not required or entitled to become member of EPF.
- ii. In case of Cine-Workers, the required employee strength of the establishment for the purpose of coverage under the Act is five. A cine worker would require having worked in at least three feature films for being eligible for enrolment. Further the wage ceiling for statutory enrolment of Cine workers is Rs 1,600/- per month or Rs 15,000/- if the payment is by lump sum.
- iii. For Persons with Disabilities, the wage ceiling for enrolment as a member is less than or equal to Rs 25,000/- per month. Further, for such persons, Central Government contributes the employers' share of contribution for the maximum period of first three years from date of commencement of membership.
- iv. For employees working in newspaper establishments there is no wage ceiling, i.e., all employees in newspaper establishments, irrespective of wages are required and entitled to members of the EPF.
- v. For International Workers there is no wage ceiling specified, i.e. all International Workers, irrespective of wages are required and entitled to members of the EPF.

3.6 Notwithstanding the above, the Act provides for voluntary enrolment of establishments under section 1(4), on joint request of the employer and majority of employees.

3.7 **Online faceless registration process of establishments for employers:** Since 2014, the registration of establishments under EPF & MP Act, 1952, is made simple and online at the Unified Shram Suvidha Portal of Ministry of Labour & Employment providing complete ease of doing business to employers. The entire process is faceless, online, fully

transparent, free of any charges, and completely hassle free.

3.8 Auto-registration under EPFO for new companies incorporated under Companies Act through Ministry of Corporate Affairs (MCA) Portal from Feb 2020: In order to facilitate Ease of Doing Business in case of

companies from Feb 2020, the registration of new Public and Private Limited Companies and One Person Companies has been stopped on the Unified Shram Suvidha Portal, and these companies are allotted EPF registration number automatically while registering with MCA irrespective of applicability of the EPF Act to such companies.







CHAPTER-4

COVERAGE OF CONTRACTUAL WORKERS UNDER THE ACT



CHAPTER-4

COVERAGE OF CONTRACTUAL WORKERS UNDER THE ACT

- 4.1 Employees' Provident Fund Organisation in the past launched “**Employees Enrolment Campaign 2017**”, with an aim to increase PF membership by 30% of the current contributing members (Dec 2016). Notification to the effect was issued vide Notification no G.S.R. 1190(E) dated 30-12-2016. The scheme was in operation during the period 1st January 2017 to 31st March 2017. The salient features of the Scheme were.
- i. Employer who did not enroll members, who were otherwise entitled to be enrolled under the EPF Scheme 1952, during the period 1-4-2009 to 31-12-2016, could enroll them from the date of eligibility by giving declaration.
 - ii. Employer on giving declaration had to remit employer's share and pay penal interest on the same as per the provisions of the scheme.
 - iii. Employees share did not have to be paid, provided the employer did not deduct employee share from the salary of the employee.
 - iv. The employer did not have to pay administrative charges for the said payment.
 - v. The employer was liable to pay token damages @ Rs one per annum for such payment.
 - vi. The declaration as above could be given only for such employees who were alive on 1-1-2017 and no proceedings under sec 7A of the Act or Para 26B of the Scheme was going on against the establishment.
- 4.2 The scheme was designed on the premise that the employers who were not registered under the Act or employers having large scale evasion will come forward and get their employees enrolled by giving declaration. For any such campaign to be effective it is important that the EPFO has sufficient data on establishments which are coverable under the Act but have not registered themselves and establishments having large scale evasion. Only if the EPFO is armed with the data and a perception is created that EPFO will take stern action against employers who do not enroll members even after the expiry of the campaign, that the employers will come forward and enroll the members. Thus, there is urgent need to collect actionable data on coverable establishments and establishments having large scale evasion.
- 4.3 There is sufficient literature and ample studies to suggest that regular workers with written contract of service greater than one year have access to social security. Ravi Srivastva (2016) in his study based on NSS unit records, 68th round (2011-12), Schedule 10 (Employment - Unemployment) concluded that 88.3 percent of the Regular workers with written contract greater than 1 year, in establishments employing 20 or more workers have access to some form of social security. In the same study the author concluded that social security is available to only 2.8% of casual workers, 41.8% of regular workers with no written contract and 47.7 percent of regular workers with written contract less than or equal to one year, in establishments employing 20 or more workers.
- 4.4 Data published in Economic Survey (2021-2022) based on Periodic Labour Force Survey shows the trend of increase in informal workers in Un-organised sector. Table 8 From the Economic Survey is reproduced below.

Formal - Informal Employment across Organized and Unorganized Sector (in Crores)

Type of Employment	Organized	Unorganized	Total
2017-18			
Formal	4.43	0.28	4.70
Informal	4.62	37.79	42.43
Total	9.05	38.07	47.13
2018-19			
Formal	4.91	0.45	5.35
Informal	4.55	38.87	43.43
Total	9.46	39.32	48.78
2019-20			
Formal	5.09	0.80	5.89
Informal	4.46	43.19	47.64
Total	9.55	43.99	53.53

4.5 There are other studies to show that due to increasing informalization of the workforce, a higher proportion of the paid workers are outside the social security net. These workers can be brought under the fold of the Act by using information already available with the Government.

Contract Labour

4.6 Contract labour are those workers who have been hired in connection with work in an establishment through a contractor, while a contractor includes both those who have undertaken to supply workers for work in an establishment and undertake any work in an establishment to produce a given result with the help of contract labour.

4.7 The Code on Social Security, 2020 (Code) in sub-Section (19) of Section 2 defines contract labour as under:

"contract labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and

includes inter-State migrant worker but does not include an employee (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;

4.8 Contractor is defined in sub-Section (20) of Section 2 of the Code as:

"contractor", in relation to an establishment means a person, who— (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or (ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor.

4.9 Principal Employer is defined under The Occupational Safety, Health and Working Conditions Code 2020 as

Code 2 (1) (zz) "principal employer", where the contract labour is employed or engaged, means - (i) in relation to any office or Department of the Government or a local authority, the head of that office or Department or such other officer as the Government or the local authority, may specify in this behalf; (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory, the person so named; (iii) in a mine, the owner or agent of the mine; (iv) in relation to any other establishment, any person responsible for the supervision and control of the establishment;

4.10 Comprehensive data on contract labour and contractors covered under social security is not available to arrive at the correct figure of contract labour out of the purview of social security. The only systematic source of data on contract labour is available for organised manufacturing (Factories), from Annual Survey of Industries (ASI). Studies suggest that percentage of contract workers in organised manufacturing has increased since 1999-00 and in 2018-19, 37.6 percent of the workforce were engaged through contractors. During the period 2014-15 to 2018-19 the directly employed workers in Factories increased 14.8% while the workers employed through contractors increased 26.6 %. (Annual Survey of Industries). This makes a strong case for shifting the focus from workers engaged directly to workers engaged through Contractors.

4.11 Coverage of Contract Labour under EPF

The definition of employee under the EPF and MP Act 1952 and The Social Security Code, 2020 includes person employed through a Contractor. Under EPF and MP Act 1952, employees engaged by or through contractor are required to be enrolled as PF members. Contract worker are extended benefit under the scheme either by the principal employer or the contractor, however, the ultimate responsibility lies with the principal employer. Contractors are also independently registered under the Act, provided, they satisfy other conditions related to number of employees

and business activity. The relevant provisions under the Act are as below

Section 2(f) of the EPF & MP Act, 1952:

“employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person, -

- (i) employed by or through a contractor in or in connection with the work of the establishment.
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment.

Sec 8 A of the EPF & MP Act, 1952

- (1) [The amount of contribution (that is to say the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme)], and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor, under any contract or as a debt payable by the contractor.
- (2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution 1 [under any Scheme] by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

Para 30(1) of the EPF scheme 1952:

The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and, on behalf of the member

employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

Para 30(2) of the EPF scheme 1952:

In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and administrative charges.

Para 30(3) of the EPF scheme 1952:

It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. [Explanation – For the purpose of this paragraph the expression “administrative charges” means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses.

Para 36-B. Duties of Contractors:

Every contractor shall, within seven days of the close of every month, submit to the principal employer a statement showing the recoveries of contributions in respect of employees employed by or through him and shall also furnish to him such information as the principal employer is required to furnish under the Scheme to the Commissioner.

Similar provisions are also contained in The Social Security Code 2020. Code 17(1) which deals with contribution in respect of employees and contractors.

Estimate of Contract Labour covered under the EPF and MP Act.

4.12 The data on contract labour covered under the Act is not available; therefore, no estimate can be made about percentage of contractor workers to total workers covered under the Act. There is no separate schedule head as contractors. Some of the schedule heads (expert services, cleaning and sweeping services etc.) suggest that establishment would be engaging contract workers, but it may also be having regular employees.

4.13 Principal Employer Portal was launched on 04-03-2021. Its version 2.0 was launched on 12-03-2022 by Sh Bhupendra Yadav, Hon'ble Labour & Employment Minister with the aim of capturing details of contractors and number of Contract workers engaged by the Principal Employers. The portal has now been integrated with the unified employer portal where any Principal Employer whether registered under the Act or not can enter details of the Contractors and Contractor Workers. The portal supports

- Entry of details of Contractors by registered establishments through their login credentials. Establishments not registered under the Act can create login credentials through PAN/TAN.
- Uploading the copy of Contract.
- Entry of Contract Start date and End date.
- Entry of Number of Contractor workers engaged.
- Entry of Details of Contract Worker (UAN, wages, number of working days)

4.14 Since the launch of Principal Employer portal the data uploaded on the portal by the Principal Employers are as below.

Zone Name	Office Name	NO OF PRINCIPAL EMPLOYER WHO HAVE ADDED CONTRACTORS		NO OF CONTRACTORS ADDED BY PRINCIPAL EMPLOYERS	
		BY COVERED PRINCIPAL EMPLOYERS	BY NOT COVERED PRINCIPAL EMPLOYERS	BY COVERED PRINCIPAL EMPLOYERS	BY NOT COVERED PRINCIPAL EMPLOYERS
GRAND TOTAL		8,497	413	48,135	1,442

4.15 The above table is suggestive of the fact that very few registered establishments have uploaded details of contractors. The number of establishments who have uploaded details of Contract workers is even far lesser. In case of non-registered establishments, the figure is abysmally low. Thus, the system of urging the establishments to enter details of contractors

has not been able to create data which would help in enhancing the coverage of contract workers who are outside the purview of any form of social security.

4.16 The robust data available with EPFO is mostly in the form of ECR Data. The current ECR has the following fields:

1. ECR File Fields:-

(ECR File consists of 11 Fields as mentioned below which are separated by #~#)

Sr. No.	Column Name
1	UAN
2	MEMBER_NAME
3	GROSS_WAGES
4	EPF_WAGES
5	EPS_WAGES
6	EDLI_WAGES
7	EPF_CONTRI_REMITTED
8	EPS_CONTRI_REMITTED
9	EPF_EPS_DIFF_REMITTED
10	NCP_DAYS
11	REFUND_OF_ADVANCES

4.17 **There is no field to know whether the contribution has been made for regular employee or for contract employee.** Both the principal employer and contractor independently register with EPFO and file their return. There is no mechanism to identify whether the employee for which ECR is filed is regular employee or contract worker.

4.18 There are approximately 5 crore contributing members. There is no way to identify what fraction of it is working through contractors. The principal employers rely on the ECR filed by the contractor as proof of making compliance in respect of employees engaged through contractors. Some of the principal employers make compliance in respect of

contact workers under their own code (this is very rare). The Principal Employer portal too has not been able to create sufficient database of Contract workers. The data created has a positive bias as details of only such contractors are uploaded by the Principal employer for which the compliance is reported.

4.19 Field experience has revealed that very few employers have established mechanism of passing the bill of contractors after proper audit of ECR filed by the contractor with reference to the employees deployed to the principal employer. Since EPFO does not have any information related to contractor employees therefore, we have to rely on the Principal Employers who do not have adequate inter controls to ensure compliance in respect of contractor employees. There is huge compliance gap in respect of contractor employees, and this is also supported by the studies quoted earlier. Government itself is the biggest employer engaging contract workers. The Government establishments are not covered under the Act and therefore the compliance in respect of employees engaged through contractors by the government department cannot be strictly enforced. The issue cannot be tackled by routine inspections and meetings, with the limited resources available with EPFO field offices.

4.20 **Collating Data from Income tax to increase coverage of contractor workers** - The income tax department has data which can be effectively used by the department to increase coverage of contractor employees. Under the Income Tax Act there are provisions about making payments to contractors and sub-contractors by the principal employers after deducting tax and paying directly to the Tax Authorities. Section 194C of the Income Tax Act provides for this facility. A brief description of same is as below :

- Section 194C states that any person responsible for paying any sum to resident contractor for carrying out any work (including supply of labor),
- In pursuance of a contract between the contractor and the following:

- a. The Central Government or any State Government.
- b. Any local authority.
- c. Any corporation set up by or under a Central, State or Provisional Act.
- d. Any company.
- e. Any co-operative society.
- f. Any authority constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the needs for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both.
- g. Any society registered under the Society Registration Act, 1980 or under any such corresponding law to the Act in any Part of India.
- h. Any trust.
- i. Any university or deemed university.
- j. Any firm is required to deduct TDS under sec 194C

4.21 **Meaning of work for the purpose to Section 194C:** The expression "work" in this section would include: -

- a. advertising.
- b. broadcasting and telecasting including production of programs for such broadcasting or telecasting.
- c. carriage of goods and passengers by any mode of transportation, other than railways.
- d. catering.
- e. Manufacturing or supplying of a product according to the requirement or specification of a customer by using the materials purchased from such customer but does not include manufacturing or supplying of a product according to the requirements or specifications of a customer by using the materials purchased from a person, other than such a customer.

Annexure - Deductee wise break up of TDS

(Please use separate annexure for each line item in the table at S.No. 4 of main Form 26Q)

Details of amounts paid/credited during the quarter ended _____ (DD-MM-YYYY) and of tax deducted at source

BSR code of the branch where tax is deposited	Name of Deductor
Date on which tax deposited (DD-MM-YYYY)	
Challan Serial No.	
Section under which payment made	TAN
Total TDS to be allocated among deductees as in the vertical total Col. 425	
Interest	
Others	
Total of the above	

S. No.	Deductee Code (01 - Company, 02-Other than company)	Pan of the Deductee	Name of the Deductee	Date of Payment/ Credit	Amount paid / Credited Rs.	Paid by book entry or otherwise	TDS Rs.	Surcharge Rs.	Education Cess Rs.	Total tax deducted (421+422+423) Rs.	Total tax deposited Rs.	Date of deduction	Rate at which deducted	Reason for non - deduction/ Lower deduction*
414	415	416	417	418	419	420	421	422	423	424	425	426	427	428

4.22 Thus any establishment whether government or otherwise as indicated in sec 194C is liable to make Tax deduction at the time of making payment to the contractor at the specified rate and file quarterly returns in form 26Q. The annexure to form 26Q containing details of contractor is as below:

Following fields of form 26Q are relevant for EPFO:

- Name of the deductee (contractor)
- PAN of the deductee
- Payment made during the quarter by the deductor (principal employer) to the deductee (contractor) for the work.

4.23 Form 26 AS in respect of the Contractors contains data on payments received from the Principal and TDS deducted during a particular FY. The Part A of Form 26 AS contains the following information, which is relevant for EPFO :

- i. Section under which TDS deducted (194 C is relevant)
- ii. Amount Paid
- iii. Tax deducted

4.24 The data related to Form 26Q of Principal

Employer and 26AS in respect of Contractor can be requisitioned from the Income Tax department. Officer not below the rank of Regional PF Commissioner is authorized to seek information from the Income Tax Department in view of notification No. 9 of 2003 dated 7-01-2003 issued under sec 138 (1) (a) (ii) of the Income Tax Act. Institutional arrangement will have to be worked out with the department for online sharing of such data instead of sharing the data case wise. This data obtained from Income tax for a financial year will help us in arriving at the figure of yearly payment received by the contractor from various deductors. This data can be run on our establishment master (with PAN as the primary key) and on our ECR data.

4.25 With this.

- Case 1 - EPFO can identify the establishments that are having a threshold Yearly payment and not registered with EPFO.
- Case 2 - EPFO can identify even cases where establishments are registered with it but may be not contributing according to their size of business.

4.26 Taking Case 1: Establishments paying to the contractors are not registered with EPFO: Taking the case of contractors supplying manpower for security, cleaning

sweeping, housekeeping, maintenance etc, a study can be done to arrive at the threshold limit of business done by the establishment to have 20 employees as illustrated below:

EXPENDITURE HEAD	AMOUNT IN RS
BASIC SALARY	10,000
ALLOWANCES	1,000
PF, ESIC, BONUS	2,035
SERVICE TAX AND CESS	1,650
SERVICE CHARGES	1,100
TOTAL	15,785
TOTAL AMOUNT FOR 20 EMPLOYEES	3,31,485

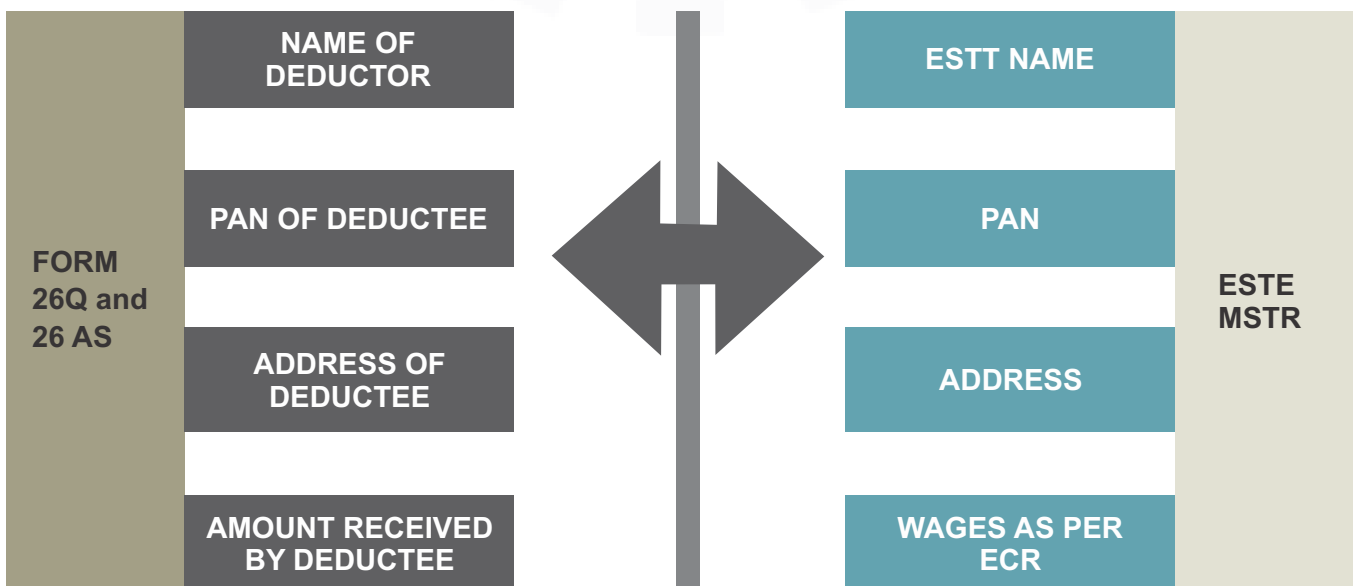
Thus, any contractor receiving yearly bill amount approximately Rs 40 lac and above, will have engaged 20 employees and is potentially coverable under the Act independently.

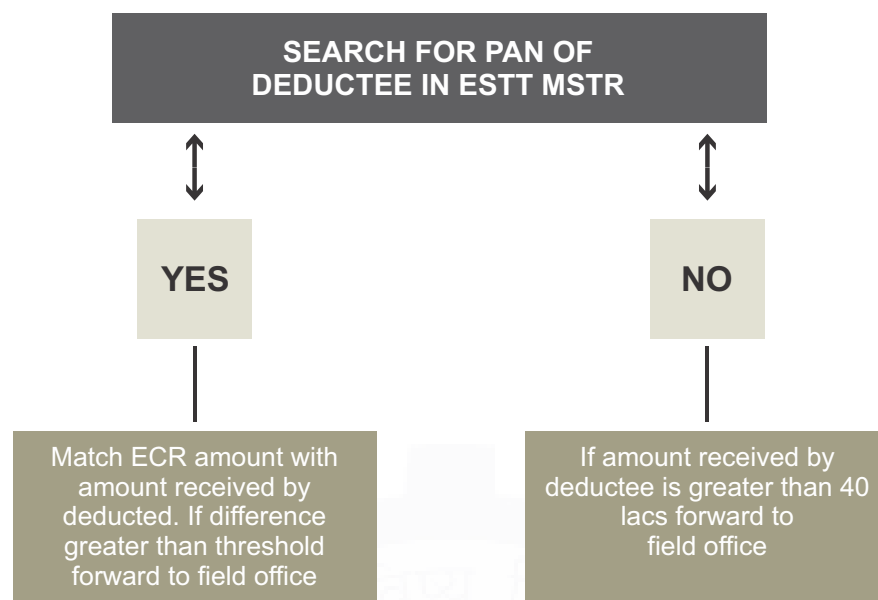
4.27 Data collected from IT department through Form 26 Q and Form 26 AS will help EPFO in sorting establishments (contractors) where payment received from principal employers is more than 40 lakhs. This benchmark can be used for listing out the contractors and run the data on our establishment master (based on PAN) to identify whether establishment is covered or not. CAIU cell can filter such uncovered establishments and forward those to respective field offices with details of

contractor and payment received from the Principal employer during the financial year. This will help in either covering the establishment under the Act and/or ensuring compliance through the principal employer.

4.28 Case 2 : **Contractor is registered with EPFO -** Even in those cases when where the contractor is already having a code number with EPFO, the data on payments received from principal employer by the contractor can be matched with the wages shown in ECR and wherever there is huge variation (benchmarks can be created industry wise) such cases could be flagged for evasion and field offices instructed accordingly.

The whole process is illustrated as below.





4.29 Armed with the input received from CAIU, field offices can approach the contractor establishments for independent coverage in case they are coverable under the Act and the principal employer and contractor where the wages on which compliance is made is far too less than the business received from the principal employer. For this industry wise thresholds can be worked out after examining balance sheets of contractors and principal employers. Statistical Models can be built to create such threshold limits. These models can be tested in field and based on the actual inspection in field in respect of few select establishments the statistical model can be trained, and threshold limits revised. Over a period of time the model will become more accurate and help in identifying establishments having large scale evasion.

4.30 **Changes proposed in ECR to collect details of contract workers and create an inbuilt mechanism of securing compliance of contract workers** - The increase in informalization of work force has led to denial of social security benefit to the contract and casual workers. The Act and the Scheme provides for ensuring compliance in respect of employees engaged through contractors by making the principal employer responsible. EPFO has not been able to completely secure this mandate from the principal employers. The contractors work on very thin margin, and they try to maximize their profit but avoiding

statutory payments. It is very difficult to catch hold of the contractors due to the transient nature of contract work and due to lack of adequate enforcement resources.

4.31 EPFO is better placed to create a system having inbuilt mechanism to secure compliance in respect of contract workers. The following changes may be considered to create the system.

- i. Employers should be asked to file ECR in respect of all categories of employees whether regular or engaged through contractor. [Section 8A (1) of the Act and Paras 30(1), 30(2) and 30(3) of EPF Scheme 1952]
- ii. Category of the employee like regular, part-time, seasonal, contract etc should be flagged in ECR.
- iii. In case of employees engaged through contractor the principal employer will have the option to pay the contribution or flag that the contribution will be paid by contractor. As per scheme provisions (Para 36B, EPF Scheme) contractor must provide this information to the principal employer in 7 days.
- iv. At the end of the month system will search the UANs having no contribution and look for contribution received in any other ECR (ECR of the Contractor). In case no contribution is received in respect of the

- said UAN, the principal employer will be made responsible and default notice generated for the principal employer at the time of filing next ECR. This will alert the Principal Employer to make deduction of PF contribution from the bill of the contractor.
- v. EPFO can carry random inspections based on 26Q and 26AS data and verify the name of contract workers working with the principal employer. In case principal employer does not provide correct information in ECR, action can be initiated against the establishment.
 - vi. The onus of securing compliance in respect of contract workers will directly shift to principal employer, which agrees with the statutory provisions.
 - vii. Government of India may consider issuing an executive order directing all the government establishments like CPWD, PWD, BRO, Irrigation Department etc to seek coverage under sec 1(4) of the Act for making compliance in respect of contractor employees. The Govt. establishment may have to file ECR in respect of contract workers, even if the contractor is covered under the Act and reporting compliance. This will facilitate EPFO in securing compliance in a completely non-intrusive manner in respect of contract workers engaged by the Government establishments who are otherwise not required to be covered under the Act. Till the time this mechanism is put in place all government departments can be directed to obtain registration under the Act and file ECR in respect of employees engaged through contractor. However, the department will not be able to act against the Govt Departments not filing the ECR as in this case the Act would not apply to the establishment.
2. EPFO does not have any data on employees engaged through contractors enrolled as PF members.
 3. NSS data for 2012 reveals that while on the one hand 88.3% of regular workers with contract more than one year in establishments employing 20 or more persons, have access to some form of social security, on the other hand only 2.8% of casual workers and 41.8% of regular workers with no written contract have access to social security in establishments with 20 or more employees.
 4. The increase in workers engaged through contractors is far greater than increase in direct employees, thus demanding focus shift in ensuring compliance under the Act.
 5. Present system of inspections, meeting with employers, employers' association, trade unions, Principal Employer Portal etc have not yielded desired result because there is lack of commitment by the contractors to report compliance. The least cost model to award contract and profit maximization model of the contractor work against the system existing to secure compliance in respect of contract workers.
 6. Independent coverage of contractors under the Act has made Principal employers complacent in securing compliance in respect of employees engaged through contractors and EPFO does not have adequate data to confront the principal employers and contractors.
 7. Form 26Q filed by establishments for deduction made under sec 194 C of the Income Tax Act together with Form 26 AS of the Contractor can supply data on the payments made by principal employer to contractor. Collation of the data can provide definitive indication of the business done by the contractor which can be translated in to expected number of employees. This will arm EPFO with data to confront the principal employers and the contractors for seeking coverage of contractors who are not yet registered and for tackling evasion. With industry specific micro studies, a robust statistical model can be built to secure compliance.

4.32 Summary and Suggestions:

1. Studies suggest that data on correct estimate of contract labour is not available to arrive at the magnitude of the problem.

8. Present ECR needs to be modified by adding one field for capturing the type of employment of the employee (Regular, contract, part-time etc.- If Contract then a further drop-down having three options i.e., “through Contractor”, “directly on contract” or “on Job-Work basis.”) may be provided.



9. The employers should be asked to file ECR in respect of all categories of employees whether regular or contract. In respect of the contract employees the establishment will have the option to pay directly or ask the contractor to make the payment under their code no. In case the payment is made by the contractor the same would be captured in the ECR of the contractor. The principal employer in such case would only provide the details of the employee in ECR and not make any remittance. At the end of the month system will

check for the UANs (in ECR of Principal employer) not having any contribution and look for the contribution in ECR of contractor. The UANs where no payment is received will be flagged and made available to the principal employer for reporting compliance. This arrangement is as per the statutory provisions and shifts the onus of securing compliance in respect of contractor employees, on the principal employer.

10. Government departments like Railways, CPWD, PWD, Irrigation Department, Health and Education Department etc are one of the largest employers engaging contract labour. The present principal employer portal and periodic meetings of the departments with RPFs in the field will not be able to secure compliance. The legal obligation created through the statute will need to be watched through a robust e-enabled process to secure compliance.

11. An executive order can be issued directing all Government Departments to seek coverage under sec 1(4) of the Act and register locally with RPF. The Govt departments will be responsible for filing ECR in respect of contract employees. The details of contract workers will be matched to check for compliance and in case of default the concerned principal employer will be made liable.

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CHAPTER-5

**COVERAGE UNDER
THE CODE ON
SOCIAL SECURITY
2020 (CODE)**



CHAPTER-5

COVERAGE UNDER THE CODE ON SOCIAL SECURITY 2020 (CODE)

- 5.1 The Code has certain provisions applicable for the entire code and certain for specific chapters in the code. Chapter III of the code pertains to EPFO.
- 5.2 The Code further expands the statutory ambit for coverage by removing the class of establishments to which the Code shall apply. The Code shall apply to every establishment in which twenty or more employees are employed.
- 5.3 Further, establishment (which was not defined under the Act) has been defined in sub-Section (29) of Section 2 of the Code as under:
"establishment" means-
- (a) a place where any industry, trade, business, manufacture or occupation is carried on; or
 - (b) a factory, motor transport undertaking, newspaper establishment, audio visual production, building and other construction work or plantation; or
 - (c) a mine, port or vicinity of port where dock work is carried out.
- Explanation. - For the purposes of Chapter III, where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.
- 5.4 The other two elements governing coverage of an establishment, employment strength of establishments and wage ceiling, find mention in the Code. The Code retains employment strength threshold for coverage as it is at twenty employees. First Schedule to the Code specifies that EPF shall apply to every establishment employing twenty or more employees. However, Section 152 of the Code empowers the Central government to inter-alia amend the Schedule itself by notification and extend coverage of EPF to establishments with employee strength less than twenty. Further, sub-Section (6) of Section (1) of the Code empowers the Central Government to apply the Code to any establishment employing less than 20 employees, after giving a notice of two months of its intention to do so.
- 5.5 The wage ceiling was not defined under the EPF & MP Act 1952 and the ceiling was controlled through operative provisions in the Schemes. The Code defines wage ceiling in sub-Section (89) of Section 2 as:
"wage ceiling" means such number of wages as may be notified by the Central Government, for the purposes of becoming a member under Chapter III and Chapter IV.
- 5.6 The provisions for voluntary coverage have been retained in the Code. However, a new provision has been made for such establishments to opt out of coverage.
- 5.7 Section 20 of the Code retains the provision of exclusion with a new inclusion as under:
(a) to the employees who, immediately before the commencement of this Code, were receiving benefits of Provident Fund under any Central or State enactment.
- 5.8 The Code empowers the Central Government to notify a web-based inspection policy through an electronic collection of information and randomized inspections.

- 5.9 The Code provides for composition of offences committed for the first time, punishable with fine and/or imprisonment. [Section 138].
- 5.10 Sec 15 (1) of the Code provides for framing of any additional Scheme for social security for any class of employees or self-employed workers, thereby expanding the scope of coverage. Further, section 109 and 114 of the code enable central government to from welfare scheme relating to old age protection or any other benefit for unorganised, workes and sig and performs works.
- 5.11 The Code authorises the Central Government to assign additional functions to a Social Security Organisation including administration of any other Act or scheme relating to social security subject to such provisions as may be specified in this behalf in the notification [Section 13].
- 5.12 A brief tabulation of the Code on Social Security 2022 vis-a-vis the EPF & MP Act 1952 is given below: -
- i) **EXISTING LEGAL FRAMEWORK**
 - Employees' Provident Funds and Miscellaneous Provisions Act, 1952
 - EPF Scheme, 1952
 - EDLI Scheme, 1976
 - EPS-1995
 - Administrative Tribunal Rules, 1997
 - ii) **FUTURE LEGAL FRAMEWORK**
 - Code on Social Security, 2020
 - Code on Social Security (Central) Rules, 2020
 - Schemes: yet to be framed
 - iii) **Code on Social Security 2020 encompasses following Laws:**
 - Employees' Compensation Act, 1923
 - ESIC Act, 1948
 - EPF & MP Act, 1952
 - Employment Exchange Act, 1959
 - Maternity Benefit Act, 1961
 - Payment of Gratuity Act, 1972
 - The Cine-workers Welfare Fund Act, 1981
 - The Building and other Construction Workers Welfare Cess Act, 1996
 - The Un-organized Workers' Social Security Act, 2008
 - iv) Code on Social Security 2020 is published on 29th September 2020 for general Information; Notification is due shortly (Section 142 of the Code notified w.e.f. 3rd May 2021)
 - v) The Code consists of 14 Chapters (6 Common +1 EPF); 164 Sections; 7 Schedules
 - vi) EPF & MP Act 1952 has 62 Sections; 4 Schedules
 - **Chapter-I of the Code** - Short Title, extent, commencement and application; Schedule-I: Applicability
 - **Chapter III will now apply on all establishments with more than 20 employees.**
 - Voluntary Coverage
 - Inapplicability subject to such conditions as may be prescribed (Rules)
 - vii) **Section 2 of the Code -> Definitions:**
(26) Employee; (29) Establishment; (33) Family; (37) Inspector-cum-Facilitator; (82) Superannuation; (88) Wages; (89) Wage ceiling
 - viii) **Section 3 of the Code -> Registration and cancellation of an establishment**
 - Single, Electronic registration for all labour laws
 - Existing registration to continue
 - Cancellation
 - Conditions for cancellation and Manner of registration in the Rules
 - ix) **Chapter-II of the Code - (SS Organisations)**
 - Central Board
 - 9. Transaction of business of SSO or a committee thereof
 - To be prescribed under the Rules

x) Chapter-III of the Code - (EPF)

- 15. Schemes
- 16. Contribution
- 17. Contribution in r/o employees and Contractors
- 18. Funds to be recognized under IT Act, 1961
- 19. Priority of payment of contribution over other debts
- 20. Exclusions
- 23. Appeal to Tribunal

xi) Chapter-X of the Code - 115 to 121. Accounts, Audit, Budget, Annual Reports, Valuation and writing offs of losses etc.

xii) Chapter-XI of the Code

- 122. Inspector-cum-Facilitator
- 125. Assessment and determination of dues
- 127. Interest
- 128. Power to recover Damages

- 129 to 132 Recovery provisions

xiii) Chapter-XII of the Code - Offences and Penalties

- 133. Penalties
- 137. Prior opportunity before prosecution
- 138. Compounding of offences

xiv) Chapter-XIV of the Code

- 143. Exemption
- 144. Power to defer or reduce
- 154-156. Power to make Rules
- 162. Delegation of Powers
- 164. Repeal and savings

xv) Schedule-I-Applicability

xvi) Schedule-V - Matters which may be provided in the Schemes

- Part A: EPF Scheme
- Part B: Pension Scheme
- Part C: EDLI Scheme





CHAPTER-6

LITIGATION MANAGEMENT IN EPFO



CHAPTER-6

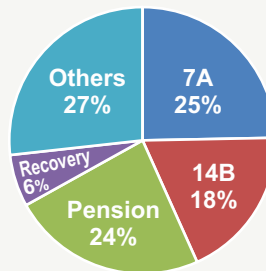
LITIGATION MANAGEMENT IN EPFO

6.1 **Legal Cases** - EPFO deals with court litigations as well as consumer disputes. The litigation in EPFO primarily arises out of compliance issues and consumer disputes out of service delivery deficiencies.

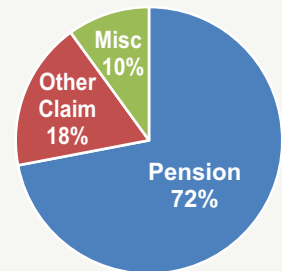
UNDERSTANDING LEGAL LANDSCAPE

- 2.56 lakh assessment cases decided in last three years - 3,893 (3%) disputed by employers before CGITs.
- About 8,000 cases pending before CGIT
- About 5,000 cases are in Lower courts - mostly filed by EPFO pertaining to prosecutions
- Almost 4.5 crore claims in 2021-22. 3987 cases are pending in District consumer forums.

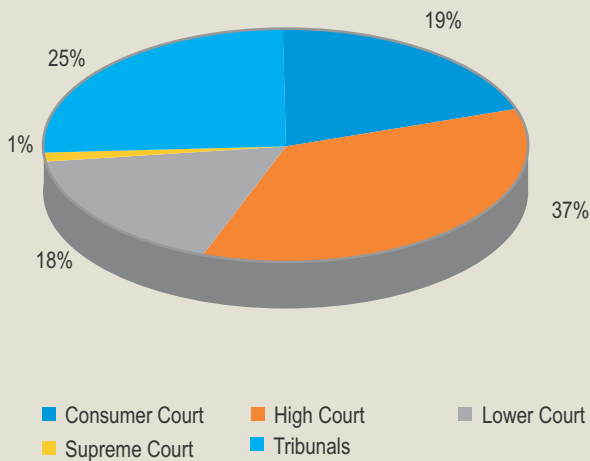
HC Cases



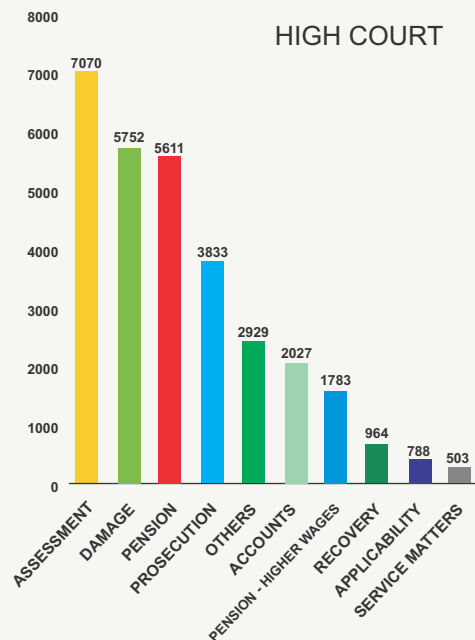
DCDRF



PENDENCY ANALYSIS COURTS CASES



HIGH COURT



6.2 EPFO officers are also performing adjudicating roles while determining dues under the Act as Quasi-judicial authorities. Details of assessments made by EPFO during last five years are given as under: -

Assessments done by EPFO

Table (A)

Year	OB	7A		14B (Un-exempted)		Total Cases disposed
		Initiated	Cases disposed	Total workload	Cases disposed	
2016-17	20623	17,860	15,199	1,79,596	1,15,845	1,31,044
2017-18	23355	9,612	13,100	1,37,607	91,276	1,04,376
2018-19	19364	13,678	14,305	1,29,551	97,122	1,11,427
2019-20	18634	14,311	17,901	1,22,009	90,624	1,08,525
2020-21	15066	2,173	4,285	57,364	32,432	36,717

(Source Annual Report EPFO)

6.3 **Further, EPFO processed 4.58 crore claims** during the year 2020-21. 71% claims (3.26 crore) were settled, and 29% claims (1.32 crore) were rejected. Of the settled claims, 48% were settled within three days, 67% within seven days, 77% within ten days and 95% were settled within twenty days. Disputes against these settlements primarily lies in Consumer Courts and further appellate forums.

6.4 The Central Govt launched LIMBS (Legal Information Management & Briefing system) portal to create central data base for court cases and monitoring thereof. Since 2017 EPFO is using LIMBS portal only. From the data available on LIMBS portal as on 06-05-2022, following Table B is prepared for analysis:

COURT	EPFO PETITIONER		EPFO RESPONDENT		Total Cases
	Cases	%	Cases	%	
HIGH COURT	1,903	16%	9,984	84%	11,887
TRIBUNALS	21	0%	7,522	100%	7,543
CGIT	3	0%	7,065	100%	7,068
CAT	1	0%	397	100%	398
NCLT	10	20%	41	80%	51
DRT	4	17%	19	83%	23
NCLAT	3	100%		0%	3
CONSUMER COURTS	1,932	32%	4,128	68%	6,060
DCDRF	18	1%	3,573	99%	3,591
SCDRC	1,836	77%	537	23%	2,373
NCDRC	78	81%	18	19%	96

LOWER COURTS	4,475	77%	1,329	23%	5,804
DISTT & SESSION COURT	2,565	80%	656	20%	3,221
CIVIL COURT	463	48%	492	52%	955
MAGISTRATE COURT	891	99%	13	1%	904
MAGISTRATE COURT	536	79%	146	21%	682
LOK ADALAT	1	4%	22	96%	23
METROPOLITAN MAGISTRATE	19	100%	-	0%	19
SUPREME COURT	35	18%	157	82%	192
Grand Total	8,366	27%	23,098	73%	31,486

(Source : LIMBS portal)

6.5 EPFO does not normally initiate legal proceedings in courts of law. Only in exceptional cases for major violation of law which effect benefit delivery to EPFO members or defending major question of law effecting implementation of the Act EPFO initiate legal proceedings. Further for default, non-filing of return or non-completion of KYC

prosecutions under section 14 of the Act are filed at District court level.

6.6 In last 3 years **2,56,669 cases of determination under section 7A/14B were passed.**

6.7 The details of Court cases filed, disposed off and disposal in favour or against the EPFO for the last three years is depicted in table C below

(Annual Reports, EPFO)

Table C

Court cases in last 3 years	Added	Decided	Decided against the Organisation		Pending
Supreme Court	99	70	11	16%	155
High Court	7,752	5,668	1557	27%	12074
CGIT	3,893	2,120	289	14%	7387
District Court	2,486	2,963	448	15%	5592
	14,230	10,821	2,305		25,208
CONSUMER COURTS					
National Commission	177	56	27	48%	201
State Commission	1,054	925	602	65%	1757
District Forum	2,926	1,887	880	47%	3987
	4,157	2,868	1,509		5,945
CAT	286	250	47	19%	299
Grand Total	18,673	13,939	3861	28%	31452

6.8 Major portion of the legal cases pertain to assessment of dues due to default or evasion by the employers, and levy of damages and interest, for belated payment of dues and recovery actions. In recent past majority of litigation related to damages are initiated by employers questioning the element of mens-rea and unreasonable waiver/reduction of damages by CGITs.

6.9 Major category of litigation presently faced by EPFO in High Courts / Supreme Courts is regarding the revision of pension benefits. This challenge has arisen after Kerala HC court order on pension on wages exceeding statutory wage ceiling. EPFO is facing court cases across India.

- 6.10 Since last three years, EPFO has been working actively towards litigation management by grouping litigations involving similar questions of law, which would result in disposal of groups of pending cases as well as pre-empt future litigation. As strategic approach, reply in similar matters, are attempted in uniformity, briefing of lawyers is done by Head Office in important matters effective team of advocates is selected for contesting the matters and close monitoring is being done for important matters. These efforts have found favour with Hon'ble Supreme Court in recent past in the matters of:
- [Civil Appeal No. 2136 of 2012 with Civil Appeal Nos. 2121, 2135 and 2141 of 2012]; Horticulture Experiment Station, Gonikoppal, Coorg Vs. The Reginal Provident Fund Organisation decided on 23-02-2022 holding that mens-rea it is not an essential element in levy of damages under Section 14B of the Act.:
 - Civil Appeal No. 6221 of 2011 with Civil Appeal Nos. 3965-3966 of 2013, 3969-3970 of 2013, 3967-3968 of 2013; The Reginal Provident Fund Commissioner-II West Bengal Vs. Vivekanand Vidyamandir and Others decided on 28-02-2019 permanently settling nature of allowances that form part of basic wages.
 - The cases relating to pension on higher wages is now pending consideration before a three-judge bench of Hon'ble Supreme Court of India. The decision will settle thousands of cases pending before various Courts
- 6.11 Recently number of litigations are arising under the Insolvency and Bankruptcy Code 2016 disallowing the priority of EPF dues in the resolution/liquidation process where there are competing claims on the assets of the establishment. The matter is under active discussion with concerned ministries for administrative resolution to pre-empt fresh round of litigations in these matters.
- 6.12 There is a category of cases related to service matters of officers and employees, which are being agitated before the Administrative Tribunals and High Courts. These relate to service entitlements and disciplinary proceedings. There are 522 such cases, 392 in Central Administrative Tribunals and 130 in various High Courts.
- 6.13 **Existing legal arrangement:** Presently the litigation management is handled through instructions issued from time to time. All Supreme Court matters are dealt with by EPFO Head Office and all other cases in High Court and other courts are dealt with by Zonal / Regional Authorities. As an exception since last 3 years all policy issues involving major question of law and directly involving UOI, CBT, CPFC as necessary party are also contested under active guidance of Head Office.
- 6.14 The committee was apprised that as a responsible central government organisation, the approach of EPFO towards litigation must be informed by principles of equity and public interest. Being a compulsive litigant is neither in the interest of organisation nor any of its stakeholders. A lot of advancement has taken place in the field of alternative dispute redressal (ADR) across the world and also in India. ADR provides for a number of avenues for amicable settlement of disputes involving civil, criminal and service matters. To effectively utilise the ADR mechanism for amicable settlement of court cases the following guidelines are issued to be followed by all field formations.
- 6.15 Plea bargain is an effective ADR mechanism for disposal of court cases involving criminal allegations. A number of prosecution cases are instituted by EPFO during administration of the Act.
- 6.16 Sections 265 A to L of the Code of Criminal Procedure was enacted to incorporate the process of plea bargaining in criminal trials. The procedure described therein is also applicable to prosecution cases filed by functionaries of EPFO in the trial courts,



The background features a soft-focus image of an open book with its pages slightly curved. A large, white circular graphic with a dark grey border is centered over the book. Inside the circle, the text is displayed in a clean, sans-serif font. The overall lighting is warm and diffused, creating a professional and academic atmosphere.

CHAPTER-7

ISSUES DISCUSSED DURING DELIBERATIONS OF THE COMMITTEE



CHAPTER-7

ISSUES DISCUSSED DURING DELIBERATIONS OF THE COMMITTEE

- 7.1 During the deliberations of the Committee, it was informed that:
- i. Employees' threshold i.e., number of employees in an establishment for which EPFO coverage is mandatory was 50 in 1952 and was last modified in 1960 bringing it down to 20 employees. There have been various recommendations including of the First (1962) and Second (2002) National Commission on Labour as well as a Working Group of the Ministry of Labour and Employment to reduce the threshold to 10 and less gradually.
 - ii. Under the EPF and MP Act 1952, the coverage is restricted to specific categories of industries and establishments. However, this limitation has since been removed in the Social Security Code and is likely to increase the coverage.
 - iii. The employees working in establishments with 11-19 strength are not entitled to any statutory old-age income security scheme.
 - iv. The wage ceiling was last revised in the year 2014 increasing from Rs. 6,500 to Rs. 15,000. There is no change since last 7 years.
 - v. The Provident Fund Act of 1925 is presently under the Ministry of Labour and Employment, but it has not been assigned to any organisation for administration. Government may consider assigning the same to EPFO for administration.
 - vi. Almost one crore members are contributing to EPF on wages more than Rs 15,000/- but voluntarily.
 - vii. There are approximately 91,000 establishments who have registered with EPFO declaring their average employee strength of 25 but complying for an average of 15 employees. Therefore, due to exclusion of employees above wage ceiling a good number of employees remains out of Social Security.
 - viii. The current wage ceiling and employee number threshold inhibits mandatory coverage of all workers depriving them from the guarantee on benefit of social security. This needs to be considered and reviewed if required be.
 - ix. There are cases pending for years together especially those where Hon'ble Courts have granted stay and thereafter no further proceedings have taken place. This stalemate is resulting in denial of benefits to eligible beneficiaries. Special efforts are required to tackle such cases.
 - x. Issues arising out of judgment of Hon'ble Supreme Court in the Vivekanand Vidyamandir case need to be addressed, especially the issue of retrospective levy of damages on retrospective payment of contributions arising out of the said judgement.
 - xi. The current inspections regime needs a review to have more robust system to act as a deterrent against wilful defaulters. This is especially required as India has ratified the ILO's Labour Inspection Convention no. 81 (excluding Part-II of the said Convention). Article 12 of the said Convention provides for
 1. Labour inspectors provided with proper credentials shall be empowered:

(a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;

(b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and

(c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed.

2. On an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

xii. The Code has statutory provisions empowering Central Government to assign administration of any scheme to EPFO. However, for unorganised sector workers there is separate chapter and separate National Social Security Organisation is conceptualised under Section 6 of Code. Further, there will be other challenges such as organizational capacity, manpower and infrastructure etc as it involves a new work requirement involving and a complete shift from present social security schemes administered by EPFO

xiii. Since March 2021 EPFO has launched an electronic facility for principal employers called PE portal. The government departments and government entities, which presently do not come under the purview of EPFO, can register themselves on this portal for better monitoring of EPF compliances of their contractors.

7.2 Since 3rd May 2021, Section 142 of Code on Social Security, 2020 is in force which makes seeding of Aadhar mandatory for registration & availing of benefits. . The analysis of UAN data not seeded with Aadhar indicates that there are 11,57,680 employees of 1,87,877 establishments whose UAN is still not seeded with Aadhar even after consistent follow up by EPF field offices.

7.2 During the deliberations of the Committee, it was explained that the compliance

requirements under the statute lead to four kinds of situations requiring attention of the compliance machinery:

a) Disputes on the applicability of the Act

b) Non-payment of provident fund and allied dues

c) Non-enrolment of all eligible Members

d) Non-submission of returns and other documents

7.3 The following Actions are provided in the Act that can be taken to ensure compliance under the Act:

a. Action under section 7A - Deciding applicability of the Act in case of disputes and determination of amounts due from any employer under any provisions of the Act, the Provident fund Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, by inquiries, quasi-judicial in nature, thereby enforcing attendance, requiring attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavit and issuing commissions for examination of witnesses.

b. Action under section 8F- Issue of prohibitory orders to third parties including post offices, bankers, insurance etc. to withhold any payment due to the defaulting employers and to remit the same to the Fund for appropriation against Provident Fund dues.

c. Action under section 14 - Filing of prosecution cases against the defaulting employers before the appropriate courts of law for avoiding payment of dues, non-submission of statutory returns, making or causing to make false statement or representation, contravening any condition subject to which exemption was granted and committing same offence repeatedly.

7.4 Further the Act also provides for following Actions to be taken for delay in remittance of dues:

a. Action under section 14B - Levy of damages, as penalty, for belated remittance of contributions due from any

employer by giving reasonable opportunity of being heard, at such rate as specified in the Scheme.

- b. Action under section 7Q** - Levy of simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the Scheme on any amount due from the employer under this Act from the date on which the amount has become so due till the date of its actual payment.

7.5 In their written feedback the members (employers' representatives) have submitted that:

- For the present CBT should not consider coverage of those establishments that have employee strength between 10 to 19 as with the implementation of the Social Security Code the services of such a person are in the nature of a Gig Worker, Platform Worker, Home Based Worker and the like, they would all be potentially coverable for the purposes of coverage and applicability of Provident Fund and Pension.
- The decision of the Supreme Court in the RPFC Vs Vivekananda Vidyamandir case should be made applicable prospectively just as has been done by MOLE in the case of a subsequent Judgement of the Hon'ble Supreme Court of India pertaining to the ESIC. It needs to be appreciated that both Social Security legislations viz EPF & MP Act and ESI Act are within the domain and jurisdiction of the Ministry of Labour and Employment. Thus, a fair and equitable stand needs to be taken by the CBT.
- Home Guard in Delhi are not being provided the benefits of Provident Fund/Pension; this issue too needs to be addressed on priority
- Regarding Prosecution for non-seeding of Aadhar etc CII submitted that:
 - Punishing the Employer for such technical issues is an overkill.
 - Denying the Employer, the opportunity to comply by not allowing remittance on UAN issue, nor being able to create UAN because Employee provides the Aadhar detail but that does not get verified with

UIDAI and then prosecuting them needs to be avoided

- The Employer here is an intermediary between EPFO, and the Beneficiary is the EPF subscriber.
- It should be a role of facilitation and EPFO should make use of technology to directly interact with Employees.
- Equating the PF contribution remitted (deducted and matched) payment to Income Tax may not be the right approach. And may not be appropriate as well
- Therefore, trying to apply the same level of damages and assigning the same severity as that of evading Income Tax is not justified
- The intentional fraudster should be dealt severely. For example, the following instances are serious crimes with mens rea, and should be dealt with more severity than the offenders who evade tax.
- Those who deduct contribution from employee and intentionally do not remit to the EPFO; those who are coverable (say with 20 plus coverable employees) but intentionally avoid coverage etc.
- In the light of the plan to make EPF scheme applicable to establishments employing 10 or more employees (Persons employed), it is essential and urgent that EPFO approach to such instances are more of facilitation rather than punitive.
- If the Employer is found to be compliant with respect to covering the establishment and the employees coverable and the issue is only with respect to what is PF wages, then the Employer should be given an option to correct from the date of such finding.
- Such an Employer should be put on watch (which is easier now with technology, every month ECRs could be checked at the backend and report generated automatically).

- If default is repeated, the employer to be treated on par with the intentional fraudsters

- 7.6 During deliberations, the employer representatives were of the view that the employers are subjected to three penalties in case of default, viz. levy of Interest, Damages and Prosecution. It was submitted that the Act, which presently does not identify genuine business difficulty from a wilful default puts enormous financial and legal pressure on establishments by way of levy of damages. This pressure is especially debilitating for smaller employers. It was suggested that there is a need for rationalising the rates for levy of damages. The members also referred to various court cases across India, whose pendency adversely affects the overall service delivery. It was suggested that Alternate Dispute Resolution (ADR) should be actively encouraged and adopted as a means for quick resolution of legal disputes in various court cases across India.
- 7.7 It was discussed that the compliance management in EPFO should be so oriented to distinguish defaults by otherwise compliant

establishments, who are occasionally forced to default for reasons beyond their control from defaults committed by unscrupulous employers. It was also recommended that a technology enabled framework needs to be put in place for compliance management so that subjective criteria are minimized in the administration of compliance management.

- 7.8 On the specific issue of Prosecution, it was suggested that the entire prosecution process should be handled by a separate set of officials who are well trained, and there should be an escalation matrix available for an employer to seek redressal, at an internal appellate level and to get a wrong prosecution withdrawn.
- 7.9 In the case of Recovery proceedings, the employers' representatives submitted that the Standard Operating Procedures (SoPs) for recovery of assessed amount, for which the recovery process is presently initiated within 15 days after issue of assessment orders at present, be reviewed. Further, that at least sixty days may be allowed from the date of assessment order before initiation of recovery proceedings.



CHAPTER -8

**ANALYSIS AND
RECOMMENDATIONS -
COVERAGE**



CHAPTER-8

ANALYSIS AND RECOMMENDATIONS - COVERAGE

8.1 The Committee during its deliberations has decided to consider following key issues: -

- i. Employee threshold for coverage of establishments.
- ii. Rationalising the statutory wage ceiling and linking it with an identifiable metric.
- iii. Universal coverage of all employees upto wage ceiling
- iv. Use of IT tools to ensure better compliance and Robust Inspection systems
- v. Universal coverage of unorganised workers
- vi. Review ECR format for capturing employer complete liability towards contributions.
- vii. Rationalisation of rates of Damages.
- viii. Rationalising mechanism for withdrawal of Prosecutions.
- ix. Rationalising litigation related to Recovery
- x. Enhancing quality of quasi-judicial assessment with proper legal training and use of IT tools.
- xi. Other matters raised by members.

EMPLOYEE THRESHOLD FOR COVERAGE OF ESTABLISHMENTS -

8.2 Establishments having employment strength of 20 or more are required to compulsorily enrol under the Act. The threshold of 20 was inserted in the Act in December 1960. There have been recommendations to reduce the threshold to universalize the coverage of the Act. The First National Commission on Labour

in the year 1969 recommended to reduce the coverage threshold to 10 employees (Para 13.52). The Second National Commission on Labour in the year 2002 recommended that the employment threshold should be brought down to 10 immediately, to 5 during the next 3-5 years, and to one within a short time frame thereafter. [Para 8.118].

8.3 The report of the Working Group on Labour Laws and Other Regulations for the Twelfth Five Year Plan (2012-17) prepared by Ministry of Labour and Employment recommended that, "It is proposed to amend the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to bring down the threshold limit from 20 and above to 10 and above for coverage of establishments."

8.4 Although recommendations exist for reducing the threshold from 20 to 10 but there has been no change in threshold in the last 60 years. The Code does have retained the threshold of coverage for EPFO as it is at existing 20 strength of 20 employees and for ESIC at 10 employees. As a result, establishments having employment strength between 10 to 19 presently do not have any statutory social security coverage in the form of Provident Fund and Pension which is a major coverage gap.

8.5 Sub-Section (1) of Section 152 of the Code deals with the establishments to which Chapter-3 of the code which pertains to EPFO shall apply. The Section read as

"152. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification amend the First Schedule, Fourth Schedule, Fifth Schedule, Sixth Schedule and Seventh Schedule by way of

addition or deletion therein and upon such addition or deletion, the Schedules shall stand to have been amended accordingly”.

The relevant entry in first schedule reads as:

“Chapter III - Employee's Provident Fund- Every establishment in which twenty or more employees are employed”.

Thus, Sub-Section (1) of Section 152 of the Code empowers the Central Government to amend the said Schedule by way of a notification.

The Committee in principle agreed that coverage threshold for enrolment under EPF should be 10 employees so that the same is aligned with the coverage threshold under ESIC. However, this may be considered at appropriate time after the economy is fully revived from setback of pandemic. Further committee felt that considering the financial strength small and marginal establishments with employment strength between 10 to 19, special lower rates of employers’ contribution

may be considered and the employee share of contribution in such cases may be optional.

Therefore, the Committee recommends considering amendment to Entry 1 in the First Schedule of the Code that “Every establishment in which ten or more employees are employed.”

The committee further recommends special lower rates of employers’ contribution may be considered and the employee share of contribution in such cases may be optional.

RATIONALISING THE STATUTORY WAGE CEILING AND LINKING IT WITH ANY IDENTIFIABLE METRIC

8.6 The Committee was apprised that between 1952 to 1983 the wage ceiling in EPF was 5 to 6 times of minimum Central Government pay of employees. Between 1983 to 2006 it was 2 to 3 times. However, from 2006 to date it is less than minimum Central Government pay of employees. This is evident from the below table below: -

PAY COMMISSION	MINIMUM PAY (Rs.)	EPF WAGE CEILING (Rs.)	EPF Wage Ceiling as proportion of Minimum Pay of Central Government servants
First Central Pay Commission (1946-47)	55	300 (w.e.f. 01-11-1952)	Five times
Second Central Pay Commission (1957-59)	80	500 (w.e.f. 01-06-1957)	Six Times
Third Central Pay Commission (1972-73)	196	1,000 (w.e.f. 31-12-1962)	Five Times
Fourth Central Pay Commission (1983-86)	750	2,500 (w.e.f. 01-09-1985)	Three times
Fifth Central Pay Commission (1994-97)	2,550	5,000 (w.e.f. 01-10-1994)	Two times
Sixth Central Pay Commission (2006-08)	7,000	6,500 (w.e.f. 01-06-2001)	90% of minimum central Government wages
Seventh Central Pay Commission (2014-16)	18,000	15,000 (w.e.f. 01-09-2014)	83% of minimum central Government wages

8.7 The Committee was also apprised of cross-country comparison of wage ceiling with per capita income which is depicted in the table below.

WAGE CEILING - CROSS COUNTRY COMPARISON

Sl. No.	Country	Contribution wage/earnings ceiling (₹)	GDP Per capita (\$)	GDP Per capita (₹)	Wage ceiling as a ratio to GDP per capita
1	US	₹ 8,82,000	\$ 63,413.50	₹ 47,10,196	0.19
2	Germany	₹ 6,06,000	\$ 46,208.40	₹ 34,32,244	0.18
3	Japan	₹ 4,21,000	\$ 40,193.30	₹ 29,85,458	0.14
4	Italy	₹ 7,55,000	\$ 31,714.20	₹ 23,55,651	0.32
5	China	₹ 3,04,000	\$ 10,434.80	₹ 7,75,071	0.39
6	Russia	₹ 1,24,000	\$ 10,126.70	₹ 7,52,186	0.16
7	Brazil	₹ 83,168	\$ 6,796.80	₹ 5,04,849	0.16
8	Indonesia	₹ 45,371	\$ 3,869.60	₹ 2,87,424	0.16
9	India	₹ 15,000	\$ 1,927.70	₹ 1,43,185	0.10
				Average	0.18
<p>The average ratio (0.18) multiplied by GDP per capita indicates wage ceiling at approx. Rs 25,000 per month for India</p>					

8.8 From the above table it appears that in view of international comparison of wage ceiling with as ratio of GDP per capita the wage ceiling is below the international standards.

8.9 The Wage Ceiling was Rs 500/- per month in the year 1957. Applying the annual Consumer Price Index on this amount from 1958 onwards indicates that the current wage ceiling should be approximately Rs 45,000 per month.

TABLE – HISTORIC INFLATION INDIA (CPI) – BY YEAR	RATE OF INFLATION	PROJECTED WAGE CEILING
CPI India 1958	5.15%	₹ 526
CPI India 1959	4.23%	₹ 548
CPI India 1960	0%	₹ 548
CPI India 1961	3.21%	₹ 566
CPI India 1962	2.48%	₹ 580
CPI India 1963	6.87%	₹ 619
CPI India 1964	17.01%	₹ 725
CPI India 1965	5.49%	₹ 765
CPI India 1966	13.94%	₹ 871
CPI India 1967	8.6%	₹ 946
CPI India 1968	-2.23%	₹ 925
CPI India 1969	3.54%	₹ 958
CPI India 1970	5.01%	₹ 1,006

CPI India 1971	4.89%	₹ 1,055
CPI India 1972	7.66%	₹ 1,136
CPI India 1973	23.81%	₹ 1,406
CPI India 1974	25.4%	₹ 1,763
CPI India 1975	-6.18%	₹ 1,654
CPI India 1976	0%	₹ 1,654
CPI India 1977	7.86%	₹ 1,784
CPI India 1978	1.51%	₹ 1,811
CPI India 1979	11.7%	₹ 2,023
CPI India 1980	9.09%	₹ 2,207
CPI India 1981	12.73%	₹ 2,488
CPI India 1982	8.05%	₹ 2,688
CPI India 1983	12.46%	₹ 3,023
CPI India 1984	5.19%	₹ 3,180
CPI India 1985	7.14%	₹ 3,407
CPI India 1986	9.21%	₹ 3,721
CPI India 1987	9.31%	₹ 4,068
CPI India 1988	8.79%	₹ 4,425
CPI India 1989	5.42%	₹ 4,665
CPI India 1990	13.71%	₹ 5,304
CPI India 1991	13.07%	₹ 5,998
CPI India 1992	8%	₹ 6,478
CPI India 1993	8.64%	₹ 7,037
CPI India 1994	9.47%	₹ 7,704
CPI India 1995	9.69%	₹ 8,450
CPI India 1996	10.41%	₹ 9,330
CPI India 1997	6.29%	₹ 9,917
CPI India 1998	15.32%	₹ 11,436
CPI India 1999	0.47%	₹ 11,490
CPI India 2000	3.48%	₹ 11,889
CPI India 2001	5.16%	₹ 12,503
CPI India 2002	3.2%	₹ 12,903
CPI India 2003	3.72%	₹ 13,383
CPI India 2004	3.78%	₹ 13,889
CPI India 2005	5.57%	₹ 14,662
CPI India 2006	6.53%	₹ 15,620

CPI India 2007	5.51%	₹ 16,481
CPI India 2008	9.7%	₹ 18,079
CPI India 2009	14.97%	₹ 20,786
CPI India 2010	9.47%	₹ 22,754
CPI India 2011	6.49%	₹ 24,231
CPI India 2012	11.17%	₹ 26,937
CPI India 2013	9.13%	₹ 29,397
CPI India 2014	5.86%	₹ 31,119
CPI India 2015	6.32%	₹ 33,086
CPI India 2016	2.23%	₹ 33,824
CPI India 2017	4%	₹ 35,177
CPI India 2018	5.24%	₹ 37,020
CPI India 2019	9.63%	₹ 40,585
CPI India 2020	3.69%	₹ 42,083
CPI India 2021	5.56%	₹ 44,423
annual inflation (dec vs. dec)		

<https://www.inflation.eu/en/inflation-rates/india/historic-inflation/cpi-inflation-india.aspx>

8.10 The present wage ceiling is not linked to any identifiable metric issued by Government of India. Revision of wage ceiling from time to time is accordingly not having any fixed time

frame. It would be desirable if the wage ceiling is linked to any identifiable metric issued by Government of India from time to time for periodic revisions automatically.

Scheme	Contribution by ER / EE (% of wages)	Contribution by Govt.	Financial impact	Remarks
EPF	15.67	0	Increased liability for Employer	Benefit to Employees
EPS	8.33	1.16	Increased liability for Govt.	Govt. Contribution may be restricted
EDLI	0.5	0	Increased liability for Employer	Benefit to dependants of Employees will increase from Rs. 7.00 lakhs

8.11 At present the income upto Rs 2,50,000/-per annum does not attract any tax liability. Two to three times of this may be used as a metric for assigning wage ceiling. Further, according to first advance estimates of national income, 2021-22, issued by Ministry of Statistics and Programme Implementation (MoSPI), on 7th January 2022, the per capita annual Gross National Income at current prices was Rs

1,68,340. Three to four times this number issued annually could be used as a metric for arriving at a wage ceiling.

8.12 Committee was also apprised to consider specifying contribution ceiling in place. of wage ceiling. This would help align the law with provisions of Income Tax Act. The Finance Act 2020 introduced a new provision under the

Income-tax Act, 1961 by virtue of which employer contribution exceeding Rs. 7.5 lakhs p.a. (i.e., excess contribution) in aggregate to the following funds is now taxable in the hands of the employee as perquisite:

- i) Employer contribution in a recognized provident fund.
- ii) Employer contribution in National Pension Scheme ('NPS').
- iii) Employer contribution in an approved superannuation fund.

Further, the Finance Act 2021 specifies that interest on employee contribution exceeding Rs 2,50,000 shall be taxable.

Thus, the Committee recommends that Government may consider revising the present statutory wage ceiling of Rs.15000/- per month accordingly. The Committee also recommends that Government may consider the contribution ceiling as above, as modified from time to time for the purpose of specifying contribution to EPF.

ENROLLING ALL EMPLOYEES UPTO WAGE CEILING

8.13 Committee was apprised that the present statutory definitions of "excluded employees" results in large number of employees becoming ineligible for enrolment. The extant definition inter-alia specifies that an employee whose wages at the time of joining the establishment exceeds the wage ceiling is not required to mandatorily enrol as member. The extant provisions of EPF Scheme [Para 26(6)] allow an employee whose wages are above the specified wage ceiling to enrol as member after taking due permission.

The excluded employees are defined under para 2(f) of the EPF Scheme as: -

"excluded employee" means -

- (i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69.
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [fifteen thousand rupees] per month.

Explanation: --'Pay' includes basic wages with dearness allowance [retaining allowance (if any) and cash value of food concessions admissible thereon;]

(iii) [omitted].

(iv) an apprentice.

Explanation: -- An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government;""

8.14 As a result of the definition related to pay, an employee gets completely out of purview of the membership if initial pay exceeds Rs.15,000/- per month. The committee was also apprised of the analysis of coverage data of about in 91,000 establishments 23.29 Lakhs employees were declared (with an average of 25 employees per establishment) but only 13.6 Lakhs employees were registered as members (with an average of 15 employees per establishment). Thus only 58% employees are converted into members for the obvious reason of definition of excluded employees. In many states the statutory minimum wage is more than current wage ceiling thus depriving workers of Social Security eligibility. The condition of the workers with wages less than 15000 become more miserable upon bifurcating these wages into permissible allowances under the law leading to actual benefit of social security on even half of this wage ceiling. Further, the possibility of undesirable manipulation of wages cannot be ruled out.

8.15 The committee was apprised that internationally wage ceiling is used to defined contribution limit and not used as a metric for excluding enrolment. In Sri Lanka, Bhutan, Nepal there is no wage ceiling for membership; in Brazil, USA, Singapore wage ceiling is adjusted periodically based on national average wage.

ILO convention 102 speaks that "The minimum objectives of the Convention relate, for all the nine branches, to the percentage of the population protected by social security schemes, the level of the minimum benefit to

be secured to protected persons, as well as to the conditions for entitlement and period of entitlement to benefits. Convention No. 102 does not prescribe how to reach these objectives but leaves certain flexibility to the member state. They can be reached through:

- universal schemes.
- social insurance schemes with earnings related or flat rate components or both.
- social assistance schemes.”

Universal Social Security to all employees will also further India’s case for bi-lateral social security agreements internationally. All the present Act does not provide social security to all, but the intent of Code on Social Security is the same.

8.16 The committee therefore recommends that definition of excluded employees may be modified providing social security to all employees up to wage ceiling. The present statutory definitions of “excluded employees’ results in large number of employees becoming ineligible for enrolment. The extant definition inter-alia specifies that an employee whose wages at the time of joining the establishment exceeds the wage ceiling is not required to mandatorily enrol as member. The extant provisions of EPF Scheme [Para 26(6)] allows an employee whose wages are above the specified wage ceiling to enrol as member after taking due permission.

ENSURING FILING OF RETURNS BY ESTABLISHMENTS IN RESPECT OF ALL EMPLOYEES ON ITS ROLLS AND MANDATORY ENROLMENT OF ALL EMPLOYEES DRAWING WAGES UPTO THE SPECIFIED WAGE CEILING

8.17 The extant provisions of EPF Act & Scheme specify that the employer shall file returns and make payments in respect of all employees either directly or through a contractor. Following provisions are relevant in this context:

8A. Recovery of moneys by employers and contractors.

- (1) The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any 'amount payable to the contractor under any contract or as a debt payable by the contractor.

{EPF & MP Act, 1952}

Paragraph 30, 36 and 36B of EPF Scheme 1952 read with Section 8A (1) of the Act above, specify that the employer shall file a statement of amount due in respect of all employees employed directly or through a contractor and also make payments accordingly. In the present system of filing ECR, the employer submits return of only those employees, in respect of whom the employer is making remittances. **The Committee recommends that:**

- a) All establishments should mandatorily file return in respect of all employees, employed directly or through a contractor. This will facilitate faster completion of assessment enquiries as the “statement of due amount” shall always be available with assessing officers for finalising assessment enquiries**
- b) Central Government, all State Governments and the various entities under their supervision and control may be mandatorily required to specify mandatory EPFO registration as a pre-qualification condition for all establishments/individuals applying for any contract for goods or services with them.**
- c) The Principal employers may be allowed the facility to file returns and make payments in respect of contractual employees, if the contractor fails to submit the same within seven days of the closing of the month for which the amount is due, Principal employers**

should be allowed to submit the said returns and make the payments.

- d) The return to be filed by the employer should contain details of all employees on rolls of the establishment. Further, all employees upto the specified wage ceiling should be mandatorily required to enrol as member. This would ensure that the social security benefit is extended to all employees in the establishment.

8.18 The Code on Social Security in sub section (82) of Section 2 has defined that "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service, as the age on the attainment of which the employee shall vacate the employment:

Provided that for the purposes of Chapter III, the age of superannuation shall be fifty-eight years.

The Committee recommends that the definition of an excluded employee may be aligned to this definition and an employee who has superannuated in terms of provisions of the Code shall be treated as an excluded employee.

UNIVERSALISING COVERAGE

8.19 The Committee further recommends that Chapter IX of the Code on Social Security may be administered by EPFO as this would ensure that increasingly larger pool of persons is brought within the coverage fold of EPFO. The Committee further recommends that Government may consider assigning administration of the Provident Funds Act 1925 to EPFO. Following provisions in the Code authorise the Central Government in this regard:

Sub-section (7) of Section 4 - The Central Board, apart from the functions specified in this Code, shall also perform such other functions in such manner as may be prescribed by the Central Government.

Section 13 - Notwithstanding anything contained in this Code, the Central Government may, by notification, -

- (i) assign additional functions to a Social Security Organisation including administration of any other Act or scheme relating to social security subject to such provisions as may be specified in this behalf in the notification:

Section 15 (1)(d) of Ch III enables any other scheme for self-employed workers or any other class of persons

"15. (1) The Central Government may, by notification -

.....

- (d) frame any other scheme or schemes for the purposes of providing social security benefits under this Code to self-employed workers or any other class of persons; and..."

The Committee recommends accordingly.

8.20 The Code provides for National Social Security Board and State Unorganised Workers' Board (Section 6)

6. (1) The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers to exercise the powers conferred on, and to perform the functions assigned to, it under this Code, in such manner as may be prescribed by the Central Government.

(2) The National Social Security Board shall consist of the following members, namely: —

- (a) Union Minister for Labour and Employment as Chairperson.
(b) Secretary, Ministry of Labour and Employment as Vice-Chairperson.
(c) forty members to be nominated by the Central Government, out of whom -
(i) seven members representing unorganised sector workers.
(ii) seven members representing employers of unorganised sector.
(iii) seven members representing eminent persons from civil society.
(iv) two members representing the Lok Sabha and one from the Rajya Sabha.

- (v) ten members representing Central Government Ministries and Departments concerned.
- (vi) five members representing State Governments.
- (vii) one member representing the Union territories; and
- (d) the **Director General Labour Welfare, as Member Secretary, ex officio.**

8.21 Challenges for EPFO in the event that administration of benefits for workers in the Unorganised sector, including for Gig & Platform workers is assigned to EPFO:

- Organizational capacity, manpower and infrastructure
- Complete shift from present experience as no employers, no adjudication roles, different funding patterns
- No administrative revenue.





A person in a grey suit is writing in a book with a pen. In the foreground, there is a wooden gavel with a gold band. The background is a plain, light-colored wall.

CHAPTER -9

ANALYSIS AND RECOMMENDATIONS - LITIGATION MANAGEMENT



CHAPTER-9

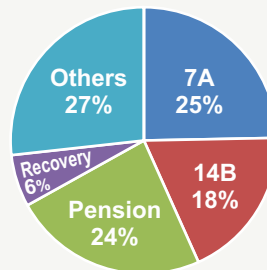
ANALYSIS AND RECOMMENDATIONS - LITIGATION MANAGEMENT

9.1 Appreciating Legal Landscape

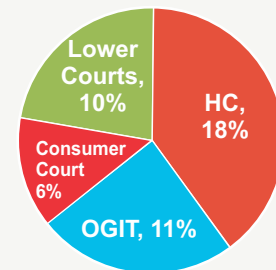
APPRECIATING LEGAL LANDSCAPE

- 2.56 Lakhs assessment cases decided in last 3 years 3893 (3%) disputed by employers in CGIT. 7778 cases on going before CGIT.
- Average 1.75 Lakhs employers delay in return filing every month.
- Around 4500 cases in lower courts - mostly filed by EPFO as prosecution for default in payment, return and KYC.
- About 14000 cases are pending beyond 5 years

HC Cases



Cases Pending >5 years

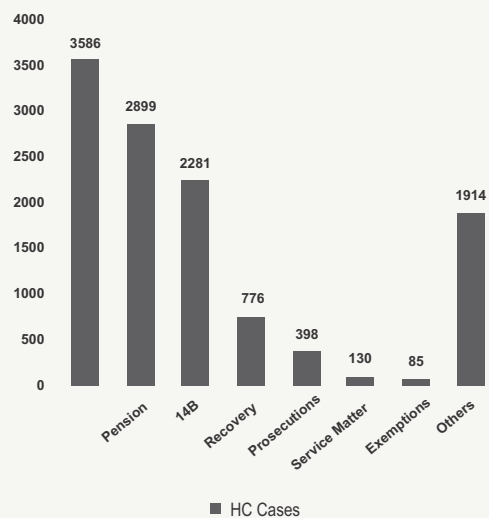
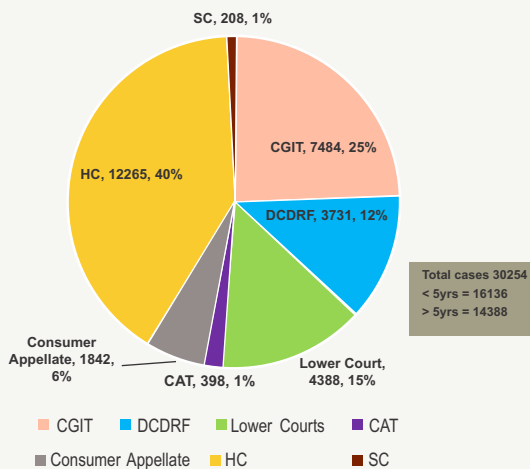


■ HC ■ CGIT
■ Consumer Court ■ Lower Courts

9.2 Pendency Analysis

PENDENCY ANALYSIS COURTS CASES

Total Court Cases
{Original jurisdiction CGIT, DCDRF and Lower Courts}
{Appellate jurisdiction - SC, HC, NCDRC / SCDRC}



9.3 Existing Legal Arrangement and proposed Legal Framework

EXISTING LEGAL ARRANGEMENT

Handling litigations through instruction and guidelines.

Legal Division EPFO HQ- directly deals with matters before SC, policy issues involving large question of law and cases involving UOI, CBT, CPFC as necessary party.

ROs and ZOs directly deals with cases where they are necessary parties.

Panel of advocates - SC panel is decided by EPFO HQ and other courts by Zonal Offices

LEGAL FRAMEWORK - UNDER WAY

SoPs for handling cases in SC, HC and other courts, contempt and stay orders.

Nodal officers, monitoring mechanism, trend analysis and strategy, task force, reviews, workshops and training and internship arrangement

Advocates' empanelment, fee management, opinions and performance evaluation

9.4 Reducing Litigation - The Committee was informed about the litigation management approach of EPFO:

- i. Identify early trends in issues being taken up for litigation, conduct 360-degree analysis and ensure grouping of litigations with similar / same questions of law;
- ii. Arrange to prepare uniform replies, deciding about arguments, ensure proper briefing of lawyers, engage effective advocates, ensure timely filing of replies and ensure close monitoring of cases.
- iii. These efforts have found favour with the Hon'ble Supreme Court of India in the matters of:
 - Horticulture Experiment Station, Gonikoppal, Coorg Vs RPFC decided on 23-02-2022 holding that mens-rea is not an essential element in levy of damages under Section 14B of the Act.
 - The RPFC Vs. Vivekanand Vidyamandir and Others decided on 28-02-2019, permanently settling the issue regarding nature of allowances that form part of basic wages.
 - Pension on higher wages and reconsidering decision in RC Gupta case is now pending consideration
- iv. before three judge bench. This decision will settle almost two thousand cases pending on this issue before various courts.
- iv. The issue of levy of damages under Section 14B of the Act attracts large amount of litigation. The current rates of damages specified in the year 2008 (Para 32A, EPF Scheme 1952) allow levy of damages at 5% for delay in remittance upto two months, 10% for delays between two to four months, 15% for delays between four to six months and 25% for delays exceeding six months.
- v. The Act provides for filing of Prosecution for various offences in competent courts of law. The Committee was informed that the Code provides for compounding of First offence. The Committee recommended that Prosecutions filed for non-submission of KYC may be withdrawn, if the said KYCs have been subsequently filed. The Committee was informed that that at present the authority to accord sanction to withdraw Prosecution vests with the CPFC.
- vi. The Committee reviewed the Recovery Powers vested in Recovery Officers of EPFO. The Committee was informed that

EPFO has adopted Income Tax (Recovery Proceedings) Rules 1962 for regulating recovery procedure. The extant rules permit parallel provisions for recovery by Certificate Proceedings (attachment, sale, auction and arrest), as well as Garnishee action by bank attachment. The members representing employers raised the issue of EPF recovery officers enforcing recovery of assessed amounts well before the period of sixty days specified in the rules for appealing against the assessment orders and requested to review the same. The Committee was informed that various High Courts have taken divergent opinion in the matter and as desired by the Committee the issue shall be reviewed. The Committee also pointed out lack of any internal appellate mechanism in Recovery proceedings and that the only recourse is appeal before the Hon'ble High Courts.

- vii. On the issue of streamlining assessments to minimize litigation arising out of assessment orders, the Committee desired that assessment function should be a separate and distinct function from compliance management to ensure fairness and transparency as also to ensure timely conclusion of assessment enquiries. And for this purpose, requisite technical support, training and necessary administrative orders may be considered for issuing.

9.5 As is evident from Data in Table A above, reflects that approximately 2.57 lakh cases

were concluded by assessing officers during last three years. Against these assessments the employers approached CGIT in about 3% cases only. During the period January 2021 to December 2021, 775 cases were decided by the CGIT; 77% of these were decided in favour of EPFO, 15% were decided against EPFO and 8% were remanded back by CGITs.

9.6 In High Courts, majority of the cases are filed by employers aggrieved by orders of Tribunals/CGITs or against recovery Actions involving attachment of bank accounts and movable and immovable properties etc. In exceptional cases where a question of law is prima-facie erroneously decided by the Tribunal, EPFO files appeals against such orders. The authority to sanction filing of appeal in High Courts is delegated to the Additional Central PF Commissioner in charge of the Zones.

9.7 As mentioned above, EPFO processed 4.58 crore claims during 2020-21. Litigation against these settlements primarily lies in Consumer Courts. Pendency of 5,573 cases in Consumer Courts is statistically insignificant when compared to claims volume.

MECHANISM FOR WITHDRAWAL OF PROSECUTIONS

9.8 The analysis of employers and UAN data not seeded with Aadhar even after notification of Section 142 of Code on Social Security, 2020 since 3rd May 2021 is placed below:

ZONE	Estts	Workload Aadhaar Seeding	AADHAAR PENDING	% Aadhaar Pending
ANDHRA PRADESH (VIJAYWADA)	6,127	9,00,401	39,904	3.45%
BENGALURU (BENGALURU)	9,768	45,50,387	76,824	6.64%
BIHAR & JHARKHAND(PATNA)	4,901	8,08,015	30,361	2.62%
CHENNAI & PUDUCHERRY (CHENNAI)	8,979	25,56,891	52,713	4.55%
DELHI & UTTARAKHAND	10,527	30,11,013	66,386	5.73%
GUJARAT (AHMEDABAD)	15,071	23,12,187	64,276	5.55%
HARYANA	8,071	21,72,880	39,763	3.43%

HARYANA	8,071	21,72,880	39,763	3.43%
JAMMU KASHMIR AND LADAKH	1,525	1,00,703	11,540	1.00%
KARNATAKA (OTHER THAN BENGALURU) & GOA (HUBLI)	8,050	9,22,779	37,103	3.20%
KERALA & LAKSHADWEEP (THIRUVANANTHAPURAM)	4,259	6,23,409	17,503	1.51%
MADHYA PRADESH & CHATTISGARH (BHOPAL)	9,627	11,51,466	46,082	3.98%
MAHARASHTRA (EXCLUDING MUMBAI) (PUNE)	16,800	28,08,738	98,670	8.52%
MUMBAI-1 (BANDRA)	5,480	35,03,358	76,064	6.57%
MUMBAI-2 (THANE)	12,282	28,70,627	69,856	6.03%
NORTH-EASTERN REGION (GUWAHATI)	4,628	3,16,468	52,125	4.50%
ORISSA (BHUBANESWAR)	5,324	6,01,216	30,848	2.66%
PUNJAB & HIMACHAL PRADESH	7,050	8,43,118	21,117	1.82%
RAJASTHAN	6,004	8,03,868	28,058	2.42%
TAMIL NADU (EXCLUDING CHENNAI)	10,519	12,55,187	40,551	3.50%
TELANGANA (HYDERABAD)	9,379	26,54,329	66,812	5.77%
UTTAR PRADESH	10,641	15,69,473	45,933	3.97%
WB, A&N ISLANDS & SIKKIM (KOLKATA)	12,865	20,92,502	1,45,191	12.54%
Grand Total	1,87,877	3,84,29,015	11,57,680	100.00%

9.9 The Details of Prosecution filed and pending as on 31.12.2021 is as follows.

Non-seeding of Aadhaar in UAN	130
Non-submission of Returns	2896
Default in payments	6497
Pending for Other reasons	311
Grand Total	9834

9.10 The Central Board of Trustees, Employees' Provident Fund in its 94th Meeting held at New Delhi on 10.11.1982 framed guidelines for withdrawal of prosecution. The key parameters may be modified with certain clarifications for better implementation:

Sl. No.	KEY PARAMETERS	PROPOSED CHANGES
1.	The accused has set right the contravention for which the complaints were filed.	No change
2.	The accused has paid the dues levied on all belated remittances up to date as per the provision of Section 14 B of the Act.	The accused has paid the dues levied on all belated remittances up to date as per the provision of Section 14 B of the Provident Funds and Miscellaneous Provisions Act, 1952 or no appeal is filed and pending in appropriate legal forum.
3.	The accused has reimbursed to the Fund the legal and other expenses incurred in connection with the cases as determined by the RPF.	No change
4.	The current performance of the establishment is satisfactory in all respects.	There is no realizable outstanding assessed demand or recovery certificate pending for payment.
5.	The accused has given an undertaking to the Regional Provident Fund Commissioner to make prompt compliance with all the requirements under the Act/Scheme in future, and	The accused, if a running establishment, has given an undertaking to the Regional Provident Fund Commissioner to make prompt compliance with all the requirements under the Act/Scheme in future, and
6.	The proposals for withdrawal of cases are submitted to the Central Provident Fund Commissioner for formal approval..	The proposals for withdrawal of cases are submitted to the Additional Central Provident Fund Commissioner of the Zone for formal approval..

The committee recommends accordingly.

RATIONALISATION OF RATES OF DAMAGES

9.11 In the EPF & MP Act, penalties have been prescribed under Sections 14, 14A and 14AA for non-filing of returns, submitting false/incorrect returns, non-payment of dues etc for which prosecution is filed before the competent court. In Code on Social Security, 2020, many of the offences may be terminated with the fine alone. Only the non-payment of dues may result in imprisonment. Further, the EPFO has not been authorised to levy penalty in respect of any of these offences.

9.12 Authorised officers have been authorised under the Act (and Code also) to levy damages

in respect of belated payment of statutory dues only and that too after giving reasonable opportunity of hearing to the employer/establishment. Further, the statute has prescribed that the rate of damages would be as prescribed under the Scheme but would not exceed the amount of arrears.

9.13 **Rate of Damages for default in payment of any contributions** - Accordingly, the rates of damages have been specified under Para 32A of Employees' Provident Funds (EPF) Scheme 1952, Para 5 of Employees' Pension Scheme 1995 & Para 8-A of Employees' Deposit-Linked Insurance (EDLI) Scheme, 1976 as below:

S. No.	Period of default	Rates of Damages (percentage of arrears per annum)
a	Less than two months	Five
b	Two months and above but less than four months	Ten
c	Four months and above but less than six months	Fifteen
d	Six months and above	Twenty-five

9.14 The quantum of penalties in the Income Tax Act in respect of belated payment of Tax is approximately 1% per month and the interest is also @1%/ p.m. The interest on belated payment of EPF dues is governed by separate provisions u/s 7Q which is 12% p.a.

It is recommended that the rate of damages as prescribed in the Schemes may be modified at the rate of 1% per month.

The Committee recommends accordingly.

INITIATION OF RECOVERY PROCEEDINGS AFTER COMPLETION OF ASSESSMENT ENQUIRIES.

9.15 In the Kulgaon Badlapur Nagar Parishad. Petitioner Versus The Regional Provident Fund Commissioner II, Compliance III, Regional Office, Thane. Respondent WITH WRIT PETITION NO.7814 OF 2021 Bhiwandi Nizampur Municipal Corporation. Petitioner Versus The Regional Provident Fund Commissioner II, Compliance III, Regional Office, Thane. Respondent DATED: 22nd FEBRUARY 2022, the Bombay High Court has directed that:

There is a purpose behind prescribing a limitation period to prefer an Appeal, by way of a statutory provision under any enactment. It is a period which is rightfully allocated to the aggrieved party to prefer an Appeal or such proceedings, as are statutorily permitted, before the superior forum. This period is at the disposal of the aggrieved party. Being a statutory period, neither can any authority curtail the said period, nor can an authority act

to the prejudice of the aggrieved party during the Appeal period so as to frustrate the appeal. The Scheme under the PF Act enables the aggrieved party to approach the Appellate PF Tribunal by preferring an Appeal u/s.7I. Along with the Appeal, an application u/s.7O seeking reduction of the deposit of 75% of the assessed amount or waiver of the deposit can be sought. The Appeal u/s.7I is considered after the assessee deposits 75% of the amount. It is only u/s.7O that the amount could be reduced or waived. The action of the authority dealing with Section 7-A proceeding in recovering the entire amount assessed u/s.7A before the aggrieved party could file an Appeal, and that too, within the limitation period, is apparently an arbitrary action which cannot be countenanced.

The Hon'ble Court has further directed that this order may be served to all Regional PF Commissioners across India.

9.16 The panel counsel, EPFO has, however advised that the period prescribed is a limitation within which the assessee can prefer an appeal and it does not confer any right to avoid recovery or proscribes the recovery officer from initiating recovery.

9.17 The issue is being examined for further necessary action. The Committee recommends that SoP for recovery proceedings may be drawn accordingly. The Committee also recommends that an internal appellate mechanism against recovery actions be established within EPFO, as at present the only recourse is an appeal before the Hon'ble High Courts.

REDUCING LITIGATION BY IMPROVING QUALITY OF ASSESSMENTS.

- 9.18 Section 7A of the Act predicates the statutory _mandate of resolution of applicability disputes or determination of amounts due from employers and, for this purpose, also clothes the authorities with the trappings of a Court under the Code of Civil Procedure. The duty to act judicially, fairly and equitably is copiously discernable from the statutory mandate.
- 9.19 In order to bring uniformity in the procedure for initiation of inquiries u/s 7A, the following are recommended:
- i. The Compliance Branch in each of the field offices shall have two broad divisions, viz **Compliance (Administration)** - to investigate and report on complaints, defaults, remittance status etc. and **Compliance (Judicial)** - exclusively for conducting enquiries under the Act. **This is essential to honour the mandate of the Code for time bound completion of assessment enquiries.** This arrangement would ensure fairness and facilitate better compliance management.
 - ii. Inquiries u/s 7A be initiated only for dispute of applicability or determination of dues.
 - iii. The Assessing Officers may record reasons regarding existence of a prima-facie case of default, or of an applicability dispute, before initiating process u/s 7A.
 - iv. The record based on which the decision to initiate the enquiry has been taken be shared with the concerned establishment along with the notice of the enquiry.
 - v. The period of enquiry be specified in the notice for the enquiry, and it may not be modified during the pendency of the said enquiry.
 - vi. The assessment proceedings, from initiation to conclusion be digitally enabled for fair and quick conclusion and allowing verifiable audit trails.

USE OF IT TOOLS ETC. TO ENSURE BETTER

COMPLIANCE & REDUCE LITIGATION.

9.20 Government of India is actively encouraging adoption of IT tools including extensive use of data analytics to ensure citizen centric, non-intrusive and non-adversarial model of Governance. The Committee accordingly recommends:

- a. Engagement of a competent data analytics agency for assisting the compliance function.
- b. Placing information about compliance status of establishments in public domain, duly honouring fiduciary responsibilities, and inviting employees and citizens to review and report instances of evasion and non-enrolment.
- c. Specifying an annual return of compliance, to be filed by employers at the end of each financial year, specifying the number of employees, regular and contractual, on its rolls during the year and declaring their compliance status. This declaration may be randomly test checked through test audits, including third party audits.
- d. Requesting the C&AG of India to mandatorily check the EPF enrolment status of employees in entities it audits every year.
- e. Engagement with academic and other institutions and Government departments to build compliance models to ensure seamless compliance thereby minimizing litigation related to compliance.

ROBUST INSPECTION SYSTEMS.

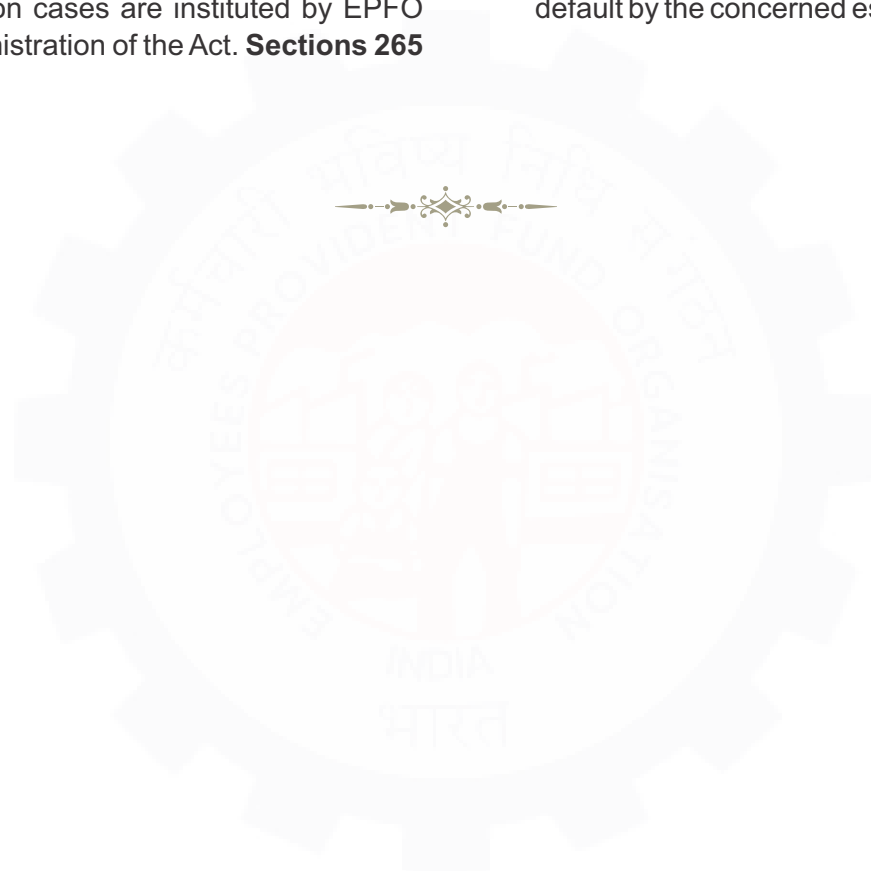
9.21 EPFO has moved towards and identity blind, rule based digitally enabled inspection systems. The Committee recommends that this process may be strengthened further.

Scheme of Alternate Dispute Redressal

9.22 As a responsible central government organisation, the approach of EPFO towards litigation must be informed by principles of equity and public interest. A lot of

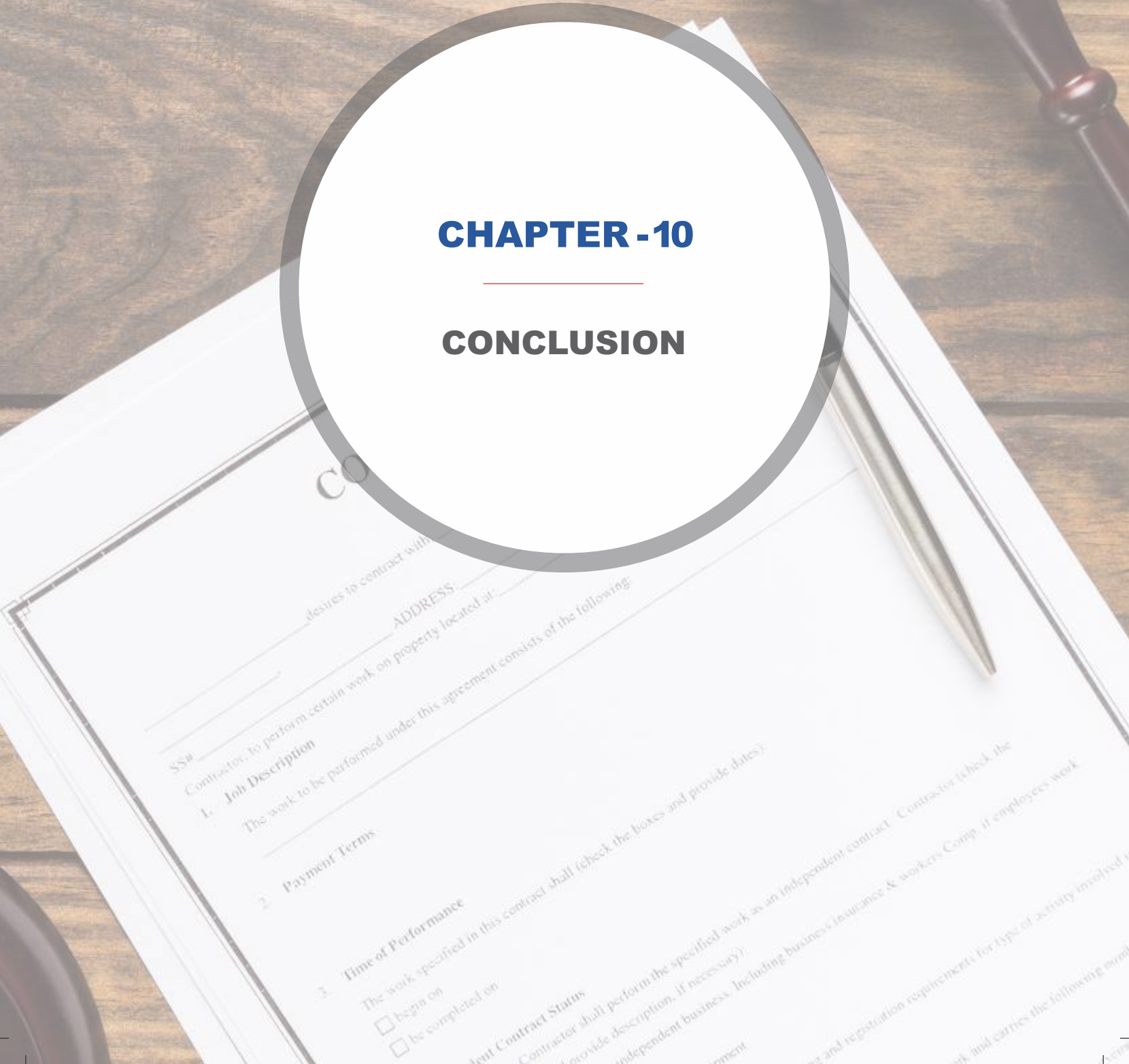
advancement has taken place in the field of alternative dispute redressal (ADR) across the world and also in India. ADR provides for a number of avenues for amicable settlement of disputes involving civil, criminal and service matters. To effectively utilise the ADR mechanism for amicable settlement of court cases the Committee recommends that EPFO may consider adopting **Plea Bargain** as an effective ADR mechanism for disposal of court cases involving criminal allegations. A number of prosecution cases are instituted by EPFO during administration of the Act. **Sections 265**

A to L of the Code of Criminal Procedure were enacted to incorporate the process of plea bargaining in criminal trials. The procedure described therein is also applicable to prosecution cases filed by functionaries of EPFO in the trial courts. Whenever a notice is issued by trial court conducting trial in any of the prosecution instituted at the behest of any functionary of EPFO, EPFO may constructively engage with the process of plea bargaining to amicably resolve the issue of default by the concerned establishment.



CHAPTER -10

CONCLUSION





10.1 Deliberations of the Committee were presented (**annexure 10.1**) before the 230th meeting of CBT EPF held at Guwahati on 11th March 2022, on the first day of its meeting. After deliberations, Chairman CBT, EPF advised that the ad-hoc Committee present, such of its recommendations on which there is consensus in the ad-hoc Committee before the Central Board on second day of the 230th meeting on 12- 03-2022 for consideration and approval. Accordingly, following recommendations were approved by CBTEPF: (**annexure 10.2**)

- a. For ensuring universal social security coverage, all employees in a coverable / covered establishment be enrolled statutorily as EPF member and contribute upto the specified wage ceiling.
- b. Ensuring Social security to the Gig and Platform workers, by extending benefits like Provident Fund, Pension and Insurance in accordance with Chapter IX of the Code on Social Security 2020 through EPFO with suitable enhancement of capacity building, infrastructure, and manpower of EPFO. The Central Government, may, in exercise of its powers under Section 13 of the Code on Social Security 2020, frame and assign the administration of such Schemes to EPFO.

- c. Regional Committees for the States for Employees' Provident Fund may increase its meeting frequency to at least four every year and have a standing agenda on coverage and litigation.
- d. Review the Prosecution cases filed for non-submission of KYC.
- e. Rationalise the rates of damages levied on establishments for delayed contribution remittances.
- f. EPFO to prepare and present before the CBT EPF in its next meeting, its Legal Framework Document for better management of litigation.

10.2 The Committee agreed in principle to need for modifying the statutory wage ceiling and linking it to an identifiable metric and for reducing the coverage threshold. The Committee, however felt that these issues required more consultation, especially in view of business difficulties being faced by establishments due to Covid and other international events adversely affecting business environment.

10.3 A proposed plan for implementing the approved recommendations of the Committee are appended as **annexure 10.3** to the report.



ANNEXURE 1.1

Zone / Region	Total Esttbs	Not Cont Esttbs		Cont Esttbs		Total Accounts	Avg Count Members (Aug, 21 to Feb,22)	
ACC BENGALURU	83,780	53,152	63%	30,628	37%	2,78,62,214	49,59,206	18%
K R PURAM (WHITEFIELD)	18,168	12,003	66%	6,165	34%	42,67,117	10,54,183	25%
BENGALURU (KORAMANGALA)	7,780	5,071	65%	2,709	35%	49,74,677	8,57,878	17%
BENGALURU (CENTRAL)	7,238	4,543	63%	2,695	37%	41,40,474	7,71,740	19%
BENGALURU (ELECTRONIC CITY)	7,563	4,940	65%	2,623	35%	37,16,909	7,15,889	19%
BENGALURU (MALLESWARAM)	11,888	7,310	61%	4,578	39%	39,70,074	6,12,660	15%
PEENYA	11,226	6,559	58%	4,667	42%	37,72,495	3,58,553	10%
RR NAGAR	10,755	6,829	63%	3,926	37%	14,19,323	2,86,906	20%
YELAHANKA	7,387	4,912	66%	2,475	34%	13,66,285	2,53,932	19%
TUMKUR	1,775	985	55%	790	45%	2,34,860	47,465	20%
ACC BANDRA	38,338	25,105	65%	13,233	35%	1,69,00,268	36,15,154	21%
BANDRA (NARIMAN POINT)	15,126	10,144	67%	4,982	33%	44,99,391	10,99,537	24%
MUMBAI (POWAI)	1,302	752	58%	550	42%	36,90,368	9,85,683	27%
BANDRA (DADAR)	11,217	7,259	65%	3,958	35%	36,35,731	8,26,396	23%
MUMBAI (BANDRA)	10,693	6,950	65%	3,743	35%	50,74,778	7,03,538	14%
ACC DELHI	1,37,147	98,258	72%	38,889	28%	2,53,50,416	35,48,885	14%
DELHI (NORTH)	41,437	30,479	74%	10,958	26%	43,37,908	6,99,866	16%
DELHI (EAST)	27,939	21,033	75%	6,906	25%	48,79,912	6,32,438	13%
DELHI (WEST)	21,990	16,210	74%	5,780	26%	55,17,494	5,96,764	11%
DELHI (SOUTH)	17,346	12,523	72%	4,823	28%	40,67,237	5,64,779	14%
DELHI (CENTRAL)	8,224	5,458	66%	2,766	34%	24,23,282	4,90,682	20%
DEHRADUN	13,396	8,578	64%	4,818	36%	25,28,505	3,76,062	15%
HALDWANI	6,815	3,977	58%	2,838	42%	15,96,078	1,88,295	12%
ACC PUNE	1,64,818	1,07,487	65%	57,331	35%	2,11,65,913	35,29,636	17%
PUNE (PUNE CANTT)	40,527	27,221	67%	13,306	33%	67,99,161	12,28,443	18%
PUNE (AKURDI)	25,132	15,824	63%	9,308	37%	52,98,641	7,64,512	14%
NASIK	23,072	14,527	63%	8,545	37%	24,64,024	3,93,859	16%
NAGPUR	24,172	15,828	65%	8,344	35%	20,87,918	3,60,294	17%
KOLHAPUR	18,029	10,330	57%	7,699	43%	12,02,949	3,09,845	26%
AURANGABAD	16,833	11,968	71%	4,865	29%	24,37,753	2,59,212	11%
SOLHAPUR	8,907	6,065	68%	2,842	32%	4,83,186	1,33,092	28%
AKOLA	8,146	5,724	70%	2,422	30%	3,92,281	80,379	20%
ACC AHMEDABAD	1,39,959	85,952	61%	54,007	39%	2,17,62,888	33,08,300	15%
AHMEDABAD	41,618	26,786	64%	14,832	36%	63,46,348	10,54,537	17%
VADODARA	17,371	10,278	59%	7,093	41%	33,20,968	5,33,335	16%
RAJKOT	26,091	15,602	60%	10,489	40%	32,90,037	4,68,890	14%
VAPI	12,064	6,296	52%	5,768	48%	32,08,160	4,63,085	14%
SURAT	22,293	14,625	66%	7,668	34%	29,70,433	3,59,087	12%
BHARUCH	7,036	3,925	56%	3,111	44%	15,08,183	2,00,518	13%
NARODA	8,350	5,413	65%	2,937	35%	6,35,170	1,39,664	22%
VATWA	5,136	3,027	59%	2,109	41%	4,83,589	89,184	18%
ACC CHENNAI	81,819	51,886	63%	29,933	37%	1,92,75,853	31,02,456	16%
CHENNAI (SOUTH)	12,877	8,083	63%	4,794	37%	46,49,258	9,15,303	20%
CHENNAI (EAST)	18,725	12,417	66%	6,308	34%	51,86,500	8,54,269	16%
AMBATTUR	21,184	13,560	64%	7,624	36%	38,29,857	5,35,990	14%
TAMBARAM	15,632	9,805	63%	5,827	37%	38,80,329	4,78,706	12%
VELLORE	9,030	5,510	61%	3,520	39%	9,01,937	2,13,357	24%
PONDICHERRY	4,371	2,511	57%	1,860	43%	8,27,972	1,04,831	13%

ANNEXURE 1.1

Zone / Region	Total Esttbs	Not Cont Esttbs		Cont Esttbs		Total Accounts	Avg Count Members (Aug, 21 to Feb,22)	
ACC THANE	1,00,797	64,730	64%	36,067	36%	1,84,40,549	30,73,781	17%
VASHI	25,781	16,479	64%	9,302	36%	44,51,375	7,93,416	18%
KANDIVALI (EAST)	14,991	9,431	63%	5,560	37%	40,77,930	6,99,714	17%
KANDIVALI (WEST)	24,332	16,055	66%	8,277	34%	39,35,401	6,05,928	15%
THANE (SOUTH)	13,826	8,767	63%	5,059	37%	34,53,216	5,88,118	17%
THANE (NORTH)	21,867	13,998	64%	7,869	36%	25,22,627	3,86,603	15%
ACC HYDERABAD	89,479	60,301	67%	29,178	33%	1,53,07,444	30,50,543	20%
HYDERABAD (MADHAPUR)	21,521	14,458	67%	7,063	33%	53,29,487	10,76,897	20%
HYDERABAD (BARKATPURA)	30,197	21,135	70%	9,062	30%	47,62,562	7,85,548	16%
NIZAMABAD	2,426	1,456	60%	970	40%	8,92,532	4,25,465	48%
KUKATPALLI	16,221	11,205	69%	5,016	31%	23,76,640	3,65,176	15%
PATANCHERU	7,154	4,572	64%	2,582	36%	12,22,382	2,03,638	17%
KARIMNAGAR	5,026	3,063	61%	1,963	39%	3,07,524	97,952	32%
WARANGAL	6,021	3,909	65%	2,112	35%	3,27,489	73,996	23%
SIDDIPET	913	503	55%	410	45%	88,828	21,870	25%
ACC KOLKATA	1,01,913	58,483	57%	43,430	43%	1,16,82,050	27,83,236	24%
KOLKATA	36,444	22,191	61%	14,253	39%	42,37,948	9,41,768	22%
JANGIPUR	5,750	2,757	48%	2,993	52%	9,44,045	3,23,583	34%
HOWRAH	11,528	6,302	55%	5,226	45%	9,66,833	2,77,006	29%
DURGAPUR	13,166	7,000	53%	6,166	47%	9,43,575	2,75,652	29%
PARK STREET	7,896	4,947	63%	2,949	37%	24,22,717	2,59,395	11%
BARRACKPORE	12,930	7,450	58%	5,480	42%	8,62,635	2,51,542	29%
JALPAIGURI	4,248	2,139	50%	2,109	50%	6,10,536	2,32,025	38%
SILIGURI	7,952	4,416	56%	3,536	44%	5,64,608	1,80,933	32%
DARJEELING	657	361	55%	296	45%	72,522	23,906	33%
PORT BLAIR	1,342	920	69%	422	31%	56,631	17,425	31%
ACC FARIDABAD	89,062	59,385	67%	29,677	33%	2,06,07,784	25,89,597	13%
GURUGRAM (EAST)	13,195	8,676	66%	4,519	34%	57,84,225	9,96,428	17%
GURUGRAM (WEST)	18,198	12,301	68%	5,897	32%	69,12,394	6,35,065	9%
FARIDABAD	16,224	10,268	63%	5,956	37%	46,69,422	4,31,431	9%
KARNAL	26,904	18,273	68%	8,631	32%	20,95,664	3,22,171	15%
ROHTAK	14,541	9,867	68%	4,674	32%	11,46,079	2,04,502	18%
ACC KANPUR	1,51,249	1,08,424	72%	42,825	28%	1,31,41,876	23,56,239	18%
NOIDA	26,329	17,716	67%	8,613	33%	53,65,780	8,04,021	15%
MEERUT	31,634	22,749	72%	8,885	28%	23,74,325	3,94,790	17%
LUCKNOW	20,321	15,144	75%	5,177	25%	11,99,491	2,96,224	25%
KANPUR	16,987	11,976	71%	5,011	29%	13,06,647	2,33,092	18%
VARANASI	14,097	10,235	73%	3,862	27%	8,20,942	1,78,092	22%
AGRA	14,553	9,723	67%	4,830	33%	8,31,291	1,76,327	21%
BAREILLY	12,234	9,030	74%	3,204	26%	6,46,403	1,38,572	21%
GORAKHPUR	7,857	6,322	80%	1,535	20%	2,42,465	68,844	28%
ALLAHABAD	7,237	5,529	76%	1,708	24%	3,54,532	66,277	19%
ACC COIMBATORE	88,026	49,281	56%	38,745	44%	1,35,17,641	21,43,416	16%
COIMBATORE	23,287	13,291	57%	9,996	43%	48,04,938	6,97,030	15%
SALEM	16,068	8,880	55%	7,188	45%	30,92,680	4,50,312	15%

ANNEXURE 1.1

Zone / Region	Total Esttbs	Not Cont Esttbs		Cont Esttbs		Total Accounts	Avg Count Members (Aug, 21 to Feb,22)	
MADURAI	17,550	9,098	52%	8,452	48%	24,29,196	4,14,415	17%
TRICHY	18,486	11,238	61%	7,248	39%	15,23,948	2,96,481	19%
TIRUNELVELI	8,744	4,775	55%	3,969	45%	13,83,014	2,30,491	17%
NAGERCOIL	3,891	1,999	51%	1,892	49%	2,83,865	54,686	19%
ACC BHOPAL	99,857	66,374	66%	33,483	34%	87,17,911	16,00,513	18%
RAIPUR	27,136	16,774	62%	10,362	38%	24,18,812	4,99,375	21%
INDORE	20,930	13,291	64%	7,639	36%	26,86,218	4,22,410	16%
BHOPAL	15,820	11,198	71%	4,622	29%	15,52,420	2,92,383	19%
JABALPUR	18,001	12,529	70%	5,472	30%	8,27,036	1,90,858	23%
GWALIOR	9,073	6,523	72%	2,550	28%	6,52,690	90,602	14%
UJJAIN	4,934	3,254	66%	1,680	34%	3,44,029	62,993	18%
SAGAR	3,963	2,805	71%	1,158	29%	2,36,706	41,893	18%
ACC CHANDIGARH	92,175	59,374	64%	32,801	36%	99,11,588	15,13,188	15%
CHANDIGARH	18,061	11,043	61%	7,018	39%	30,55,718	4,50,009	15%
SHIMLA	28,360	21,151	75%	7,209	25%	20,40,383	3,46,308	17%
LUDHIANA	13,261	6,960	52%	6,301	48%	22,59,651	2,94,930	13%
JALANDHAR	9,322	5,379	58%	3,943	42%	10,06,991	1,91,620	19%
BHATINDA	14,939	9,701	65%	5,238	35%	10,80,596	1,44,915	13%
AMRITSAR	8,232	5,140	62%	3,092	38%	4,68,249	85,407	18%
ACC HUBLI	63,868	36,070	56%	27,798	44%	67,90,388	13,62,256	20%
HUBLI	13,603	7,343	54%	6,260	46%	11,12,887	2,71,192	24%
MANGALORE	5,490	2,482	45%	3,008	55%	9,63,422	2,26,194	23%
MYSORE	9,301	5,085	55%	4,216	45%	10,24,526	2,07,791	20%
GOA	7,138	4,087	57%	3,051	43%	17,22,824	1,82,108	11%
BELLARY	6,655	3,990	60%	2,665	40%	5,00,556	1,21,345	24%
UDUPPI	2,595	1,093	42%	1,502	58%	2,86,510	82,154	29%
SHIMOGA	4,062	2,263	56%	1,799	44%	3,18,701	81,034	25%
GULBARGA	6,874	4,832	70%	2,042	30%	3,91,059	80,292	21%
CHIKAMAGALUR	4,307	2,495	58%	1,812	42%	2,52,354	58,169	23%
RAICHUR	3,843	2,400	62%	1,443	38%	2,17,549	51,978	24%
ACC PATNA	80,741	61,322	76%	19,419	24%	52,36,173	13,46,822	26%
PATNA	22,362	17,913	80%	4,449	20%	16,90,631	4,68,834	28%
RANCHI	22,350	15,433	69%	6,917	31%	12,54,959	2,94,215	23%
JAMSHEDPUR	10,597	6,940	65%	3,657	35%	15,76,537	2,45,323	16%
MUZAFFARPUR	15,794	13,220	84%	2,574	16%	4,34,958	2,06,407	47%
BHAGALPUR	9,638	7,816	81%	1,822	19%	2,79,088	1,32,042	47%
ACC JAIPUR	77,589	50,084	65%	27,505	35%	74,62,416	12,61,414	17%
JAIPUR	42,855	27,770	65%	15,085	35%	43,17,145	7,33,423	17%
UDAIPUR	10,025	6,162	61%	3,863	39%	15,22,738	2,58,002	17%
JODHPUR	18,018	11,583	64%	6,435	36%	9,26,278	1,82,883	20%
KOTA	6,691	4,569	68%	2,122	32%	6,96,255	87,106	13%
ACC VIJAYWADA	58,417	39,107	67%	19,310	33%	56,67,515	11,86,327	21%
VISHAKAPATNAM	15,931	10,231	64%	5,700	36%	20,02,418	3,68,462	18%
GUNTUR	16,821	11,774	70%	5,047	30%	14,96,583	3,62,046	24%
KADAPA	15,590	10,842	70%	4,748	30%	14,88,315	3,03,826	20%

ANNEXURE 1.1

Zone / Region	Total Esttbs	Not Cont Esttbs		Cont Esttbs		Total Accounts	Avg Count Members (Aug, 21 to Feb,22)	
RAJAMUNDRY	10,075	6,260	62%	3,815	38%	6,80,199	1,51,992	22%
ACC TVM	47,001	29,322	62%	17,679	38%	39,51,152	10,63,888	27%
COCHIN	19,195	11,707	61%	7,488	39%	19,49,599	4,92,364	25%
TRIVANDRUM	7,240	4,639	64%	2,601	36%	6,81,375	2,06,934	30%
CALICUT	10,439	6,781	65%	3,658	35%	5,50,083	1,52,759	28%
KOTTAYAM	3,646	2,152	59%	1,494	41%	3,10,033	80,531	26%
KOLLAM	3,185	2,022	63%	1,163	37%	2,85,434	71,538	25%
KANNUR	3,296	2,021	61%	1,275	39%	1,74,628	59,763	34%
ACC BHUBANESWAR	47,530	30,317	64%	17,213	36%	39,89,437	8,06,493	20%
BHUBANESWAR	29,097	19,095	66%	10,002	34%	22,50,746	4,67,489	21%
ROURKELA	8,128	4,691	58%	3,437	42%	11,35,173	2,00,732	18%
BERHAMPUR	6,334	3,820	60%	2,514	40%	2,75,483	77,941	28%
KEONJHAR	3,971	2,711	68%	1,260	32%	3,28,035	60,331	18%
ACC GUWAHATI	42,791	33,321	78%	9,470	22%	14,90,910	3,60,376	24%
GUWAHATI	29,018	22,909	79%	6,109	21%	10,37,891	2,47,921	24%
SHILLONG	3,670	2,797	76%	873	24%	1,51,070	40,804	27%
TINSUKIA	8,085	6,430	80%	1,655	20%	1,85,209	39,863	22%
AGARTALA	2,018	1,185	59%	833	41%	1,16,740	31,789	27%
ACC JK & LADHAK	21,018	15,739	75%	5,279	25%	5,23,549	1,45,399	28%
JAMMU	10,842	7,621	70%	3,221	30%	3,89,423	1,04,318	27%
SRINAGAR	9,707	7,727	80%	1,980	20%	1,30,086	39,843	31%
LADAKH(LEH)	469	391	83%	78	17%	4,040	1,239	31%
Grand Total	18,97,374	12,43,474	66%	6,53,900	34%	27,87,55,935	4,87,07,124	17%

Establishment Type	Total Esttbs	Non Cont Esttbs	Cont Esttbs		Total Accounts	Accounts in Non Cont Esttbs	Accounts in Cont Esttbs	Avg Count Members (Aug, 21 to Feb,22)	
PROPRIETARY FIRMS	7,80,402	5,09,220	2,71,182	41%	7,58,79,363	2,06,54,378	5,52,24,985	99,77,423	20%
PRIVATE LIMITED COMPANIES	5,98,488	4,48,267	1,50,221	23%	11,92,66,955	1,75,90,117	10,16,76,838	2,24,12,059	46%
PARTNERSHIP FIRMS	2,73,926	1,61,954	1,11,972	17%	3,80,15,752	97,24,404	2,82,91,348	54,80,465	11%
REGISTERED SOCIETY	57,919	22,624	35,295	5%	39,93,752	5,82,897	34,10,855	13,30,344	3%
FIRMS RUN BY TRUST	36,207	11,311	24,896	4%	33,63,401	3,09,630	30,53,771	11,70,411	2%
CO-OPERATIVE SOCIETY	28,926	13,153	15,773	2%	20,70,070	4,59,810	16,10,260	6,14,235	1%
JOINT STOCK COMPANIES	30,818	21,161	9,657	1%	1,82,76,417	28,42,795	1,54,33,622	28,75,061	6%
OTHERS	29,083	21,493	7,590	1%	74,72,295	13,08,169	61,64,126	13,60,132	3%
LIMITED LIABILITY PARTNERSHIP)	11,104	3,920	7,184	1%	21,20,786	2,61,733	18,59,053	6,08,613	1%
STATE GOVT. CONTROLLED	13,660	7,037	6,623	1%	29,03,194	3,41,459	25,61,735	11,39,647	2%
LOCAL BODIES / MUNICIPAL CORPORATIONS	6,607	3,037	3,570	1%	11,88,636	1,53,238	10,35,398	3,87,395	1%
	14,921	12,040	2,881	0%	3,14,502	1,09,989	2,04,513	72,363	0%
STATE GOVT. DEPARTMENT	4,874	2,824	2,050	0%	7,20,490	1,28,637	5,91,853	3,11,073	1%
AUTONOMOUS / STATUTORY ORGANISATIONS	2,193	959	1,234	0%	3,35,203	78,479	2,56,724	97,721	0%
GOVT. ORGANISATIONS)	1,773	689	1,084	0%	1,96,712	24,120	1,72,592	69,189	0%
STATE PUBLIC SECTOR UNDERTAKINGS	2,222	1,149	1,073	0%	8,08,831	1,46,881	6,61,950	2,85,839	1%
CENTRAL GOVT. CONTROLLED	2,545	1,599	946	0%	9,02,838	2,00,163	7,02,675	2,57,488	1%
CENTRAL PUBLIC SECTOR UNDERTAKINGS	894	534	360	0%	7,40,662	1,48,963	5,91,699	2,12,199	0%
CENTRAL GOVT. DEPARTMENT	812	503	309	0%	1,86,076	36,986	1,49,090	45,467	0%
Grand Total	18,97,374	12,43,474	6,53,900	100%	27,87,55,935	5,51,02,848	22,36,53,087	4,87,07,124	100%

ANNEXURE 1.3

Establishment Type	Total Estbts	Non Cont Estbts	Cont Estbts	22%	Total Accounts	Accounts in Non Cont Estbts	Accounts in Cont Estbts	Avg Count Members (Aug, 21 to Feb,22)	29%
EXPERT SERVICES	3,56,859	2,16,044	1,40,815	22%	9,93,40,917	1,93,35,649	8,00,05,268	1,39,34,008	29%
TRADING - COMMERCIAL ESTABLISHMENTS	1,19,029	68,556	50,473	8%	1,86,37,408	37,68,263	1,48,69,145	39,63,135	8%
ELEC, MECH OR GEN ENGG PRODUCTS	1,07,729	62,502	45,227	7%	2,30,71,988	42,24,391	1,88,47,597	37,20,102	8%
ESTABLISHMENT ENGAGED IN MANUFACTURE, MARKETING SERVICING, USAGE OF COMPUTERS	23,579	12,331	11,248	2%	80,69,296	6,28,156	74,41,140	28,25,067	6%
ENGG. CONTRACTORS	1,74,676	1,20,697	53,979	8%	1,41,76,029	39,21,508	1,02,54,521	18,25,134	4%
TEXTILES	42,366	26,850	15,516	2%	92,80,433	21,09,024	71,71,409	13,85,453	3%
OTHERS	2,85,792	2,55,679	30,113	5%	55,46,548	6,32,691	49,13,857	12,57,567	3%
BUILDING AND CONSTRUCTION INDUSTRY	1,53,841	1,13,218	40,623	6%	1,74,24,149	31,71,804	1,42,52,345	12,12,291	2%
BEEIDI MAKING	8,347	5,090	3,257	0%	40,05,227	6,20,779	33,84,448	11,76,974	2%
HEAVY - FINE CHEMICALS	17,930	9,534	8,396	1%	50,96,582	9,19,411	41,77,171	11,48,784	2%
HOSPITALS	24,073	9,142	14,931	2%	32,81,520	2,51,694	30,29,826	10,64,233	2%
UNIVERSITY, COLLEGE, SCHOOL. ETC.	36,202	13,180	23,022	4%	31,44,495	3,61,518	27,82,977	9,94,248	2%
SCHOOL	47,815	16,488	31,327	5%	27,17,818	2,84,237	24,33,581	9,77,953	2%
FINANCING ESTABLISHMENT	12,572	7,394	5,178	1%	32,17,529	2,81,780	29,35,749	9,77,953	2%
GARMENTS MAKING	20,456	14,335	6,121	1%	1,17,26,672	42,59,360	74,67,312	8,52,035	2%
BANKS OTHER THAN NATIONALISED BANKS.	4,787	1,410	3,377	1%	18,37,003	1,64,532	16,72,471	7,09,438	1%
ROAD MOTOR TRANSPORT	14,686	9,413	5,273	1%	23,30,462	3,14,210	20,16,252	6,98,354	1%
ESTABLISHMENTS ENGAGED IN CLEANING, SWEEPING SERVICES	22,898	13,969	8,929	1%	32,09,887	4,36,896	27,72,991	6,28,233	1%
IRON AND STEEL	16,904	9,831	7,073	1%	26,10,645	6,66,095	19,44,550	5,63,716	1%
ELECTRICITY (G,T,D)	11,543	7,886	3,657	1%	13,28,237	2,39,634	10,88,603	4,26,025	1%
Grand Total	18,97,374	12,43,474	6,53,900	100%	27,87,55,935	5,51,02,848	22,36,53,087	4,87,07,124	100%



कर्मचारी भविष्य निधि संगठन

EMPLOYEES' PROVIDENT FUND ORGANISATION
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA
मुख्य कार्यालय/Head Office
भविष्य निधि भवन, 14, भीकाजी कामा प्लेस नई दिल्ली-110066
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi -110066

ANNEXURE 2.1

No. Conf.4(3)2018/CBT Committee/6185

Date: 16.03.2022

To

16 MAR 2022

All Members, Central Board of Trustees (EPF),
Addl. Central PF Commissioner (HQ) Compliance

Subject: Reconstitution of Ad hoc Committee on Coverage and related Litigation (Sub-Committee of CBT, EPF).

Sir/Madam,

I am directed to inform that Hon'ble Chairman, Central Board of Trustees (CBT), EPF has approved the following modification in the existing Ad hoc Committee on Coverage and related Litigation (Sub-Committee of CBT, EPF) constituted vide this Office Order No. Conf.4(3)2018/CBT Committee/4014 dated 27.11.2021 (copy enclosed for reference):-

S. No	Name of the Ad hoc Committee (Sub-Committee of CBT, EPF)	Existing employees' Representative	New employees' Representative
1.	Ad hoc Committee on Coverage and related Litigation	Shri Ramendra Kumar	Shri Sukumar Damle

Yours faithfully,

Encl.: As above.

16/03/2022
(Pramod Singh)

Regional PF Commissioner-I (Conference)

Copy forwarded for information and necessary action to:

1. PS to Hon'ble Minister for Labour & Employment and Chairman, Central Board (EPF) Shram Shakti Bhawan, New Delhi.
2. PS to Hon'ble Minister of State for Labour & Employment & Vice-Chairman, Central Board (EPF) Shram Shakti Bhawan, New Delhi.
3. PS to Secretary (L&E) & Vice-Chairman, Central Board (EPF)/Chairman, EC, CBT(EPF), Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi.
4. PS to Central Provident Fund Commissioner, EPFO, Head Office, New Delhi.
5. Joint Secretary (Social Security), Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi.
6. Joint Secretary & Director General Labour Welfare, Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi
7. Under Secretary (SS-I & II), Ministry of Labour & Employment, New Delhi.
8. All Division Heads in Head Office, New Delhi.
9. Director (PDNASS), New Delhi.
10. RPFC-I (NDC) for uploading on the official website.



कर्मचारी भविष्य निधि संगठन

EMPLOYEES' PROVIDENT FUND ORGANISATION
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA

मुख्य कार्यालय/Head Office

भविष्य निधि भवन, 14, भीकाजी कामा प्लेस नई दिल्ली-110066

Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi -110066

No. Conf.4(3)2018/CBT Committee/

A61A

Date:

To,

27 NOV 2021

All Members, Central Board of Trustees (EPF),
Addl. Central PF Commissioner (HQ) Compliance

Subject: Constitution of Ad hoc Committee on Coverage and related Litigation (Sub-Committee of CBT, EPF).

Sir,

I am directed to inform that Hon'ble Chairman, Central Board of Trustees (CBT), EPF has constituted an ad hoc Committee on Coverage and related Litigation (Sub-Committee of CBT, EPF), comprising of the following members:

Ad hoc Committee on Coverage and related Litigation	
Chairman	Minister of State for Labour and Employment
Vice-Chairman	CPFC (ex-officio)
Government's Representative	1. Joint Secretary (SS), Ministry of Labour and Employment 2. Joint Secretary & Director General Labour Welfare, Ministry of Labour and Employment
Employees' Representatives	1. Shri Hiranmay J. Pandya 2. Shri Ramendra Kumar 3. Shri Dilip Bhattacharya
Employers' Representatives	1. Shri Michael Dias 2. Shri Sougata Roy Choudhury 3. Shri S. K. Sharma
Convener	Addl. Central PF Commissioner (HQ) Compliance

2. The term of reference of the Committee is:

- To suggest wider coverage of membership under EPFO in view of Social Security Code and steps to reduce litigation.

Note:

- The Committee will start functioning with immediate effect and submit its report within a period of 3 months and present its recommendations in the next CBT meeting.
- Chairman of the Committee can coopt or invite any person as special invitee.
- The Chairman can hold meetings either through VC or in meeting in person to be convened at a place of his discretion.

- d) All expenditure shall be borne by EPFO including TA/DA etc., as per EPFO Rules.
- e) No proceedings will be made public by any of the member without the prior permission of the Chair of the Committee.
- f) The Committee will stand dissolved after submission of report unless extended by CBT.

Yours faithfully,


(Udit Chowdhary)

Addl. Central PF Commissioner (HQ) (Conference)

Copy forwarded for information and necessary action to:

1. PS to Hon'ble Minister for Labour & Employment and Chairman, Central Board (EPF) Shram Shakti Bhawan, New Delhi.
2. PS to Hon'ble Minister of State for Labour & Employment & Vice-Chairman, Central Board (EPF) Shram Shakti Bhawan, New Delhi.
3. PS to Secretary (L&E) & Vice-Chairman, Central Board (EPF)/Chairman, EC, CBT(EPF), Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi.
4. PS to Central Provident Fund Commissioner, EPFO, Head Office, New Delhi.
5. Joint Secretary (Social Security), Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi.
6. Joint Secretary & Director General Labour Welfare, Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi
7. Under Secretary (SS-I & II), Ministry of Labour & Employment, New Delhi.
8. All Division Heads in Head Office, New Delhi.
9. Director (PDNASS), New Delhi.
10. RPF-C-I (NDC) for uploading on the official website.
11. Deputy Director (OL) – for Hindi Version.


(Udit Chowdhary)

Addl. Central PF Commissioner (HQ) (Conference)

**FIRST MEETING OF THE AD HOC COMMITTEE ON COVERAGE AND RELATED LITIGATION
MAIN COMMITTEE ROOM, SHRAM SHAKTI BHAWAN,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA
[Friday 10th December 2021; 1:45 p.m]**

The meeting was held under the Chairmanship of Shri Rameswar Teli, Hon'ble Minister of State Ministry of Labour and Employment. Following members attended the meeting:

1. Ms. Neelam Shami Rao, Central Provident Fund Commissioner
2. Sh. Dilip Bhattacharya, Member CBT, Employees' representative
3. Sh. Michael Dias, Employers' representative
4. Sh. Sougata Roy Choudhury, Employers' representative
5. Sh. SK Sharma, Employers' representative

Other members could not attend and were granted leave of absence.

Following officers of EPFO were also present in the meeting:

6. Shri Jag Mohan, ACC(HQ) Compliance & Legal and convenor of meeting
7. Dr Shiv Kumar, RPFC-I (Compliance & Recovery),
8. Shri Navendu Rai, RPFC-I (Legal)

It was informed that the terms of reference of the committee are to give suggestions for:

- wider coverage of membership under EPFO in view of Social Security Code and;
- steps to reduce litigation.

Shri Jag Mohan made a presentation briefing the committee on the issues at hand. It was highlighted in the presentation that:-

- Employees' threshold i.e. number of employees in a establishment for which EPFO coverage is mandatory was 50 in 1952 and was last modified in 1960 bringing it down to 20 employees. There have been various recommendations including of the 2nd National Commission on Labour as well as a Working Group of the Ministry of Labour and Employment to reduce the threshold to 10 and less gradually.
- That under the EPF and MP Act 1952, the coverage is restricted to specific categories of industries and establishments. However, this limitation has since been removed in the Social Security Code and is likely to increase the coverage;
- That the employees working in establishments with 11-19 strength are not entitled to any statutory old-age income security scheme;
- That the wage ceiling was last revised in the year 2014 increasing from Rs. 6,500 to Rs. 15,000. There is no change since last 7 years;
- That the Provident Fund Act of 1925 is presently under the Ministry of Labour and Employment, but it has not been assigned to any organisation for administration;
- There are about 31,000 cases of litigation for various reasons such as assessments of dues and damages, claim of higher benefits, prosecutions matter against establishments for non-compliance with statutory provisions and service-related matters of EPFO employees.
- The main reasons for litigation is challenge of correctness of dues and damages by employers and claim of higher pension or PF dues by employees.

Shri Michael Dias stated that we need to analyse as to why almost 2 lakh employers default/delays in remittances every month. If these defaults are on account of financial problems, then the committee needs to look into genuine difficulties of the employers. He further stated that there is a need of social security for unorganised sector workers and through Social Security Code a large number of unorganised and gig workers are likely to be brought in ambit of EPFO. However, he expressed his concern on large number of litigations and emphasised the need to reduce litigation.

Shri Dilip Bhattacharya stated that most of the employers do not enrol all eligible employees under EPF especially contractual employees and migrant workers. He also stated that practically no physical inspections take place in field offices and advised to review inspection policy to ensure that all establishments are subjected to regular inspections especially on receipt of information/complaints. He further stated that the discrimination between EPF and ESIC on account of threshold and wage ceiling should be removed to expand the scope of coverage and bring it at par with ESIC.

Shri Bhattacharya further stated that the statutory rate of contribution should not be 10% for establishments in Jute sector as these are large scale establishments and 100% of their output is taken by the Government and accordingly should not qualify to get the benefit of contribution at lower rates. For the state of West Bengal, a senior counsel should be engaged to pursue long pending Court cases so that workers dues could be realised. He also requested that this committee should interact with Regional Committees of few states to understand the nature of problems and litigation at ground level.

Shri Sougata Roy Choudhary suggested that help and assistance of local industry bodies and trade unions should be taken to help the small-scale employers to register with EPFO to ensure that all workers are enrolled under EPF. He further stated that many states have various schemes for benefit of such workers. Funding pattern and available corpus of these schemes could be studied to ascertain if these could be integrated into Social Security Code. He further suggested that the dispute settlement mechanism outside the courts such as Ombudsman etc. could be looked into.

Shri SK Sharma stated that post assessment of dues, action to recover the dues by attaching bank accounts starts almost immediately. He requested that an SOP may be issued in this regarding giving some time to the establishments to respond to the demand notices. He suggested that 85% of EPF membership is in MSME sector and that lower contribution rates for the MSME sector could be looked into.

The Chairman appreciated the members to be present in spite of a short notice and assured that in future at least about seven days' advance notice of meeting will be given. He advised the members to discuss the issues in detail with full participation and give their suggestions.

Summing up the discussions CPFC stated that members of sub-Committee have pointed out gaps in coverage probably on account of default on the part of employers; complexity of the onboarding process; and organisational challenges of EPFO.

As regards threshold, wage ceiling and rate of contribution, preferential treatment for MSME and enrolling the workers in the unorganised sector, CPFC stated that these issues would require consultation with the Ministry of Labour & Employment.

CPFC requested the Chairman to consider the suggestion of the members to get inputs from few Regional Committees for further deliberations. CPFC assured the members for having standard operating procedure for attachments of bank accounts.

Concluding the meeting, CPFC requested all the members to send their responses in writing through email also so that it could form part of the agenda for the next meeting of the sub-committee.

The meeting ended with a vote of thanks to the Chair.

**2nd MEETING OF THE AD HOC COMMITTEE ON COVERAGE AND RELATED
LITIGATION MAIN COMMITTEE ROOM, SHRAM SHAKTI BHAWAN,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA
[Thursday, 6th January 2022; 7:30 p.m]**

The 2nd meeting of the committee was held under the Chairmanship of Shri Rameswar Teli, Hon'ble Minister of State Labour & Employment. Following members attended the meeting:

1. Ms. Neelam Shami Rao, CPFC
2. Smt Vibha Bhalla, JS [SS]
3. Sh. Dilip Bhattacharya, Member CBT, Employees' representative(through VC)
4. Sh. Michael Dias, Employers' representative (through VC)
5. Sh. Sougata Roy Choudhury, Employers' representative (through VC)

Following officers of EPFO were also present in the meeting:

1. Shri Jag Mohan, ACC(HQ) Compliance & Legal and convenor of meeting
2. Shri Pankaj Raman, ACC (Compliance)
3. Dr Shiv Kumar, RPFC-I (Compliance & Recovery),
4. Sh Navendu Rai, RPFC-I (Legal)
5. Sh Abhisek APFC (Compliance)

The first meeting of the Committee was held on 10.12.2021 and its minutes were circulated, vide email dated 20.12.2021. Members of the committee were requested to provide their response in writing for framing agenda for further discussion. Considering the response received from S/Shri Dilip Bhattacharya, Hiranmay J Pandya and Michael Dias agenda for further discussion in the 2nd meeting is as under :-

- a. Review of Wage ceiling and employee threshold for coverage.
- b. Exploring Social Security for Unorganised sector workers through EPFO.
- c. Alternate dispute resolution mechanism to reduce litigation.
- d. Exploring Amnesty Scheme for dispute resolution for employers.
- e. Interaction with few Regional Committees for better understanding of issues related to Coverage and Litigation.

With the permission of Chairman Shri Jag Mohan ACC HQ made a brief presentation each agenda item as detailed below:-

ITEM-A: WAGE CEILING AND COVERAGE THRESHOLD –

- Wage ceiling has been changing intermittently over the years and presently stands at Rs 15,000 p.m since 1st September 2014.
- Almost one crore members are contributing to EPF on wages more than Rs 15,000/- but voluntarily.
- The Social Security Code (SS Code) defines wage ceiling as definition u/s 2(89) but the same is not mentioned anywhere in the Chapter III. Therefore the various aspects of wage ceiling may be dealt with while drafting new schemes under the code.
- there are approximately 91,000 establishments who have registered with EPFO declaring their average employee strength of 25 but complying for an average of 15 employees.

- Therefore, due to exclusion of employees above wage ceiling a good number of employees remains out of Social Security.
- The current wage ceiling and employee number threshold inhibits mandatory coverage of all workers depriving them from the guarantee on benefit of social security. This needs to be considered and reviewed if required be.

ITEM B – SOCIAL SECURITY FOR UN-ORGANISED SECTOR THROUGH EPFO

- The SS Code has statutory provisions for allowing Unorganised sector to be brought under EPFO
- However, if Unorganised sector workers are to be serviced by EPFO, then apart from Section 6 of SS Code, other challenges such as organizational capacity, manpower and infrastructure need of EPFO, a new work requirement involving a complete shift from present role and managing cost of implementation will need to be addressed.

ITEM C: ALTERNATE DISPUTE RESOLUTION MECHANISM

- Data of last 3 years for assessment cases [7A & 14B] has been analyzed. It indicates that out of 2.56 Lakhs cases, employers appealed in CGIT in 3,893 (1.51%) cases only.
- Even in these cases, appellate courts have upheld EPFO's actions in 84% of the cases.
- This is an ongoing process and litigation appears proportionately insignificant.

ITEM D: AMNESTY SCHEME

- As there has not been any specific reference from the members therefore it is kept open for discussion and suggestions of members.

ITEM E: INTERACTION WITH REGIONAL COMMITTEE

- In view of the pandemic situation, it is submitted that members may decide further course of action.

The members were then requested to offer their submissions.

Shri SK Sharma made following submissions:-

- There are approximately 5,000 prosecution cases filed by EPFO for non-compliance with KYC requirements of members. He submitted that in all such cases where due compliance has been done, prosecution may be withdrawn. Further, that extant instructions on Prosecution withdrawal, which presently vest this power with CPFC be reviewed and the powers be delegated to Zonal ACCs.
- That the present rates of interest and damages may be reviewed. High damages are also cause of action for litigation by employers.
- That in the cases of the issue of refund of wrongly claimed PMRPY benefits, interest and damages on such refunds may not be levied.
- That contribution rates especially for MSME sector should be reviewed for lower side in view of pandemic over last two years or so.
- The decision of Hon'ble Supreme Court of India in the case of The Regional Provident Fund Commissioner vs Vivekananda Vidyamandir [CIVILAPPEAL NO(s). 6221 OF 2011, decided on 28 February 2019], wherein the Hon'ble Court has held that Special allowance were to be considered as part of basic wages and accordingly EPF contribution was payable on them, be applied prospectively, as is being done by ESIC in a similar case.
- That the SoPs for recovery of assessed amount, for which the recovery process is initiated within 15 days at present, be issued. CPFC advised Sh Sharma to give detailed written submission in the matter.

Shri Dilip Bhattacharya made following submissions-

- ESIC and EPFO should have same employee threshold limit and wage ceiling for coverage.
- Opposed the demand for reduction in rate of contribution, as EPF is a forced saving and is designed for ensuring income security to poor workers.
- Inspections, which are presently not happening, may be ensured, including surprise inspections without prior permission, to detect evasion or coverage and employees.
- Survey for enrolling unorganised sector workers should be done through Inspectors to ensure enrolment.
- Unorganised sector workers, especially Anganwadi, ASHA and Mid-Day Meal workers should be brought under EPFO fold. The employer share in all such cases be paid by the Government (Central or the State government). Employee share should be bare minimum as these workers draw very less wage.
- Long pending court cases be expedited by meeting with Regional Committees of the States and with Labour & Law ministers of various states.
- He further state that if physical meetings are not possible then virtual meetings be held with Regional Committees.

Shri Michael Dias made following submissions: -

- He opposed the demand for increasing wage ceiling due to the ongoing pandemic and its adverse impact on industry.
- Supported the demand of Sh Bhattacharya to bring unorganised sector workers under EPFO. He referred to an ongoing case before Hon'ble Supreme Court of India where Gig workers are pleading for social security benefits and requested that it should be considered by the committee.
- Requested that present format and system of notices for assessment and inspection be reviewed to bring transparency and uniformity. The notices shall be specific with regard to period, contents of records and purpose.
- He submitted that there should be a separate and exclusive set up such as CGIT only for conducting assessment enquiries. Officers shall not conduct quasi judicial inquiries.
- Requested that an amnesty scheme may be considered to help such employers who have defaulted/delayed the payment of EPF contribution due to pandemic and suggested that it will be a good gesture to the beleaguered industry.
- He suggested that in order to get clear understanding of ground situation, meetings with Regional Committees would be helpful.
- He further suggested forming alternate dispute redressal system and bringing an amnesty scheme to help the employer.

Shri Sougata Roy Choudhary made following submissions:-

- He opposed the demand for raising of wage ceiling due to pandemic situation.
- He suggested that a special provision waiving employer share for new persons joining employment may be introduced to encourage new employment.
- He suggested a deeper detailed study may be commissioned to understand and recommend the financing mechanism for unorganised sector workers, including self-employed persons

Ms Vibha Bhalla JS (SS) stated that litigations of compliance related matters and employees related

matters be classified separately. She advised that cause analysis of pending prosecution case be placed before the Committee in its next meeting. She also stated that pending notification of Social Security Code assessment notices issued for long periods needs to be monitored.

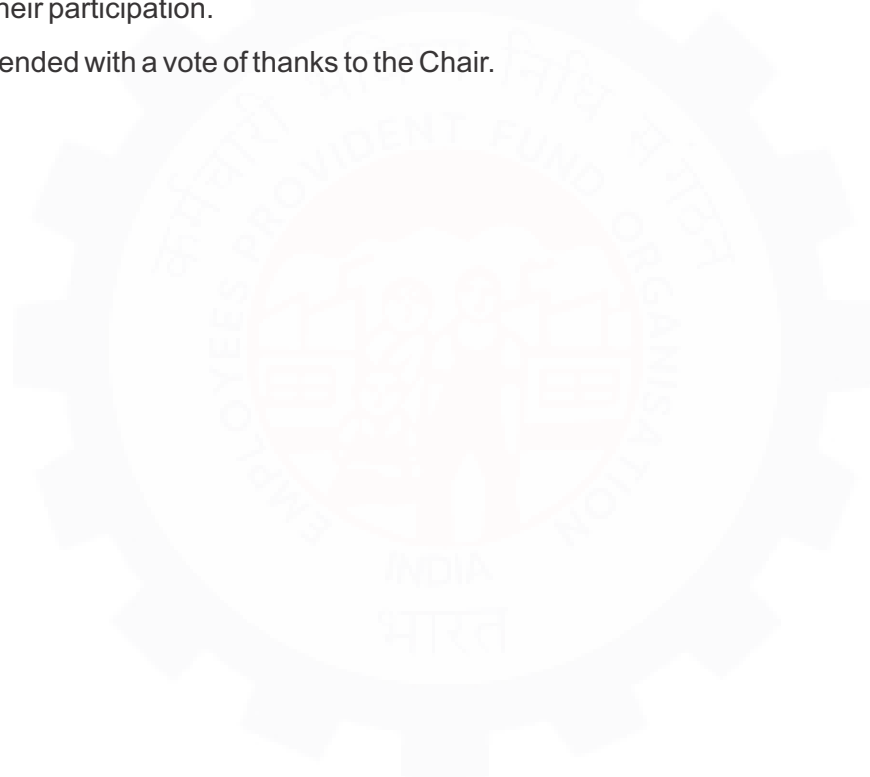
Sh. Jagmohan mentioned that instruction on conducting 7A inquires have already been issued to field and the same will be placed before committee in the next meeting.

Summing up the discussion CPFC directed ACC HQ to place necessary information desired by members in next meeting. CPFC informed that MGNREGA contractual employees are eligible for coverage.

A similar arrangement for ASHA workers can be analyzed. Regarding interaction with Regional Committees, CPFC suggested that meeting with Chairpersons of few Regional Committees, who generally are Secretary in-charge of Labour Ministry of the concerned State may be held separately.

Concluding the meeting, the Chairman stated that many of the issues raised by members are addressed in Code on Social Security 2020. The Chairman appreciated the response of the members and thanked them for their participation.

The meeting ended with a vote of thanks to the Chair.



**3rd MEETING OF THE AD HOC COMMITTEE ON COVERAGE AND RELATED LITIGATION
MAIN COMMITTEE ROOM, SHRAM SHAKTI BHAWAN,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA
[Monday, 31th January 2022; 4:30 p.m]**

The 3rd meeting of the committee was held under the Chairmanship of Shri Rameswar Teli, Hon'ble Minister of State, Labour & Employment. Following members attended the meeting:

1. Ms. Neelam Shami Rao, CPFC
2. Smt Vibha Bhalla, JS [SS]
3. Sh. Dilip Bhattacharya, Member CBT, Employees' representative(through VC)
4. Sh. Michael Dias, Employers' representative (through VC)
5. Sh. Sougata Roy Choudhury, Employers' representative (through VC)
6. Sh. S.K. Sharma, Employers' representative
7. Sh. Hiranmay Pandya, Employees' representative (Could not connect due to technical glitch)

Following officers of EPFO were also present in the meeting:

1. Shri Jag Mohan, ACC(HQ) Compliance & Legal and convenor of meeting
2. Sh. Navendu Rai, RPFC-I (Legal)
3. Dr Shiv Kumar, RPFC-I (Compliance & Recovery),
4. Sh. Manish Kumar Thakur, RPFC-II (Legal)
5. Sh. Abhishek RPFC-II (Compliance)

Sh. Jag Mohan ACC(HQ) informed that in the second meeting of the Committee held on 06.01.2022, it was decided to interact with few Regional Committees for better understanding of issues related to Coverage and Litigation at state levels. Chairpersons of four Regional Committees have been invited to join the discussion and share their views. He briefly explained the issues for discussions and terms of reference of the committee.

Following Chairpersons joined through VC and shared their views:

- Maharashtra – Mrs Vinita Ved Singal, IAS, Principal Secretary (Labour) [Could not connect due to technical glitch]
- Tamil Nadu – Thiru R. Kirlosh, IAS, Secretary Labour Welfare informed that their Regional Board Meeting is scheduled on 2nd Feb 2022 and he would be better able to share his views based on the feedback after the said Meeting.
 - It was raised whether as Labour Secretary he gets complaints from employees of not deducting PF by employers or regarding service issues faced by them from EPFO offices locally.
 - Sh. Kirlosh informed that he does not get these types of complaints generally.
- West Bengal – Sh Barun Kumar Ray, IAS, Principal Secretary (Labour) suggested:-
 - That exclusion clause of employees in EPF Act shall be removed and like ESIC and EPFO should have same wage ceiling and employment thresholds for coverage.
 - That the contractual workers of the Govt. should also be covered under EPF & MP Act 1952.
 - That action may be taken in the cases where stay has been granted by the Hon'ble Courts
- Haryana – Shri Raja Sekhar Vundru, IAS, Additional Chief Secretary (Labour) informed that
 - He gets complaints related to PF Contributions and related issues and the same are being referred to Regional Offices.

- That it will be better if there is a dashboard which is accessible by state labour departments for better monitoring of the complaints
- Regional HQ should be at the State level as it will help in reporting mechanism to be aligned with information that state Govt. has

Shri Jag Mohan ACC HQ informed that since March 2021 EPFO has launched an electronic facility for principal employers called PE portal. The government departments and governments entities, which presently do not come under the purview of EPFO, can register themselves on this portal for better monitoring of EPF compliances of their contractors. He further informed that a formal communication shall soon be sent to all Chairpersons of Regional Committees about this facility.

Sh. Jag Mohan further requested to the Chairpersons of the Regional Committees to issue instructions from State Governments to all government departments/ governments entities to register on the Principal Employer portal for effective monitoring of EPF compliance of contractors engaged by State Government/State Government entities.

Shri Raja Sekhar Vundru set forth that if State Labour Secretaries can have access to the principal employers' portal so that they can have a consolidated view for monitoring.

CPFC assured to provide the same.

Sh. Jag Mohan further informed the Chairman of the Committee that an ATR on minutes of last (2nd) meeting of the sub-committee held on 6th January 2022 has been prepared and circulated to all members.

With the permission of Chairman Shri Jag Mohan ACC HQ made a brief presentation:

- a) Issue raised regarding prosecution cases filed by EPFO for non-compliance with KYC requirements of members and withdrawal of prosecution-

Sh. Jag Mohan placed a separate discussion paper (annexure-I) and informed that since 3rd May 2021, Section 142 of Code on Social Security, 2020 is in force which makes seeding of Aadhar mandatory. He informed

- That the analysis of UAN data not seeded with Aadhar indicates that there are 11,57,680 employees of 1,87,877 establishments whose UAN is still not seeded with Aadhar seeded even after consistent follow up by EPF field offices.
- That there are only 130 cases for Non-seeding of Aadhaar in UANs per details of Prosecution filed and pending as on 31.12.2021
- That CBT in 94th Meeting held on 10.11.1982 framed guidelines for withdrawal of prosecution. The key parameters of the instructions with some modifications were presented for discussions and the committee agreed to place the same before CBT.
- Sh. Jag Mohan further informed that the schemes such as Pradhan Mantri Rojgar Protsahan Yojana (PMRPY) and Aatmanirbhar Bharat Rojgar Yojana (ABRY) which are being implemented through EPFO by Central Government are already in place to support the industry. He further stated that
- for the unorganized sectors e-shram portal has been launched to improve the implementation efficiency of the social security benefits.
- there is no sub-category of MSME either under EPF & MP Act 1952 or CoSS 2020. However, the extant rules allow contribution at 10% inter-alia for establishments with employment strength less than 20.
- separate instructions for specific cases where damages have been levied in the cases of the issue of refund of wrongly claimed PMRPY benefits could not be issued.

Shri SK Sharma made following submissions:-

- That the prosecution cases are related to KYC are of before notification of Section 142 of Code on Social Security 2020 and so these are not legally sustainable and so may be withdrawn without any pre-condition.
- That the guidelines for withdrawal of prosecution were framed in CBT meeting of 1982 and they must appropriately change with time. He submitted that in all such cases where due compliance has been done, prosecution may be withdrawn without any pre-conditions.
- That the suggested rates of damages may be reviewed.

Shri Michael Dias made following submission: -

- That there must be a standard procedure for withdrawal of prosecution cases which would further also result in reduced litigation.
- That the rates of damages should be rational.

Shri Sougata Roy Choudhary made following submissions:-

- That EPFO is both the regulator as well as the administrator. He suggested that an independent system of Ombudsman may be put in place like a Banking Ombudsman to process all legal cases before they land in a court of law. This, he suggested, would help minimize litigation considerably.

Shri Dilip Bhattacharya made following submissions-

- Coverage under EPF & MP Act 1952 for all workmen to universalize Social Security, as EPF is a forced saving and is designed for ensuring income security to poor workers.
- ESIC and EPFO should have same employee threshold limit and wage ceiling for coverage.
- Inspections, which are presently not happening, may be ensured, including surprise inspections without prior permission, to detect evasion or coverage and employees.
- Survey for enrolling unorganised sector and contractor workers should be done through Inspectors to ensure enrolment.
- Unorganised sector workers, especially Anganwadi, ASHA and Mid-Day Meal workers should be brought under EPFO fold.
- Long pending court cases be expedited by meeting with Labour Secretaries with Labour & Law ministers of various states.

Sh.Jag Mohan clarified that even in the earlier regime of Aadhar EPFO was using Aadhar seeding with UAN as Government had notified its use for pension scheme under Section 7 of the Aadhar Act. Subsequent to the directions of Hon'ble Supreme Court of India mandating statutory provisions for use of Aadhar, Section 142 of CoSS 2020 has been notified. He reiterated that even though the mandate existed, only 130 prosecutions are pending for non-seeding of Aadhar. Only in exception cases EPFO initiates prosecutions.

b) Issue raised regarding rates of interest and damages:

- Sh.Jag Mohan placed a separate discussion paper(annexure-II) and informed that maximum rate of Damages is 25% damages and 12% is interest
- Considering the quantum of penalties in the Income Tax Act, GST in respect of belated payment he presented some options of alternate slabs and rates of damages for consideration of the Committee

After discussions the members suggested that the slabs for damages should be two only with minimum rate of damages at 12%.

Sh. Jag Mohan presented the decision points before the Committee for appropriate recommendation:

1. Coverage thresholds:

- That at present there is no coverage for establishments with employee strength from 10-19. Government of India has powers under Section 152 of the Code to amend Schedule-I. He submitted that Central Government by way of issuing a notification under Section 152 of the CoSS 2020 can amend the same.
- That proviso (ii) of Section 2(f) of EPF Scheme may be amended for universal coverage up to wage ceiling.
- That the wage-ceiling which is not presently linked to any metric may be linked with any identifiable metric such as per capita income of India issued by Ministry of Statistics and Planning, Government of India.. National Floor Level Minimum Wage, Income exempt from tax (including Standard deduction), contribution eligible for tax rebate under Income Tax, Pay at Level 1 Central government employee etc.

2. Reducing Litigation:

- That section 125(2) of Code on Social Security directs time bound completion of enquiries. As suggested by members of the Committee also, there should be a separate and exclusive wing in EPF filed offices for conducting assessment enquiries.
- Streamlining rate of damages
- Rationalizing Prosecution withdrawal by revising instructions.
- Reducing litigation by improving quality of assessments through –
 - Legal training for reading legal documents and legal drafting through reputed institutions.
 - Training for reading and understanding financial statements through reputed institutions.

CPFC suggested that adequate legal training, use of technology as well as modified business process should also be included in order to have objective and uniform compliance management and assessments.

Sh. Jag Mohan also informed that the Provident Fund Act 1925, presently with MoL&E as per Allocation of Business Rules, Cabinet Secretariat, Government of India, maybe considered for assignment to EPFO, as Section 15 of the CoSS 2020 authorizes the Central Government in this regard.

Shri SK Sharma submitted that the wage-ceiling limit may not be increased considering the present situation of industry. On a specific query from CPFC whether there is any in-principle objection to this proposal. Sh. Sharma stated that in-principle all employees upto the specified wage ceiling should enroll with EPFO. He further submitted that:

- That contribution rates especially for MSME sector should be reviewed for lower side in view of pandemic over last two years or so.
- That in the cases of the issue of refund of wrongly claimed PMRPY benefits, interest and damages on such refunds may not be levied.
- That specific instructions may be issued defining the allowances as components of wages subsequent to the judgment of Hon'ble Supreme Court of India in the case of The Regional Provident Fund Commissioner vs Vivekananda Vidyamandir [CIVIL APPEAL NO(s). 6221 OF 2011, decided on 28 February 2019], wherein the Hon'ble Court has held that Special allowance were to be considered as part of basic wages

Sh. Michael Dias stated that EPFO is already in the process of increasing coverage once the gig, platform and other workers of unorganized sectors are covered under EPF Act.

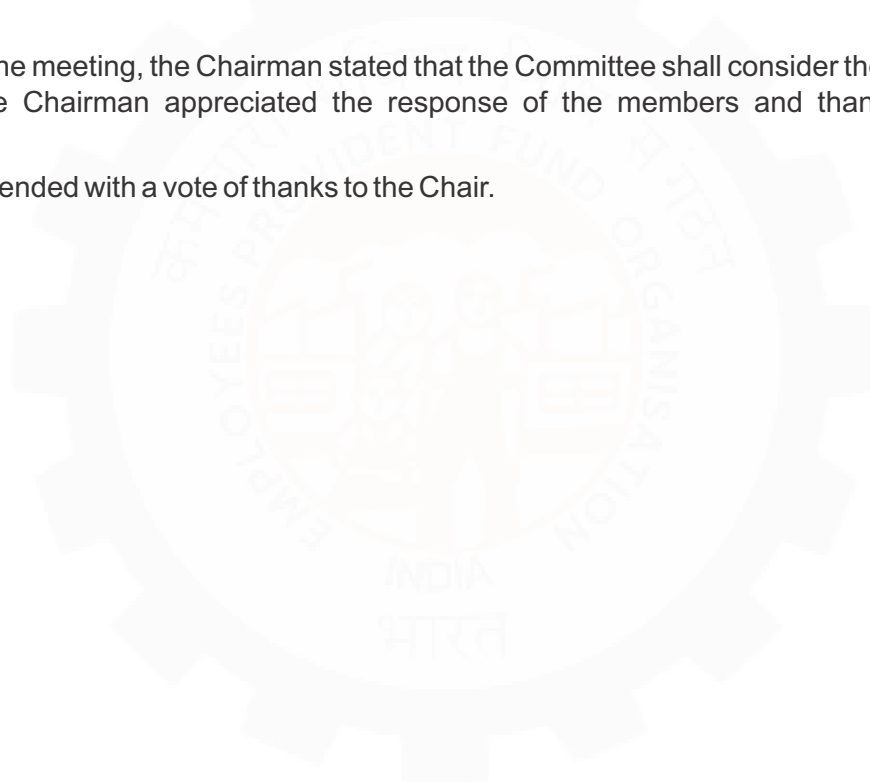
- He stated that the definition of wages has been modified in the CoSS 2020 as well as Code on Wages and there should not be any requirement for issue of clarificatory circular.
- He further submitted that the judgment of Hon'ble Supreme Court in the case of [RPFC vs Vivekananda Vidyamandir [CIVIL APPEAL NO(s). 6221 OF 2011, shall be applied prospectively (from the date of judgment), as is being done by ESIC

Summing up the discussion CPFC thanked Chairpersons of the State Regional Committee's for raising the relevant points for ensuring universal coverage for social security. CPFC informed that Ministry of Rural Development has issued guidelines that MGNREGA contractual employees are eligible for coverage and this Committee may consider making appropriate recommendations to the Ministries of Women and Child Department, Education and other Ministries.

CPFC further informed that the mechanism to review the cases as well as the draft report shall be prepared and circulated to the members of the committee for incorporating their suggestions and may be placed before the Chairman of the Committee for discussion and thereafter final adoption in the next meeting.

Concluding the meeting, the Chairman stated that the Committee shall consider the suggestions given by members. The Chairman appreciated the response of the members and thanked them for their participation.

The meeting ended with a vote of thanks to the Chair.



WITHDRAWAL OF PROSECUTION

The analysis of employers aid UAN data not seeded with Aadhar eiei after notification of Sec 142 of Code of SS, 2020 since 3rd May 2021 is placed below:

ZONE	Estts	Workload Aadhaar Seeding	AADHAAR PENDING	% Aadhaar Pending
ANDHRA PRADESH (VIJAYWADA)	6,127	9,00,401	39,904	3.45%
BENGALURU (BENGALURU)	9,768	45,50,387	76,824	6.64%
BIHAR & JHARKHAND(PATNA)	4,901	8,08,015	30,361	2.62%
CHENNAI & PUDUCHERRY (CHENNAI)	8,979	25,56,891	52,713	4.55%
DELHI & UTTARAKHAND	10,527	30,11,013	66,386	5.73%
GUJARAT (AHMEDABAD)	15,071	23,12,187	64,276	5.55%
HARYANA	8,071	21,72,880	39,763	3.43%
JAMMU KASHMIR AND LADAKH	1,525	1,00,703	11,540	1.00%
KARNATAKA (OTHER THAN BENGALURU) & GOA (HUBLI)	8,050	9,22,779	37,103	3.20%
KERALA & LAKSHADWEEP (THIRUVANANTHAPURAM)	4,259	6,23,409	17,503	1.51%
MADHYA PRADESH & CHATTISGARH (BHOPAL)	9,627	11,51,466	46,082	3.98%
MAHARASHTRA (EXCLUDING MUMBAI) (PUNE)	16,800	28,08,738	98,670	8.52%
MUMBAI-1 (BANDRA)	5,480	35,03,358	76,064	6.57%
MUMBAI-2 (THANE)	12,282	28,70,627	69,856	6.03%
NORTH-EASTERN REGION (GUWAHATI)	4,628	3,16,468	52,125	4.50%
ORISSA (BHUBANESWAR)	5,324	6,01,216	30,848	2.66%
PUNJAB & HIMACHAL PRADESH	7,050	8,43,118	21,117	1.82%
RAJASTHAN	6,004	8,03,868	28,058	2.42%
TAMIL NADU (EXCLUDING CHENNAI)	10,519	12,55,187	40,551	3.50%
TELANGANA (HYDERABAD)	9,379	26,54,329	66,812	5.77%
UTTAR PRADESH	10,641	15,69,473	45,933	3.97%
WB, A&N ISLANDS & SIKKIM (KOLKATA)	12,865	20,92,502	1,45,191	12.54%
Grand Total	1,87,877	3,84,29,015	11,57,680	100.00%

The Details of Prosecutions filed and pending as on 31.12.2021 is as follows

Non-seeding of Aadhaar in UAN	130
Non-submission of Returns	2896
Default in payments	6497
Pending for Other reasons	311
Grand Total	9834

The Central Board of Trustees, Employees' Provident Fund in its 94th Meeting held at New Delhi on 10.11.1982 framed guidelines for withdrawal of prosecution. The key parameters may be modified with certain clarifications for better implementation:

Sl. No.	KEY PARAMETERS	PROPOSED CHANGES
1.	The accused has set right the contravention for which the complaints were filed.	No change
2.	The accused has paid the dues levied on all belated remittances up to date as per the provision of Section IAB of the Act.	The accused has paid the dues levied on all belated remittances up to date as per the provision of Section 14 B of the Provident Funds and Miscellaneous Provisions Act, 1952 or no appeal is filed and pending in appropriate legal forum.
3.	The accused has reimbursed to the Fund the legal and other expenses incurred in connection with the cases as determined by the RPFC.	No change
4.	The current performance of the establishment is satisfactory in all respects.	There is no realizable outstanding assessed demand or recovery certificate pending for payment.
5.	The accused has given an undertaking to the Regional Provident Fund Commissioner to make prompt compliance with all the requirements under the Act/Scheme in future, and	The accused, if a running establishment, has given an undertaking to the Regional Provident Fund Commissioner to make prompt compliance with all the requirements under the Act/Scheme in future, and
6.	The proposals for withdrawal of cases are submitted to the Central Provident Fund Commissioner for formal approval..	The proposals for withdrawal of cases are submitted to the Additional Central Provident Fund Commissioner of the Zone for formal approval..

The committee may deliberate and give its recommendations that may be placed before the next CBT for consideration and approval

DAMAGES

In the EPF & MP Act, penalties have been prescribed u/s 14, 14A and 14AA for non-filing of returns, submitting false/incorrect returns, non-payment of dues etc for which prosecution is filed before the competent court. In Code on Social Security, 2020, many of the offences may be terminated with the fine alone. Only the non-payment of dues may result in imprisonment. Further, the EPFO has not been authorised to levy penalty in respect of any of these offences.

Authorised officers have been authorised under the Act (and Code also) to levy damages in respect of belated payment of statutory dues only and that too after giving reasonable opportunity of hearing to the employer/establishment. Further, the statute has prescribed that the rate of damages would be as prescribed under the Scheme but would not exceed the amount of arrears.

Rate of Damages for default in payment of any contributions

Accordingly, the rates of damages have been specified under Para 32A of Employees' Provident Funds (EPF) Scheme 1952, Para 5 of Employees' Pension Scheme 1995 & Para 8-A of Employees' Deposit-Linked Insurance (EDLI) Scheme, 1976 as below:

Sl. No.	Period of default	Rates of Damages (percentage of arrears per annum)
a	Less than two months	Five
b	Two months and above but less than four months	Ten
c	Four months and above but less than six months	Fifteen
d	Six months and above	Twenty-five

PROPOSAL

The quantum of penalties in the Income Tax Act in respect of belated payment of Tax is approximately 1% per month and the interest is also @1%/ p.m. The interest on belated payment of EPF dues is governed by separate provisions u/s 7Q which is 12% p.a. The rate of damages as prescribed in the Schemes may be modified in consonance with the IT Act as per following option:

Sl. No.	Proposed Period of default	Proposed Rates of Damages (percentage of arrears per annum)
a	Less than six months	Six
b	Six months and above but less than twelve months	Twelve
c	Twelve months and above but less than eighteen months	Eighteen
d	Eighteen months and above	Twenty-four

If agreed to, the Committee may consider making an appropriate recommendation. The implementation will be after the Govt of India makes suitable amendment in the Schemes.

**4th MEETING OF THE AD HOC COMMITTEE ON COVERAGE AND RELATED LITIGATION
MAIN COMMITTEE ROOM, SHRAM SHAKTI BHAWAN,
MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA
[Monday, 7th March 2022; 5:00 p.m]**

The 4th meeting of the Committee was held under the Chairmanship of Shri Rameswar Teli, Hon'ble Minister of State, Labour & Employment. Following members attended the meeting:

1. Ms. Neelam Shami Rao, CPFC
2. Sh. Dilip Bhattacharya, Member CBT, Employees' representative (through VC)
3. Sh. Michael Dias, Employers' representative (through VC)
4. Sh. Sougata Roy Choudhury, Employers' representative (through VC)
5. Sh. S.K. Sharma, Employers' representative
6. Sh. Hiranmay Pandya, Employees' representative (through VC)

Following officers of EPFO were also present in the meeting:

1. Shri Jag Mohan, ACC(HQ) Compliance & Legal and convenor of meeting
2. Sh. Navendu Rai, RPFC-I (Legal)
3. Dr Shiv Kumar, RPFC-I (Compliance & Recovery),
4. Sh. Paritosh Kumar, RPFC-I (Legal)
5. Sh. Manish Kumar Thakur, RPFC-II (Legal)
6. Sh. Abhishek RPFC-II (Compliance)

Shri Jag Mohan made a detailed presentation on the deliberations held in the committee in its first three meetings and key takeaways and decision points on which the committee may like to take a final view for finalizing its recommendations. The issues are summarized as under:

1. Reducing employees' threshold for coverage under EPF ;
2. Linking wage ceiling to an identifiable metric ;
3. Enrolling all employees up to the specified wage ceiling ;
4. Robust information system and Technology e enabled inspections ;
5. Universal coverage including for workers in the unorganised sectors;
6. Rationalizing rates of damages
7. Rationalizing prosecution withdrawal process and alternate dispute redressal mechanism
8. Rationalizing litigation related to recovery
9. Enhancing quality of Quasi judicial assessments through separation of compliance administrative & assessment functions, reporting and representing roles of Enforcement Officers, through regular legal training and extensive use of IT tools.

It was informed that the **coverage threshold** was reduced from 50 to 20 in the year 1960 and has not changed since last 60 years. It was also informed that the National Commission on Labour in the years 1969 and 2002; a working group of Ministry of Labour and Employment in the year 2012 had recommended reduction of coverage threshold.

Further, that at present there is no statutory coverage for establishments having employee strength between 10 and 19 and this gap needs to be addressed for ensuring social security coverage to employees working in such establishments. It was suggested that for this category of establishment, that is having employee strength between 10 and 19, there may be differential pattern of statutory contributions. Only the

employer contribution may be made mandatory with lesser contribution than 12% and Employees' contribution should be on voluntary/ optional basis.

On the issue of **wage ceiling** it was informed that the same is presently not linked to any identifiable metric. Comparison of wage ceiling with the minimum pay of Central Government employees indicates that the EPF wages ceiling was around five times the minimum pay in 1952, two times the minimum pay in the year 1994 and currently it is 83% of the minimum pay of Central Government employees. In many states the wage ceiling is below the minimum wage for unskilled workers. Cross Country comparison with wage ceiling in select countries indicates that in most countries the wage ceiling is around 17% of the GDP per capita. In India the same is at 10%. It was informed that if the wage ceiling is kept at international average of 17% of GDP per capita in India the same shall be approximately Rs. 25,000 per month. The committee was also informed that in November 2016, a sub-committee of CBT EPF on Contract Workers has recommended enhancement of wage ceiling to Rs. 25,000. This recommendation is pending consideration before Ministry of Labour and Employment.

An analysis of about 91,000 establishment statutorily covered in last 2 years indicates that even though the average total employee per establishment is reported to be 25 only 60% of this become contributory members. This is so because the extant definition of an excluded employee states that persons whose wages are more than the statutory wage ceiling are not statutorily required to become members of EPF. The sample data of coverage of 91000 establishment as above is an indicator that there is scope for increasing the coverage by 30% to 40% by universalizing mandatory membership to all employees up to the wage ceiling.

The Committee was also informed that international experience indicates that wage ceiling is used not used as a tool for excluding membership rather, the same is used to define contribution limits. ILO convention {102} mandating 'social security coverage to all' also advises accordingly. Universalizing social security coverage will also further India's case for bilateral social security agreements with various countries

Accordingly, enhancing the wage ceiling and ensuring universal enrollment of all employees in an establishment up to the wage ceiling needs serious consideration .

On the issue of **extensive use of IT tools and collection third party information for securing compliance** it was informed that the Code on Social Security provides for same (sec 122) laying down an inspection scheme which may provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically. It is proposed that EPFO should set up platform for Big Data Analytics for Data mining and data analysis, extensive use of Artificial Intelligence and Machine Learning by collecting information electronically from Government/ non-Government sources to detect evasion and noncompliance leading to the objective of complete online and faceless compliance management system. It is also proposed to make ECR system more intelligent to ensure complete declaration of statutory liability by the employer.

The committee in its previous deliberations has recommended that EPF should be extended to workers in the unorganised sector with some modifications. The committee was of the view that Government may consider assigning administration of the Provident Fund Act 1925 to CBT EPF. However, the organizational capacity of EPF, availability of human and material resources and related operational issues will need further examination.

The legal landscape of EPFO was presented before the committee. It was informed that as a proportion of the work of EPFO the litigation is minuscule. Be that as it may, the committee was informed that EPFO is actively engaged in further reducing litigation by:

1. Improving and automating claims settlement process specially pension calculation, providing facility of self-calculation of benefits. This is likely to reduce cases in consumer courts.
2. Identify early trend, **360°** analysis and grouping litigations with similar questions of law
3. Uniform replies, proper briefing of layers, deciding arguments, most effective team of advocates, timely replies and close monitoring

The committee was informed that in the recent past the Hon'ble Supreme Court of India has settled the issues in (i) Horticulture Experiment Station, Gonikoppal, Coorg Vs. RPFC **decided on 23-02-2022** holding that mens-rea it is not an essential element in levy of damages under Section 14B of the Act. (ii) The RPFC Vs. Vivekanand Vidyamandir and Others decided on 28-02-2019 permanently settling nature of allowances that form part of basic wages. (iii) Pension on higher wages and reconsidering decision in RC Gupta is now pending consideration before a three-judge bench. The decision will settle thousands of cases pending before various High Courts

The committee was informed that EPFO is preparing Legal Framework for EPFO including Standard Operating Procedure for handling cases in SC, HC, NCDRC, NCLAT, District Courts, CGITs and other fora, Contempt and stay orders, etc. Introducing Alternative Dispute Redressal (ADR) Mechanisms - Plea bargaining, Monitoring mechanism, operating LIMBS portal, trend analysis and strategy, briefings, nodal officers, task force, periodical reviews, workshops and training and internship arrangement and advocates' empanelment, fee management, opinions and performance evaluation.

On the specific issue of **litigation arising from recovery action** the committee was informed that presently there is no defined mechanism for appeal against recovery actions. All such cases are agitated before various High Courts. EPFO has adopted the Income Tax (Certificate of Proceedings) Rules 1962 as amended from time to time for the purpose of recovery management. The said rules contain a provision for internal appellate mechanism against recovery actions. Issue of instructions in this regard is being processed to further streamline the litigation management of such cases.

On the issue of **rationalization of damages**, it was informed that the present rates of damages were last revised in the year 2008. The committee members have recommended modification in the said rates. The committee considered that in line with the provisions in the Income Tax Act the rates of damages may be at one percent per month and not exceeding the amount of arrears. This is subject to further consideration.

The committee was informed that in the matter of withdrawal of prosecutions filed against employers the present instructions, which mandate that approval for such withdrawal shall have to be given by the Central PF Commissioner. These Instructions may be revised by delegating the said authority to Additional Commissioner in charge of Zones and subject to the condition that the default for which prosecution was launched has been made good and that there are no further assessed amount pending for recovery against the said establishment.

The committee was also informed that the Code on Social Security provides for composition of the first offence for which presently filing of prosecution is the only option in the EPF & MP Act. This provision would result in litigation related to prosecutions on various defaults. The Committee also desired that alternative dispute resolution mechanism such as plea bargaining etc. maybe explored for better management of such litigations.

The Committee was informed that the largest proportion of pending cases, about 23% relate to litigation arising out of assessments. It was proposed that following may be considered for reducing litigation related to assessments:

1. The functions of compliance administration and compliance judicial (assessments) should be separate and distinct to ensure that biases do not creep in, in the assessment process. Similarly the role of reporting default and representing EPFO in proceedings may be separated.
2. Regular and extensive training on reading and drafting legal documents, use of IT enabled tools for better compliance management and use of third party sources for compliance management.

Thereafter, members were invited to offer their observations. Following observations were made:-

Shri SK Sharma made following suggestions:

- On the specific issue of reducing employee threshold for coverage and increasing the wage ceiling as well as on the definition of excluded employees, Shri Sharma stated that all the issues are good suggestions for enhancing the coverage. However, he suggested that due to the prolonged Covid

pandemic and the ongoing Russia Ukraine conflict the industry, especially the industry having some linkages with international trade is in serious stress. He suggested that this may not be the right time to change the parameters for coverage and enrolment. Rather, the committee should focus on recommending measures to support the industry. This problem is especially acute for small scale industries and no additional financial burden be imposed on them. Shri Sharma reiterated his earlier recommendation of having separate contribution structure for small scale industries. He supported the proposal of mandatory lesser employer share and optional employee share for establishment between 10 to 19 employee strength which fall into small industries.

- Shri Sharma suggested that gig workers/platform workers should be administer through EPFO.
- On the issue of litigation Shri Sharma suggested that there should be pre litigation support for smaller establishments to help them navigate the legal landscape. The smaller establishments do not have the resources or the capacity to handle litigation. An internal appellate system and alternate dispute resolution mechanism including plea bargaining as inform by Shri Jag Mohan would be very helpful.
- On rationalisation of damages Shri Sharma suggested that the damages rate may be aligned with Bank rate. On interest charged under 7Q he suggested that the provision may be amended to state that the interest shall be 1% more than the interest being allowed on EPF balances for the relevant year. Further, once the rates are so rationalised an online system for automatic payment of interest and damages maybe put in place.
- On the prosecution matters Shri Sharma suggested for withdrawal of all KYC related prosecution without any precondition if the said KYC seeding has been completed specially because mandatory Aadhaar seeding legal provision in Code have been introduced in May, 2021 only and not earlier. Therefore earlier litigation have not legal standing.
- He supported the proposal to create an SOP for recovery purposes. He also supported the proposal to separate compliance and assessment functions, as well as better than regular training to assessing officers for standardising assessments.

Shri Dilip Bhattacharya made following suggestions:

- All eligible employees be enrolled in accordance with provisions of the EPF & MP Act, 1952.
- It is the experience that generally in any establishment there are about 20% permanent staff and about 80% on contractual employment. The problem of non-enrolment or evasion is mostly found in contractual employees, more so in labour intensive industries. Shri Bhattacharya suggested formation of monitoring committees at district and state level for regular monitoring of coverage. This committee, he further said should meet at least once every quarter.
- Wage ceiling an employee and threshold for coverage of EPFO should be aligned with ESIC.
- He again emphasised coverage and enrolment for Asha, Midday Meal and Anganwadi workers. The employer share in these cases should be paid by Central Government together with the concerned State Governments.
- He recommended taking stringent steps to ensure that unscrupulous employers deducting employee share from their wages and not paying to EPFO are dealt with severely.

Shri Michael J Dias made following suggestions-

- He agreed with in principle to the proposal to reduce the coverage threshold enhance the wage ceiling and modify the definition of excluded employees. However, he cautioned that the timing of the proposal may not be correct now in view of the acute stress being faced by the industry in view of pandemic and war situation recently caused due to dispute between Russia and Ukraine.
- On litigation management Shri Dias emphasised that the quality of assessments needs to be improved. For this purpose, he supported the proposal for separating compliance administration

and compliance assessment as also the proposal for regular legal training and use of its tools for better compliance management.

- He raised a specific issue of assessing officers being hesitant in allowing valid reliefs to establishments in assessment proceedings, fearing vigilance action. He requested that this aspect of fear of vigilance in the mind of assisting officers needs to be addressed for ensuring a fair and transparent assessments regime.
- He raised the issue of vacant position of Presiding Officers in almost 50% CGITs, which places establishments at acute disadvantage resulting in increase of writ petitions.
- Shri Dias raised the issue arising out of judgement of the Hon'ble Supreme Court in RPFV Vs. Vivekanand Vidyamandir and Others decided on 28-02-2019. He submitted that in all follow up cases where retrospective assessments are made, the establishments may not be fastened with the liability of paying damages as the default was not wilful. He requested that an agenda item in this regard may be placed before the Central Board for appropriate decision.
- He also raised the issue of having a standard operating procedure specifying time bound steps for surrender of exemption. He mentioned that there are cases pending for even more than 10 years.
- Shri Dias placed on record his appreciation on legal case management of EPFO, more particularly in pension related litigation. He suggested that legal case management instructions may be codified through administrative instruction for further improvement.

Shri Sougata Roy Choudhury could not participate due to connectivity issues. He was advised to send his response in writing for placing on record.

Concluding the meeting, the Central PF Commissioner advised that:

- a. Issues before the committee may be grouped in two broad categories, those where the committee agrees and those where there are some points of disagreement which require further resolution.
- b. On the proposal to increase coverage through greater use of technology Regional Committees for the states can be made nodal points for ensuring coverage.
- c. Enrolment of all employees up to the wage ceiling of Rs. 15,000 can be done immediately. Increasing the wage ceiling and linking it to any of the proposed metrics can be considered in near future.
- d. Rationalising the rate of damages and damages on retrospective assessments arising out of Vidya Mandir case can be reviewed for a fair resolution with legal examination.
- e. Standard operating procedure on surrender of exemption, is not a mandate of this committee. However, the committee was informed that the sub-committee on exemption is actively considering the matter and a draft for consideration of the members may emerge shortly.

CPFC thanked the members for their active participation and the Chairman for his continued engagement in spite of his busy schedule.

The Chairman put on record his appreciation for the members of the committee as well as the officials of EPFO for facilitating finalisation of recommendations.

The meeting ended with a vote of thanks to the chair.

5th Meeting of the Ad Hoc Committee on coverage and related litigation
Main Committee Room, Shram Shakti Bhawan,
Ministry of Labour and Employment, Government of India
Thursday 21st July 2022 at 9:15 am

The 5th meeting of the Committee was held under the Chairmanship of Shri Rameswar Teli, Hon'ble Minister of State, Labour & Employment. Following members attended the meeting:

1. Ms. Neelam Shami Rao, CPFC
2. Ms. Vibha Bhalla, JS(SS)
3. Sh. Dilip Bhattacharya, Member CBT, Employees' representative (through VC)
4. Sh. Michael Dias, Employers' representative (through VC)
5. Sh. Sougata Roy Choudhury, Employers' representative
6. Sh. S.K. Sharma, Employers' representative (through VC)
7. Sh. Hiranmay J. Pandya, Employees' representative
8. Sh. Sukumar Damle , Employees' representative

Following officers of EPFO were also present in the meeting:

1. Shri Jag Mohan, ACC(HQ) Compliance & Legal and Convenor of meeting
2. Shri Amit Vashist, RPFC-I
3. Sh. Manish Kumar Thakur, RPFC-II (Legal)
4. Sh. Abhishek RPFC-II (Compliance)

At the outset, CPFC greeted the members and informed the Committee that the meeting is being held to adopt the report of the Committee and deliberate on pending issues to arrive at a consensus recommendation.

With the permission of Chairman Shri Jag Mohan ACC HQ made a brief presentation on following issues:

- Background - Ad-Hoc Committee on Coverage & Related Litigation
- Recommendations of the Committee Approved by CBT – (12-03-2022)
- Legal Framework Document
- Report of the Committee
- Guidelines for withdrawal of prosecution
- Reducing employee threshold of coverage
- Modifying wage ceiling

After deliberations the following observations were made by the members: -

Shri Michael J Dias -

- Amendments be put in public domain for comments and suggestions.
- The cost of withdrawal of prosecution may not be imposed on the employer
- Undertaking need not be filed by the employer to comply with the statutory provisions for KYC
- No discretion be available to RPFCs for withdrawal of prosecution.

- Agreeing in principle to the proposal to reduce the coverage threshold and align the wage ceiling to an identifiable metric, he further stated that the timing of the proposal may not be correct now in view of the acute stress being faced by the industry.
- The quasi-judicial roles and the administrative roles of compliance should be separated.

Shri SK Sharma:

- He stated that all the issues are good suggestions however, he further stated that this may not be the right time to change the parameters for coverage and enrolment.
- The cost of withdrawal of prosecution may not be imposed on the employer and the undertaking need not be insisted upon.

Shri Dilip Bhattacharya:

- **Coverage:** (a) Ten workers as per ESIC Act (b) Wage ceiling: There shall not be any wage ceiling. Present wage ceiling Rs. 15,000/- per month is very much low at present consumer price index. This should be revised at present index number. Once covered under PF, membership shall be continued (Present ceiling of Rs 15,000/- per month shall be withdrawn).
- **Inspection:** Inspection of factory, establishment must be there. It is seen/found, examined that a worker is to be covered under PF but the management do not cover his worker, rather deprived Social Security, in PF, ESIC etc. The issue of coverage be seriously investigated, so that a worker cannot be deprived. This is also a violation of implementation of PF Act.
- **Litigation:** Aadhaar is a problem in Jute Industry and for such workers more time be given to complete Aadhar seeding. Worker should not suffer for no fault of his. Special camps be operated by EPFO together with employers and Government authorities concerned to facilitate Aadhar seeding.
- Quarterly meeting at Regional level should compulsorily monitor this vital, significant issue.

Shri Sougata Roy Choudhury:

- **Coverage:** Threshold should be reduced to 10 to extend the coverage and membership base. Given that the main impact will be on Micro & Small enterprises, the coverage should only be for the employees' contribution. This will ensure compliance by smaller units and will encourage formalization.
- **Ceiling:** CII agrees in principle to raise the wage ceiling; however, it is suggested given the business impact due to COVID we keep the ceiling 15,000 till March 2024. In the interim, Ad hoc Committee may discuss and decide on methodology on enhancement.
- **Litigation:** Cost not to be imposed for the first-time violation.

Shri Sukumar Damle:

- He pointed out that as stated in the executive summary the contributing establishments are about 6.5 Lakhs and contributing members are 6.5 crores therefore, the average employees per establishment comes to 100 employees which in his opinion is quite high.
- He supported the proposal of bringing down the threshold limit to 10 employees and enhancing the wage ceiling at par with ESIC.

Shri Hiranmay Pandya:

- He supported the proposal to reduce the threshold to 10 employees.
- More deliberations can be done on the wage ceiling issue, but the committee should present concrete recommendations before the CBT.

Ms Vibha Bhalla, JS (SS) MoL&E:

- She stated that the withdrawal of prosecution be considered only for KYC issues and not for returns. She further stated that once a policy issue is being taken for withdrawal of KYC related prosecution then costs and undertaking in this regard from the employers not be taken.

The **Central PF Commissioner** apprised the Committee about the strategy and timelines for implementation of various recommendations of the Committee. Summarizing the deliberations of the Committee the CPFC stated that :

- The convener of the Committee should circulate the draft Legal Framework and report of the Committee and requested the member to send their written comments, if any by 23-07-2022
- The executive summary of the report of the Committee was presented and the same was approved by the Committee.
- There was an agreement to reduce the threshold of employees to 10 and identify a suitable metric for specifying the wage ceiling.
- **CPFC** made a special reference for capacity building of legal human resource through suitable training and technical enhancements and apprised the Committee that EPFO has consulted National Law University Bangalore for engaging young professional law graduates from top ten government law colleges of India. An agenda for the same is being place before CBT.

Concluding the meeting the Chairman put on record his appreciation for the members of the Committee for their active participation and recommendations. The Chairman further approved the withdrawal of prosecution pertaining to KYC issues without any cost to the employer with the condition that, an undertaking should be taken from the concerned employers to comply with the statutory provisions for KYC.

The meeting ended with a vote of thanks to the Chair.

Tabled Item 26:**Recommendations of the Ad-hoc Committee on Coverage & Related Litigation**

The issues related to Coverage and related litigation came for up discussion in the 229th meeting of CBT, EPF. Chairman CBT EPF directed constitution of a Committee for detailed deliberations on this issue. Accordingly, the Committee was constituted vide orders dated 27th November 2021. The terms of reference of the committee were to give suggestions for:

- wider coverage of membership under EPFO in view of Social Security Code and;
- steps to reduce litigation.

The Committee has the following constitution:

Chairman	Minister of State for Labour and Employment
Vice-Chairman	CPFC (ex-officio) Government's representative
	1. Joint Secretary (SS), Ministry of Labour and Employment 2. Joint Secretary & Director General Labour Welfare, Ministry of Labour and Employment
Employees' Representatives	1. Shri Hiranmay J. Pandya 2. Shri Ramendra Kumar 3. Shri Dilip Bhattacharya
Employers' Representatives	1. Shri Michael Dias 2. Shri Sougata Roy Choudhury 3. Shri S. K. Sharma
Convener	Additional Central PF Commissioner (HQ) Compliance

The orders advised the Committee to present its recommendations within three months before the Central Board, EPF. Further, Chairman of the Committee was authorised to co-opt or invite any person as special invitee during the proceedings of the Committee. The orders constituting the Committee state that the Committee will stand dissolved after submission of report, unless extended by CBT.

The Committee held four meetings in Shram Shakti Bhawan, New Delhi :a) First meeting of the Committee was held on 10-12-2021

b) Second meeting of the Committee was held on 06-01-2022.

c) Third meeting of the Committee was held on 31-01-2022.

Chairpersons of Regional Committees for the states of Maharashtra, Tamil Nadu, West Bengal and Haryana joined the meeting as special invitees.

d) Fourth meeting of the Committee was held on 07-03-2022.

A presentation summarizing discussions of the Committee was placed before the CBT, EPF on the first day of its 230th meeting on 11-03-2022. After deliberations, Chairman CBT, EPF advised that the ad-hoc Committee present, such of its recommendations on which there is consensus in the ad-hoc Committee before the Central Board on second day of the 230th meeting on 12-03-2022 for consideration and approval. The Chairman further, advised the Central PF Commissioner to chair a meeting of the committee to finalise

the agenda item for consideration of the Board. Accordingly, members of the ad-hoc Committee met at 9:15 PM on 11-03-2022 for finalizing its recommendations. After deliberations the Committee decided to unanimously recommend following for consideration and approval of the Board:

1. The Committee unanimously agreed that to **ensure universal social security coverage**, all employees should become members of Employees' Provident Fund Scheme and Employees' Deposit Linked Insurance Scheme upto the wage ceiling. However, such members shall be required to statutorily contribute to the Employees' Provident Fund only upto the wage ceiling.

Proposal: The proposal is submitted to the Board for consideration and approval.

2. The Committee unanimously agreed that there is a **need for social security by extending benefits like Provident Fund, Pension and Insurance to the Gig and Platform workers**, who are out of any statutory social security protection. However, these workers are not governed by employer – employee relationship. Therefore, the committee decided to recommend extension of social security protection to these workers in accordance with Chapter IX of the Code on Social Security 2020 through EPFO, which has vast experience in administration of social security, with suitable enhancement of capacity building, infrastructure, and manpower. The Code on Social Security [Section 13] provides for assigning additional functions to a Social Security Organisation including administration of any other Act or scheme relating to social security subject to such provisions as may be specified in this behalf in the notification. The Committee, therefore, recommends that the Central Government may frame and assign administration of such Schemes to EPFO.

Proposal: The proposal is submitted to the Board for consideration and approval.

3. The Committee noted that the Regional Committees are assigned various roles as per EPF Scheme 1952. Further, as per existing provisions of EPF Scheme 1952 (Proviso to Para 11(1) of EPF Scheme 1952), Regional Committees are required to meet at least twice in each financial year. To ensure enhancement of coverage through stronger monitoring system, there is need for sharing and review of coverage data district wise and data analysis. Therefore, the Committee recommends that the Regional Committees should be scheduled by a fixed calendar and meet more frequently having standing agenda on coverage and litigation. The Committee recommends that Proviso to Para 11(1) of EPF Scheme 1952 may be amended to state that Regional Committees shall meet at least four times every year. The Committee proposed that the word “twice” in Proviso to Para 11(1) of EPF Scheme 1952 may be replaced by the expression “four times”.

Proposal: The proposal is submitted to the Board for consideration and approval.

4. The Committee unanimously agreed that EPFO shall prepare a comprehensive Legal Framework, which should describe Standard Operating Procedures for litigation management pertaining to the Supreme Court, High Courts, Consumer Courts, NCLT/NCLAT, CGITs, CAT and other legal fora. The legal framework shall also address the steps to reduce litigation through Alternate Dispute Redressal (ADR) system. Therefore, the committee recommends that EPFO should bring out a policy for ADR including Plea bargaining. It shall also establish an objective methodology for performance evaluation of panel advocates and address the issues relating to timely empanelment, fee management etc.

Proposal: The committee propose that EPFO should present legal framework before the CBT EPF in its next meeting.

5. The committee noted that several Prosecutions are going on in respect of default for non-filing of returns and non-submission of KYC. The Committee recommends that the Board may consider the proposal to review the cases to withdraw Prosecutions related to non-filing of returns and/or non-submission of KYC.

Proposal: The proposal is submitted to the Board for consideration and approval.

6. The Committee noted that a large amount of litigation arises due to **levy of damages**. The Committee recommended that rates of damages may be rationalized in accordance with current practices.

Proposal: The proposal is accordingly submitted to CBT EPF for consideration and approval.



**Minutes of the 230th Meeting of The Central Board of Trustees (EPF)
Held on 11th (02:00 PM) & 12th March 2022 (09:30 AM)
at Guwahati, Assam**

The 230th meeting of Central Board of Trustees (CBT), EPF was held on 11th (02:00 PM) & 12th March 2022 (09:30 AM) at Guwahati, Assam under the Chairmanship of Shri Bhupender Yadav, Hon'ble Union Minister for Labour & Employment & Chairman, CBT (EPF) in the presence of Shri Rameswar Teli, Hon'ble Minister of State for Labour & Employment & Vice Chairman, CBT (EPF), Shri Sunil Barthwal, Secretary (Labour & Employment) & Co-Vice Chairman, CBT (EPF) and Smt. Neelam Shami Rao, Central PF Commissioner (CPFC) & Member Secretary, CBT (EPF). List of attending members is at Annexure A. The Hon'ble Labour Welfare Minister, Government of Assam was briefly present for introductory welcome for the CBT meeting on 11th March 2022.

- 2) CPFC welcomed Hon'ble Chairman, both Vice-Chairmen, Hon'ble Labour Minister of Assam and Members of CBT to its 230th meeting.
- 3) Chairman welcomed members to the 230th meeting of the CBT being held in Guwahati. He emphasised that the meeting was spread over more than one day to ensure ample time for members to provide valuable inputs during deliberations. He recalled that in the previous meeting, four Ad-hoc committees were formed to address the issues of the core functional areas of EPFO and recommend the way ahead. These four committees would make their presentations on the first day (11.03.2022), to be followed by discussion by all the CBT members. He then requested CPFC to initiate the proceedings.
- 4) Presentation and Observations on Ad-hoc committee on Coverage & related litigations**
 - 4.1 CPFC made a brief presentation summarising the deliberations during four (04) meetings of the Ad-hoc committee on Coverage and related litigation which was chaired by Hon'ble Minister of State for Labour & Employment. The sub-committee deliberated on wider coverage of membership under EPFO in view of social security code and steps to reduce litigation. The key points of the presentation were:
 - A robust information system & IT enabled inspections are needed for enhancing coverage. The same may be achieved through stronger & frequent regional committee meetings; big data analysis; intelligent ECR systems & moving towards faceless compliance mechanism.
 - Universal social security coverage by enrolling all employees as EPF members and contributing upto the current wage ceiling. Increase in the wage ceiling was also discussed though constraints regarding timings were highlighted by the members as well as the challenges of finance were also discussed.
 - The committee also discussed and agreed to enhance EPF Act to align with ESI establishment and wage threshold with the timings for implementation to be considered at later stage and not immediately. It also deliberated on the need of linking wage ceiling to an identifiable metrics.
 - Separate Scheme for providing PF, Pension, and Insurance like benefits, to be administered by EPFO, may be framed for Gig and Platform workers after mitigating organisational challenges of EPFO.
 - Threadbare analysis of legal landscape and pendency analysis of court cases was undertaken, necessitating need for a robust legal framework for EPFO along with its broad contours and currently adopted recent strategic approach of EPFO.
 - The other factors for reducing litigations need rationalisation of damages; prosecution withdrawals; litigation recovery action; enhancing the quality of quasi-judicial assessments capacity building by providing regular training to the officials; separating the functions of compliance administration and quasi-judicial assessments.

4.2 Thereafter, Chairman invited members to give their observations on the presentation. Following observations were made by members:

- i) Shri Hiranmay J Pandya suggested to have a mechanism to ensure faster settlement of legal cases.
- ii) Shri R. Karumalaiyan requested that the issue of universal coverage may also be consulted with all the central trade unions. He stated that the enforcement mechanism which is the spirit of the law may not be diluted in the name of ease of doing business. He was of the view that there should be a balance between ease of doing business and ensuring social protection for workers.
- iii) Shri Dilip Bhattacharya suggested that this committee should continue to oversee the vital activity of default by establishments. Also, to reduce evasion by establishments, provisions for inspection may be decentralised by empowering field offices to inspect establishments. The coverage threshold and wage ceiling for EPFO and ESIC should be similar. He requested that a litigation monitoring mechanism may be developed.
- iv) Shri Michael Dias highlighted the requirements of addressing separation of powers of compliance machinery, sound dispute resolution mechanism, coverage of gig worker etc, universal coverage by covering all employees of an establishment upto a wage limit, issues relating to the waiver provisions for 14B especially after invalidation of mens-rea for such waiver by Hon'ble Supreme Court in its recent judgement.
- v) Shri SK Sharma emphasised the need to revisit schedule of rates of penal damages u/s 14B. He mentioned that approximately 50% of the Central Government Industrial Tribunals do not have a Presiding Officer and requested that appointments to these vacant positions be made expeditiously.
- vi) Shri Sougata Roy Choudhury stated that although reducing the employment threshold to 10 employees is a good step, but the extra burden on establishments in post-COVID scenario may not be advisable right now. He suggested appointment of an Ombudsman for minimising litigation so that establishments may approach him before initiating litigation.
- vii) Shri Harbhajan Singh Sidhu raised the issue of evasion in respect of contractual workers working in state governments/ state government entities. He stated that inspection provisions are totally stalled in the name of ease of doing business. He also raised the issue of severe staff shortage, which is resulting in low recoveries by EPFO.
- viii) Shri K.E. Raghunathan suggested that wage ceiling for EPF contributions may be raised to ₹25,000 per month. On the issue of reduction of threshold for coverage, he opined that this may lead to operational difficulties for small establishments. He further suggested to constitute a committee for pre-litigation examination of common issues of litigation.
- ix) Shri Anupam Malik endorsed the recommendations of the committee. He, however, desired that timelines for implementation of recommendations may be defined, giving due consideration to the stress being faced by establishments on account of Covid Pandemic and Russia Ukraine conflict. He suggested that a mechanism of data sharing by concerned authorities with EPFO may be developed for better administration of the Act.
- x) Shri Sukumar Damle suggested that arbitration and plea bargaining will reduce litigation workload on EPFO, and that MSME should be sensitised to ensure compliance.
- xi) Shri Ashish Wig mentioned about delays in filing of statutory returns especially by small employers. He requested facilitation of such employers in filing of returns to reduce litigation on this account.
- xii) Shri Prabhakar J. Banasure and Shri Sunkari Malleshram recommended strengthening and decentralisation of inspection systems and procedures to curb evasion and improve coverage.

- xiii) Shri Govind Lele pointed out that the rate of contribution @12% is too high for small establishments and needs to be rationalised. He suggested that in accordance with recommendations of ILO, there should be a separate code for MSMEs. He proposed that the criminal provision may be removed from the EPF & MP Act. He further stated that the provisions of Insolvency and Bankruptcy Code are not available to MSMEs/Proprietary firms, and requested that similar mechanism may be developed for them. He suggested that wage ceiling could be linked to the direct tax rate, and that all labour laws should have uniform definition of wages.

5) Presentation and Observations on Ad-hoc committee on Human Resources/Establishment Matters

5.1 CPFC made a presentation summarizing the deliberations during four (04) meetings of the Ad-hoc committee on Human Resources/Establishment matters which was chaired by Hon'ble Minister of State for Labour & Employment. The key points of the presentation were:

- Stakeholders from AIEPFSSF, AIEPF Sangh, EPFOOA and EPF SC/ST Federation were heard.
- Identified HR issues in Gr. 'B' & 'C' Cadre and highlighted the mitigation/proposed solutions for resolutions of these issues.
 - (i) Section Supervisor, LDCE result pending since 2019, was declared for 864 candidates from 25.01.2022.
 - (ii) Issues pertaining to timely promotions and NFU of EO/AO, dying cadre of DPA/DEO, JE, stagnation at SSA level, lack of promotional avenues for staff car drivers were presented and the proposed solutions by relaxation of existing RRs, reducing eligibility service, issuing/seeking clarifications, recruitment, and deputations were highlighted.
 - (iii) Agenda item for relaxation of eligible service to five staff car drivers (Grade-II) being placed in the CBT.
- Proposed scope and methodology for Job analysis and work study for assessment of requirement in view of computerization project 2.01 and 2.02 of EPFO. The study is to be conducted by an agency chosen from top ten (10)
- NIRF rated academic institutions. A Selection Committee consisting of 3 senior officers of EPFO and 1 nominee of Director General, V. V. Giri National Labour Institute has been constituted to finalise an agency.
- Proposed a training policy and capacity building plan for the current and future challenges by :
 - (i) Imparting futuristic training to EPFO officials in line with Mission Karmayogi of Capacity Building Commission.
 - (ii) Developing a policy for capacity building of trainers.
 - (iii) Competency profiling of each official and regularly identifying competency gaps.
 - (iv) Strategic tie-ups with premier national and international institutions like ITC-ILO, ISSA, VVGNLI, IIMs.
 - (v) Developing a policy for matching competencies with role requirements to ensure placement of the right person at the right place & right time
 - (vi) Career progression planning enabling developing of experts in various domains by ensuring stage wise incremental learning
 - (vii) Fixing minimum training at 3% of man days and 3% of salary budget. (viii) Real time monitoring tools enabling timely training interventions to improve performance and enhance capacity

- (ix) Feedback mechanism, counselling and mentorship to enable change of role to improve outcomes
- The salient features of the draft transfer policy for Group-B/C officials prepared by reviewing systems of other similar organization were highlighted:
 - (i) The fundamental premise of transfer policy are fairness, objectivity & transparency.
 - (ii) The policies borrows various provisions & contours from other Govt. Departments, other cadres and also the State Governments like Haryana.
 - (iii) All postings categorised under concept of tenure (time-span, geographic, nature) to develop a pool of officers that are well exposed & experienced.
 - (iv) Use an objective & technology enabled objective mechanism for transfers.
 - (v) Career pathways of officers are developed to fulfil the Organizational goals.

5.2 Thereafter, members were requested to give their suggestions.

- i) Shri Harbhajan Singh Sidhu observed that MACP benefits should be admissible from the due dates along with financial benefits. Further, whenever promotions are delayed due to administrative grounds, benefits should be available from due dates. He raised the issue of compassionate appointments, especially in cases where employee deaths have occurred due to Covid related complications, and urged that compassionate appointments be made in relaxation of extant rules. He also desired that cultural/sports activities suspended for last 2 years be restarted and adequately funded to encourage employee participation. He also raised the issue of punitive transfers of employees who had participated in employee agitations, and requested for their reversal.
- ii) Shri Sunkari Mallesham requested that due to increasing workload the sanction of staff need to be reviewed urgently and additional work parameters may be included in the norms for sanction of staff. He also suggested that District Offices of EPFO may be upgraded to the full-fledged status of Regional Offices. He further submitted that there is acute stagnation in the cadre of EO/AO and requested that sufficient posts may be created for their promotion.
- iii) Shri Anupam Malik stated that retrospective promotions be allowed if delay is not attributable to employees. Further, promotion and training calendar should be specified to ensure timelines are honoured. Transfer policy should be so framed that disruptions in personal and family life of employees are minimised.
- iv) Shri Hiranmay J. Pandya submitted that regular recruitment may be done to ensure timely filling up of vacancies.
- v) Shri Govind Lele stated that training, and transfer policy should have correlation with requirements of stakeholders.
- vi) Shri Prabhakar J. Banasure stated that officials in Group B & C cadres should have sufficient opportunities for promotion. Further, there should be fast track channel for merit-based promotions also. Stagnation in EO/AO cadre needs attention. He emphasised that there should be a more humane policy for appointment on compassionate grounds.
- vii) Shri Sukumar Damle raised the issue of punitive transfer of six office bearers of staff unions and requested Chairman to reverse the same. He suggested that for handling litigation related to service matters, a committee consisting of representatives of employers and employees in CBT may be constituted to resolve such matters.
- viii) Shri R. Karumalaiyan seconded this proposal of Shri Sukumar Damle. He desired that infrastructure in all offices of EPFO should be strengthened, and that there should be a mechanism for regular interaction with staff unions and officers' association.

- ix) Shri Michael Dias submitted that physical infrastructure for all offices should be strengthened, and it should be benchmarked to the best standard available. He further suggested that greater use of information technology should be factored in to complement HR resources while considering the issue of sanction of officers and staff.
- x) Shri Dilip Bhattacharya suggested that as EPFO's work area is poised for major growth, sufficient provisioning for manpower should be done.

6. Presentation and Observations on Ad-hoc committee on IT & Communications

6.1 CPFC made a presentation summarizing the deliberations during seven (07) meetings of the Ad-hoc committee on IT and Communications which was chaired by Secretary for Labour & Employment. The key points of the presentation were:

- The key challenges of the existing IT infrastructure are slowness of system, absence of facilities, cumbersome processes and lack of communication campaign for which the root cause analysis was undertaken.
- A comparison of the IT infrastructure in EPFO was done with IT infrastructure available in GSTN, Income Tax and SBI. The absence of critical technical partners for Project Management Consultant (PMC), User Acceptance Testing (UAT), Data Analytics and in governance structure for IT policy, old HR structure & training, Change Management and Standard Operating Procedures (SOPs) were highlighted.
- The IT manpower, Hardware and Annual Budget of EPFO was compared with those of SBI. It was highlighted that for maintaining around 02 times of EPFO's account, SBI has 10 times IT manpower, 200 times DB Server, 9 times Storage and 30 times budgetary support.
- Short-term, Medium Term and Long-Term action plans were proposed for the addressing the Slowness, Business Process Re-engineering (BPR) of field office application and improving IT Governance apparatus along with 15 point interventions.

6.2 The members were then requested to offer their comments on the presentation.

- i) Shri Hiranmay J. Pandya supported the need for urgent augmentation of IT infrastructure and stated that sufficient budget provision may be made for the same. He stated that IT should have future planning for at least next 5 years so that no intermediate operational issues arise.
- ii) Shri K.E. Raghunathan emphasised the limited window of time available for EPFO to revamp and augment its IT infrastructure. More importantly, it has to be ensured that there is no disruption of current operations. He emphasised the need to ensure data protection and augmentation of cyber security. He mentioned that in near future, a large number of members are poised to move from informal to formal economy, and the IT infrastructure has to be designed accordingly. He suggested that EPFO needs to decide fast and make provisions accordingly.
- iii) Shri Prabhakar J. Banasure suggested regular system audit to identify gaps and initiation of necessary action. He further suggested that IT manpower needs to be strengthened immediately.
- iv) Shri Govind Lele submitted that the proposed activities are essentially required for better functioning of EPFO and requested to approve the same irrespective of financials involved.
- v) Shri Sukumar Damle, while appreciating the presentation, stated that provisions should be made for stakeholders who are not very IT savvy but will be required to interact with the IT enabled systems of EPFO. Shri R. Karumalaiyan seconded this.
- vi) Shri Anupam Malik emphasised the need for very strong layer of cyber security. He stated that once we centralise the database and move towards app-based access for our services, the vulnerabilities associated with Android will also have an impact on our cyber security infrastructure.

- vii) Shri Michael Dias, Shri SK Sharma, Shri Ashish Wig, Shri Sunkari Malleshram and Shri Dilip Bhattacharya stated that the recommendations of the sub-committee be accepted and implemented on priority. Full financial support be extended as required, as it will directly benefit all stakeholders.
- viii) Shri Harbhajan Singh Sidhu, supporting the recommendations, stated that strengthening of IT should not result in retrenchment of existing staff. Rather, as EPFO workload increases, more employees have to be recruited.
- ix) Representatives of state governments of Telangana and Gujarat stated that the proposed IT infrastructure should have provisions for handshake with IT systems developed and maintained by respective state governments.
- x) Shri Sougata Roy Choudhury submitted that there is urgent need for having a project management committee to oversee the changes being proposed by the subcommittee.

7. Presentation and Observations on Ad-hoc committee on Pension Reforms

- 7.1 CPFC made a presentation summarizing the deliberations during seven (07) meetings of the Ad-hoc committee on Pension reforms which was chaired by Secretary for Labour & Employment. The key points of the presentation were:

Sustainability of EPS 95 is a cause of concern. The design of EPS provides little flexibility though increase in minimum service period from 10 to 15 years may lead to enhancement of benefits upto 33 percent. Enhancing minimum service period or self-contribution is fraught with challenges of applicability of Act and government contributions. Exploring different investment pattern may be one of the plausible options.

A new Universal Pension Scheme may be considered in view of the clarion call of Hon'ble Prime Minister on universal social security and global trends, to cater to those not covered under EPS 95 including Gig workers and self-employed persons. The Universal Pension may include provisions for minimum pension of ₹ 3000 which requires a corpus of approx. ₹ 5.4 lakhs with over 15 years of service. Most countries have defined contribution and have shifted from defined benefit plan. Defined contribution pension scheme allows individual accounting and amounts proportionate to the savings.

- 7.2 The Chairman then requested members to offer their comments.

- i) Shri Harbhajan Singh Sidhu stated that the average wages on which contribution is received is between ₹8000 to ₹9000 per month. Prior to September 2014, contribution to EPS '95 on wages above the specified wage ceiling was allowed, and it should be restored. He also stated that EPFO being a service provider should not enter into litigation with its pensioners. He raised the issue of workers, especially those in gig and platform sectors where enforcement of minimum wages itself is a problem. Additionally, identifying employer employee relationship in such cases will be problematic. He suggested that there should be a separate pension scheme other than EPS 1995 for such workers. He requested Chairman to take up with the Government of India to increase government's share of contribution in EPS 1995 for ensuring higher pension. He also mentioned that monthly pension being given by many state governments are far above the minimum pension under EPS 1995.
- ii) Shri Prabhakar J. Banasure supported Shri Harbhajan Singh Sidhu's views and stated that the projected actuarial deficit in EPS 1995 needs to be discussed in detail with all Central Trade Unions and requested Chairman to convene a meeting accordingly.
- iii) Shri Ashish Wig stated that public outreach to explain benefits of EPS 1995 to members should be further enhanced. He suggested that no withdrawal benefit be allowed from EPS corpus, and voluntary contribution to EPS 1995 be disallowed. He also stated that pattern of investment for EPS corpus should be different, to account for special pay-out requirements.

- iv) Shri Hiranmay J. Pandya informed that more than 95% pensioners are drawing pension less than ₹3000 per month. He stated that post-retirement, health coverage is essential. He requested Chairman to explore whether medical coverage under Ayushman Bharat scheme can be extended to pensioners under EPS 1995. He suggested that pension available to EPS 1995 member should be at least 50% of last wages drawn by the member. Shri Sunkari Mallesham, Shri R. Karumalaiyan and Shri Sougata Roy Choudhury supported this suggestion.
 - v) Shri Govind Lele stated that the presentation indicates that almost 40,00,000 people exit the pension scheme every year. This needs to be studied for ensuring necessary correctives. He suggested that pensionable service may be increased to 15 years and entire employer share of contribution i.e. 12% should be deposited in EPS 1995.
 - vi) Representatives of the state governments of Telangana, Andhra Pradesh and Delhi suggested that schemes run by respective state governments can be studied to explore if all resources of Central Government, state governments and employer contributions etc can be pooled to ensure better pension for the beneficiaries.
 - vii) Shri Sukumar Damle questioned the actuarial projection of loss in EPS 1995, especially as the actuarial report itself states that only 5% data is reliable for making projections. He suggested that the assumptions which form the basis of actuarial calculations, need to be reviewed afresh based on the data available with EPFO for last 10 to 15 years. He reiterated the demand of trade unions to increase the minimum pension to ₹7500 per month. He further submitted that the government contribution to EPS 1995 may be enhanced to 8.33% of wages.
 - viii) Shri Anupam Malik also questioned the projected actuarial loss to the fund and suggested its review by the Board. With the enactment of the Code on Social Security, it is essential that resources from central and state governments as well as employers etc are pooled together to provide decent amount of pension to beneficiaries. The Covid pandemic has highlighted the need for Social Security and CBT must respond to this need by ensuring wider coverage.
 - ix) Shri K.E Raghunathan stated that we are caught between the conflict of “means and needs”. More than 95% pensioners are drawing pension less than ₹3000 per month. To provide ₹2000 per monthly additional pension to such pensioners, additional amount required would be ₹16,000 crores. He questioned the projected actuarial deficit of ₹37,000 crores and requested that the actuarial assumptions be revisited.
 - x) Shri Michael Dias stated that EPFO needs to frame nimble and agile scheme for all sectors. He stressed upon the need to reduce EPF contribution and enhance the EPS 1995 contribution.
 - xi) Shri Dilip Bhattacharya emphasised the urgent need to enhance minimum pension. He further stated that the pensionable salary for calculation of pension should be average of last 12 months, and not 60 months as at present. He desired that defined pension benefits scheme should continue. He appreciated the effort of EPFO wherein through PRAYAS, pension benefits are being disbursed on the date of retirement. He requested that government contribution to EPS 1995 be increased for enhancing pension benefits. He also supported the demand for extending medical cover to EPS 1995 pensioners through Ayushman Bharat scheme. He suggested that central and state governments should sit together to enhance the government contribution for improving the pension benefits.
 - xii) Shri SK Sharma submitted that withdrawal benefits under EPS 1995 may be stopped. There should be a public outreach program to educate about the benefits of pension over premature withdrawals.
- 8) Concluding the deliberations on four (04) Ad-hoc committees, Chairman appreciated the efforts put in by all the four sub-committees. He advised that such of those recommendations of the sub-committees, on which there is a consensus be placed in the next session of CBT EPF, the next day i.e.

12-03-2022, for consideration and approval by the Board. Further, for resolving the issues on which consensus is yet to be arrived at, he desired to meet each of the subcommittees separately to take a final decision.

- 9) The Chairman appreciated inauguration of Mahila help desk in select offices of EPFO in Azadi ka Amrit Mahotsav (AKAM) celebrations.
- 10) Referring specifically to HR matters, he advised that necessary action for capacity building and finalization of recruitment rules as well as further recruitments to strengthen the organization may be taken expeditiously. The Chairman stated that organizational restructuring may be undertaken on priority to resolve major HR issues. Further, he advised that capacity of the organization needs to be enhanced on priority.
- 11) The Chairman informed the Board that government is integrating the labour landscape with a view to ensure continuity of benefits across various spells of employment informal as well as formal sector. He referred to registration of 26.71 crore numbers on the e-shram portal. The chairman also informed about "donate a pension initiative" of the government, where any individual can contribute to the pension membership of at least one person. He informed that he has himself done so in his personal capacity and requested the Board to take up the initiative in such a way that "donate a pension" becomes a national movement.
- 12) The Chairman stated that it is the belief of the Government to promote the labour landscape in a harmonious and cooperative way through the tripartite governance structure of the Central Board EPF. He emphasised the need for the Board to meet at least once every quarter in different locations across the country. He announced that the next meeting of the Board will be held in Bengaluru in last week of June or first week of July 2022.
- 13) The Agenda Items were taken up for deliberations on the second day [12.03.2022 (09:30AM)]:

Item No. 1: Confirmation of minutes of the 229th meeting of the Central Board (EPF) held on 20.11.2021.

The Board confirmed the minutes of the 229th meeting.

Item No. 2: Action Taken Statement in respect of decisions taken in the CBT meetings held upto 20.11.2021 (229th CBT meeting)

Chairman directed to convene meetings of three standing sub-committees of CBT, EPF in the next month.

The ATR at Sl. No. 2 may be dropped. The issue reflected in Sl. No. 4 may be discussed with the CBDT. Chairman directed that updated action taken on ATRs at Sl.No. 7,8 and 9 may be provided in the next CBT.

The Board took note of the action taken.

Item No. 3: Minutes of meetings of the Committees of the Board.

The Board took note of the information placed before it.

Item No. 4: Proposal for filling vacancy in Exempted Establishments' Committee (EEC)(Non-Statutory Committee)

The Board authorised Chairman to nominate a member to fill the vacancy.

Item No. 5: Status note on litigations in Hon'ble Supreme Court on Higher Pension Cases

The Board took note of the information placed before it.

Item No. 6: List of ineligible cases for waiver of damages rejected by CPFC

The Board took note of the information placed before it. Shri Govind Lele informed that facility of waiver of damages is not available to the Small Scale Industries/Proprietary Concerns which are not registered with

Registrar of Companies (ROC) and to whom the BIFR/IBC doesn't apply. He requested the Chairman to provide for waiver of damages for such establishments as they are under stress. Shri Michael Dias also requested to widen the ambit of the establishments eligible for waiver of damages. Chairman, CBT desired to discuss this matter separately.

Item No. 7: Revised Estimates for the year 2021-22 and Budget Estimates for the year 2022-23 for EPFO and Schemes administered by EPFO

The proposal contained in the agenda was approved.

Item No. 8: Audited Annual Accounts in respect of Employees' Provident Fund Scheme, 1952, Employees' Pension Scheme, 1995 and Employees' Deposit Linked Insurance Scheme, 1976 for the financial year 2019-20

The proposal contained in the agenda was approved.

Item No. 9: Transfer of the unclaimed amounts and Utilisation of Fund under Senior Citizen Welfare Fund Rules, 2016

CPFC informed that as per the provisions of the Finance Act 2016, a Senior Citizen Welfare Fund (SCWF) is to be created by Government of India for the welfare of Senior Citizens in line with the National Policy on older persons and the National Policy on senior citizens. As per instructions of the Government, all unclaimed funds will be brought under the purview of SCWF.

Secretary (L&E) informed that efforts were made that instead of transferring the EPFO amount to the general fund, it may be utilised for the welfare of EPFO members. Therefore, a revised MoU with Department of Economic Affairs, Ministry of Finance was prepared, committing Rs. 100 crores for transfer to SCWF for welfare of senior citizens who are pensioners of EPS.

Secretary (L&E) also informed that the matter was discussed in the 101st meeting of Executive Committee (EC) and its members were of the view that a generalised scheme catering to all pensioners may be drafted, as the proposed scheme for utilisation of SCWF is catering to only small number of pensioners.

Chairman, CBT observed that EPFO should strive to make all accounts be identifiable and maintain them digitally and thereafter, this can again be deliberated.

Shri R. Karumalaiyan observed that the funds maintained by EPFO should be excluded from the purview of SCWF.

The Board directed to place it before the Pension Implementation & EDLI Committee (PIEC), a standing sub-committee of CBT.

Item No. 10: Extension of tenure of External Concurrent Auditor and Custodian till 31.03.2022

The proposal contained in the agenda was approved.

Item No. 11: Extension of Tenure of ETF manufacturer of SBI MF & UTI MF till 31.03.2022

The proposal contained in the agenda was approved.

Item No. 12: Redemption of Non-Convertible Debentures (NCDs) of Air India on its Disinvestment

Shri K.E. Raghunathan appreciated efforts made by MoLE & EPFO officers to prevent losses due to early redemption of the NCDs of Air India on its disinvestment. Shri Harbhajan Singh Sidhu and Shri Michael Dias requested to analyse the impact of taking Air India employees on board, on the Pension Fund. Secretary informed that employees of Air India are earning more than ₹15000 and hence are not eligible to be members of Employees' Pension Scheme, 1995 so there is no impact on the Pension Fund on their joining EPFO. He further emphasised that even if an Air India employee with wages less than ₹15000 joins EPFO, he will be eligible for benefits only from the date of joining.

The Board commended the efforts and approved the proposal contained in the agenda.

Item No. 13: Exit Policy and Standard Operating Procedure (SOP) for exiting from downgraded Securities in EPFO portfolio

Shri Govind Lele suggested that the SOP should also include the handling of the downgraded securities in the Double Entry Accounting System.

The Board took note of the information placed before it.

Item No. 14: Investment Options for Meeting and prescribed range under Category-II of the Pattern of Investment

The Board took note of the information placed before it.

Item No. 15: Delegation of power to Central PF Commissioner (CPFC) for approval of exercising early redemption options (Put and Buyback) on securities purchased by EPFO

The Item was withdrawn.

Item No. 16: Realization of Capital Gains from equity investments

The Board took note of the information placed before it.

Item No. 17: Investment in 3rd tranche of Bharat Bond ETF - April 2032

The Board took note of the information placed before it.

Item No. 18: Information to be placed before the Central Board in accordance with Para 23 of the EPF scheme.

The Board took note of the information placed before it.

Item No. 19: Status of promotions given to Group B and C officials and posts filled through Direct Recruitment in Group B and C during the year (27.10.2021 to 24.02.2022)

Members of the CBT lauded Chairman for assigning priority to resolve issues relating to the staff. Shri Harbhajan Singh Sidhu requested that benefits may be given to the staff from the date of eligibility as the same has been delayed due to administrative issues. Shri Prabhakar J. Banasure and Shri Hiranmay J. Pandya requested that the recruitment/promotions may be done for vacancies upto current financial year. Shri R. Karumalaiyan requested that provisions relating to specially-abled persons may be adhered to.

The Board took note of the information placed before it.

Item No. 20: Delegation of Administrative & Financial Powers to CPFC in relation to Physical Infrastructure Division (PID)

The proposal contained in the agenda was approved.

Item No. 21: Proposal for Surrender/Cancellation of Exemption under Section 17 (4) of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and application for withdrawal of grant of exemption

Shri Michael Dias informed that many cases of surrender/cancellation are pending for years. CPFC informed that there is requirement of notifications to be issued by the appropriate government and steps to expedite it. She further informed that an SOP with timelines is also being formulated and will be placed before standing committee of exemption.

The proposal contained in the agenda was approved.

Item No. 22: Relaxation in the period of eligibility service for promotion to the post of Staff Car Driver (Grade I) in level 5 of the pay matrix in relaxation of the Recruitment Rules

The proposal contained in the agenda was approved.

Item No. 23: Delegation of Administrative and Financial powers for Appointment and payment to Auditors/ Consultants/ Forensic Audit Experts for Investment related activities carried out by EPFO

The agenda will be placed again after incorporating the discussions held in the 101st EC.

The Item was withdrawn.

Item No. 24: Delegation of Financial/Administrative powers by Central Provident Fund Commissioner-Intimation of property under Rule 13 and Rule 18 of CCS (Conduct) Rules, 1964

The Board took note of the information placed before it.

Item No. 25: Draft Transfer policy for Commissioners' cadre in EPFO - revision of Transfer Policy of 2016

The Board accepted the recommendations of the 101st EC and the proposal contained in the agenda was approved.

Item No. 26: Recommendations of the Ad-hoc Committee on Coverage & related Litigations

CPFC apprised the chair that as was directed on the first day of its 230th meeting on 11.03.2022, recommendations on which there is a consensus among the members of the Ad-hoc committees are being placed as agenda items 26 to 29 for consideration and approval of the CBT.

She apprised that after deliberations in the Ad-hoc committee on Coverage & related litigations it has been proposed:

- (i) to ensure a universal social security coverage by enrolling all employees upto the wage ceiling;
- (ii) recommend to Central Government to frame and assign administration of scheme for Gig and platform workers, to EPFO;
- (iii) Regional Committees to be scheduled by a fixed calendar, to meet at least four times every year with standing agenda on coverage and litigations;
- (iv) to prepare a comprehensive legal framework for litigation management.
- (v) withdraw prosecutions related to non-filing of returns and/or non-submission of KYC; and
- (vi) rationalise the rate of damages.

Shri Dilip Bhattacharya proposed that the wage ceiling limit and employment threshold should be same as in ESIC. Chairman assured that this proposal will be looked into after discussions with MSME.

The proposals contained in the agenda were approved.

Item No. 27: Recommendations of the Ad-hoc Committee on Human Resources/Establishment matters

After deliberations in the Ad-hoc Committee on Human

Resources/Establishment matters, the following has been proposed:

- i) MACP to be given by April 2022 in all cases where due, from the date of eligibility and arrears to be paid. EPFO Head Office to facilitate speedy disposal of vigilance clearance in these cases.
- ii) Vacancies in Section Supervisor and Social Security Assistant and other Group- B and C Cadres will be ascertained and exams will be conducted through agencies such as National Testing Agency / National Recruitment Agency or any other Agency like IBPS for filling up of Direct Recruitment and Departmental Exam vacancies. Also, required amendments may be carried out in the examination schemes for conduct of exams. Chairman, CBT may be authorized to finalize the terms and conditions for conducting examination.

- iii) Data Entry Operators (DEO) Grade A to be promoted to Grade B and DEO Grade B to be promoted to Grade C as per previous sanctioned strength.
- iv) Staff Car Drivers Grade-II to be promoted as Staff Car Driver Grade-I by seeking relaxation in service eligibility.
- v) Assistant Section Officer (ASO) Recruitment Rules to be modified for absorption of Data Processing Assistants as ASO.
- vi) Job analysis and work study will be commissioned and completed in six months' time.
- vii) Training Policy and Capacity Building Plan.
- viii) Transfer Policy for Group B and Rotation Policy for Group C to be made objective and transparent and to be finalised within one month.
- ix) Welfare Fund, specially targeted for sports and cultural activities will be allocated/enhanced. 5% Sports Quota vacancies will be filled up with suitable candidates and an objective criteria will be laid down for filling the vacancies.
- x) Special drive will be taken up to fill up all vacancies in all the cadres.

The proposals contained in the agenda were approved.

Item No. 28: Recommendations of the Ad-hoc Committee on IT and Communications

After deliberations in the Ad-hoc committee on IT and Communications, the following has been proposed:

- i) Urgent short term measures:
 - a) Mitigate slowness by deployment of diagnostic tools; augmentation of storage & compute including replacement of servers which are at end of life support, and adoption of cloud technology.
 - b) Security of IT system- Security Operation Centre (SOC) as managed service, procurement of Aadhaar Vault after consultation with NIC / UIDAI.
 - c) Setting up of Change Management Committee
 - d) Hiring a Project Management Consultant (PMC) & Data Analytics service consultant
- ii) Time bound Mid-term measures-
 - a) The FO application be replaced by a centralised application with automated claim process from receipt to payments & UAN based accounting to be developed by C-DAC as per approval of Board in 229th meeting.
 - b) Formulation of IT Policy for hardware, perspective planning, software procurement, data sharing & protection, information security, software use.
 - c) Testing of all new developments and changes by an expert UAT.
 - d) Audit of processes & security by STQC since inception of development. e) Hiring of competent technical manpower through managed service model / Internship / apprenticeship & suitable training program of existing manpower.
- iii) Long term measures -
 - a) Addressing the exponential increase in stakeholders & services through technology shift under 2.O2.
 - b) Re-engineered business processes & complete system overhaul.

- iv) to authorize the Chairman, CBT to grant approvals for implementing the short term measures. on implementation.
- vi) to impart any further directions as deemed fit.

The proposals contained in the agenda were approved.

Item No. 29: Recommendations of the Ad-hoc Committee on Pension Reforms

It was informed that after deliberations in the Ad-hoc Committee on Pension Reforms, the members of the Ad-hoc Committee had varying opinions on the subject matter.

Therefore to guide the committee/CBT towards prudent decision making it was decided to constitute a task force of experts in the field the pension and social security. It was suggested to include members from PFRDA, LIC, VVGNI, two Independent actuaries, Chief Investment Officers of some reputed investment firms/mutual fund houses, financial or any other expert. The task force would study the existing EPS '95 in detail and also issues raised by the committee members, their written representations if any, minutes of the Ad-hoc committee meetings and would suggest possible measures to enhance the benefits under the EPS-95 within a defined time.

The proposals contained in the agenda were approved.

Item No. 30: Recommendation of rate of interest to be credited to Employees' Provident Fund members account for the financial year 2021-22

The Board decided to recommend 8.10% annual rate of interest to be credited on EPF accumulations in members' accounts for the financial year 2021-22.

The meeting concluded with a vote of thanks to the Chair.

List of members who attended the 230th meeting of Central Board (EPF)

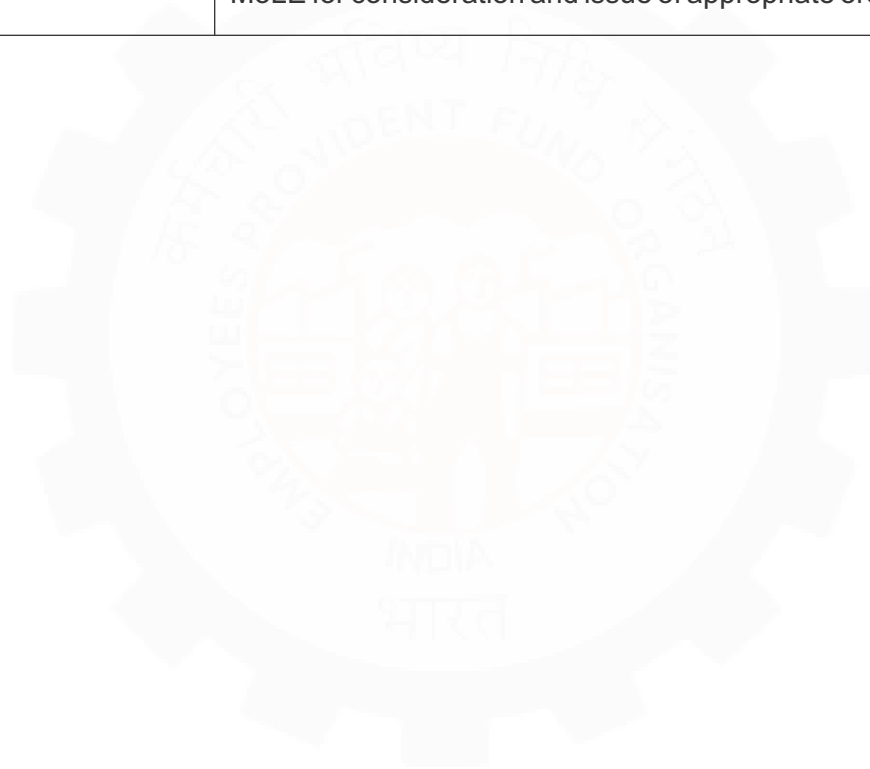
1.	Shri Rameswar Teli, Minister of State for Labour & Employment	Vice-Chairman
2.	Shri Sunil Barthwal, Secretary, Ministry of Labour & Employment	Co-Vice-Chairman
3.	Ms. Vibha Bhalla Joint Secretary (In-charge of EPFO), Ministry of Labour & Employment	Central Government Representatives
4.	Shri Ajay Tewari Joint Secretary & Director General Labour Welfare, Ministry of Labour and Employment	
5.	Smt. A. Rani, Welfare Commissioner Government of Andhra Pradesh, Labour Department, Hyderabad.	State Governments' Representatives
6.	Shri R. N. Sharma, Special Commissioner Government of NCT of Delhi, Labour Department, Delhi.	
7.	Smt. P. Bharati, Labour Commissioner Government of Gujarat, Labour and Employment Department, Gandhinagar.	
8.	Shri E. Gangadhar, Addl. Labour Commissioner, Government of Telangana, Department of Labour, Hyderabad.	
9.	Shri Prem Prakash Singh, Special Secretary, Government of Uttar Pradesh, Labour Department, Lucknow.	
10.	Shri Michael Dias	Employers' Representatives
11.	Shri Sougata Roy Choudhury	
12.	Shri Ashish Wig	
13.	Shri K. E. Raghunathan	
14.	Shri S. K. Sharma	
15.	Shri Govind Lele	
16.	Shri Anupam Malik	

STRATEGY AND TIME LINES

S. No.	Topic	Strategies and timelines-EPFO
1	Employees threshold for coverage of establishments	<p>The timelines are contingent on approval of committee recommendations by Government of India and issue of notification for modifying the Schemes framed under the EPF & MP Act 1952-T+4</p> <p>The contribution be made mandatory only for the employers share and at the rate of 10% of the wages.</p> <p>The employees' contribution maybe on an optional basis. This can be done by suitably amending section 6 of the EPF and MP Act 1952.</p> <p>The employers' contribution so received maybe utilised to ensure pension (8.33% +1.16% {Govt Share}- EPS 1995) and life insurance coverage (0.5%) EDLI 1976) for employees in such establishments. The residual 1.17% employers' contribution Could be utilised for enrolling such employees under medical insurance scheme to be framed in consultation with the National Health Authority, Government of India.</p> <p>In the Code on Social Security 2020 (Section 16) Central Government may specify rates of employees' contribution.</p> <p>For reducing coverage threshold Section 1 of the EPF & MP Act 1952 would require amendment.</p> <p>In the Code, Section 152 empowers Central Government to amend inter-alia the First Schedule (specifying threshold of 20 employees for coverage) by notification.</p> <p>Enrolment and extension of benefits is a continuous process.</p> <p>For undertaking the above, requisite enhancement in the organisational capacity, viz. Manpower (T + 9 months), infrastructure (T+ 12 months) and substantial augmentation of IT resources (T + 12 months) would be required.</p>
2	Rationalising statutory wage ceiling and linking with identifiable metric	<p>The wage ceiling is presently not linked to any identifiable metric. The Committee has recommended various options for consideration by Central Government:</p> <ol style="list-style-type: none"> 1. It could be three times the minimum pay of a Central Government employee. {@ Rs 54,000 per month} 2. It could be factor of GDP per capita. (At least Rs 25,000 per month) 3. CPI adjusted, present value of the wage ceiling in year 1957, would eb approximately Rs 45,000 per month. 4. It could be upto three times the per capita annual Gross National Income at current prices (declared annually by MoSPI, Govt of India) {Rs 42,000 per month} 5. It could be two times the income exempt from personal income tax. Approximately @ Rs 42,000 per month. <p>Instead of wage ceiling, contribution ceiling upto which the Finance Act allows tax free interest could be adopted. {Rs 2,50,000 per annum for employees' share and Rs 7,50,000 per annum for employers' share}</p>

3	Enrolling all employees upto wage ceiling	The proposal would require amendment in EPF Scheme 1952. Draft amendment notifications have been submitted for consideration and notification, to Government of India. It would become effective from the date of notification. It would require augmentation of material and manpower resources of EPFO {T +12 months}
4	Ensuring filing of returns by establishment for all employees on its rolls	Essential requirement is issue of requisite notifications by Central Government. The modification of returns and necessary changes in IT system would require T + 9 months.
5	Universalising coverage & administration of benefits of Unorganised Sector workers through EPFO	It would require issue of necessary notifications by Central Government under Section 13 of the Code on Social Security as also provisioning of financial and other resources by Central Government as provided in Section 13 of the Code. Discuss, examine and work on the recommendations contained in NITI Aayog Strategy for New India @ 75 {November 2018} and recommendations of the Second Administrative Reforms Commission.
6	Mechanism for withdrawal of prosecutions	Once the proposal is approved, circular will be issued in four weeks. Capacity building RPFCS will move to Court for filing withdrawal of prosecution cases. T+90 days Process will be finalized through implementation mechanism.
7	Rationalisation of rates of damages	Draft amendment notifications submitted to Government of India for notification. For augmentation of manpower T + 9 months. For suitably aligning IT systems T + 9 months)
8	Initiation of recovery proceedings after completion of assessment enquires	A study to be commissioned for recommending the appropriate in-house appellate mechanism in recovery process, which could be adopted. {T + 6 months} Standard Operating Procedure for Recovery and a Recovery Manual to be issued. (T + 4 months)
9	Reducing litigation through improved quality of assessments	Circular to be issued two separate branches for Compliance Administration and Compliance Judicial. {T+ 3 weeks} For augmenting the manpower strength {T + 9 months}. Capacity building and training module is in process with NLS Bengaluru on this issue. {T + 2 months}
10	Use of IT tools for better compliance and reduced litigation	Development of compliance models through a professional agency and development of IT tools for same. {T + 6 months} IS Division is engaging data analytics agency the same shall be tasked with the work { T = 4 months} Committee has recommended that C&AG may also watch EPF compliance while auditing the entities over which it has jurisdiction. Letter be issued to C&AG {T + 3 weeks} Issue of circular specifying an Annual Return of Compliance, to be filed digitally by establishments. {T + 6 months}

11	Robust Inspection System	Included in Legal Framework Document. Detailed procedural guidelines to be provided in T+60 days.
12	Recommendations approved by CBT so far	<p>Proposal for modification in EPF Scheme for mandatory enrolment of all employees upto the wage ceiling submitted to MoLE for notification. Once notified, agency for implementation will be EPFO.</p> <p>Proposal for rationalisation of rate of Damages submitted to MoLE for notification. Once notified, agency for implementation will be EPFO.</p> <p>Proposal for amending EPF Scheme to specify more meetings for Regional Committees submitted to MoLE for notification. Once notified, agency for implementation will be EPFO.</p> <p>For administering the social security for Gig & Platform workers and workers in the Unorganised sector through EPFO, proposal sent to MoLE for consideration and issue of appropriate orders.</p>







Employees' Provident Fund Organisation

Ministry of Labour & Employment, Government of India

Corporate Office : Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066

www.epfindia.gov.in

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