



# Compliance Management: Coverage & Exclusions & Important Definitions

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# Compliance Management

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- Evolution of the Act
- Importance & Basic Functions of Compliance
- Registers to be maintained by compliance
- Role of APFC/RPFC
- Coverage
- Exclusions
- Definitions under the Act



# Evolution of the Act.

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- Evolution of the Act.
- EPF Act, 1952 Vs Provident Funds Act 1925
- The **Provident Funds Act 1925** was “an Act to amend and **consolidate the law** relating to Government and **other Provident Funds**”.
- Provident Funds Act 1925: Not applicable to the industrial employees.
- To encourage the habit of thrift to make available the same in their rainy days.



# EPF & MP Act, 1952: Preamble

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- “An Act to provide for the institution of provident fund, pension fund and deposit-linked insurance fund for employees in factories and other establishments.”



# EPF & MP Act, 1952: A Social Welfare Legislation

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- **Different categories of laws** – civil, criminal, taxation, compensatory, social welfare, etc.
- **Classification** determines its nature – leads to **purpose** and purpose guides its **interpretation**.
- Social Legislation Vs Civil enactments.
- **Civil laws affects only a person**, or his property, his contractual obligations & private dealings and are not concerned with their consequences, if any, befalling the society.



# EPF & MP Act, 1952: A Social Welfare Legislation

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- Labour or industry is the backbone of the national economy.
- Constitution of India has Directive Principles of State Policy
- The duty of state to gear its policy, by legislation towards securing the common good and social welfare.
- Concurrent list, List – III of 7<sup>th</sup> Sch. Entry 23 “**Social Security** & Social Insurance; Employment & Unemployment.”.
- Entry 24: “welfare of Labour including the conditions of workers, **Provident Fund**,.....**oldage pension.**”

# EPF & MP Act, 1952: A Social Welfare Legislation

- Social Legislation is **different from taxation** law.
- “Being beneficial Legislation, a construction which **fructifies the Legislative objects** and intent has to be preferred”  
(State Vs Girdhari Lal Bajaj 1962(2) LLJ46(Bom)DB TCI Vs ESIC, AIR 2000 SC 238; 2000(1)LLJ, Nazeena Traders(P) Ltd Vs RPFC 1966(1)LLJ334.
- “Not only the courts **disapprove all subterfuges** to defeat a social Legislation, but must try to prevent such subterfuges succeeding in their object”  
(JG Vakharia Vs RPFC Bom. 1957(1) LLJ 448)



# EPF & MP Act, 1952: A Social Welfare Legislation

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- **Liberal Interpretation** (Andhara Univ Vs RPFC 1986(68)FJR6, 1985(4)SCC 509) (Ess Dee Carpets Vs RPFC Raj 1985 LIC 1116 (Raj HC)).
- “Between the two reasonable possible interpretation **courts should prefer that view which helps the achievement of the object of the Act**”  
(**RPFC Vs. Shibu Metal Works** 1964-65(27)FJR 491, AIR 1965 SC 1076).





# Basic Compliance Functions

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- Timely coverage of all coverable establishments.
- Timely allotment of Code Number
- Timely enrolment of all eligible employees to Provident Fund.
- Timely deduction and remittance of dues
- Timely detection of default for recovery and penal action.
- Timely levy of damages.



# Basic Compliance Functions

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- Timely grant of exemption.
- Timely inspection of establishments.
- Timely action on legal matters.
- Infusing and sustaining hope, faith and conviction in the minds of subscriber-members.



# Registers

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## Registers to be maintained

- Recovery Register
- Register of Prosecution
- Register of Tribunal cases
- Register of 406/409
- Register of Writ Petitions
- Register of BIFR cases
- Register of Attachment/Release of Properties
- Claim Petition Register
- Register on 8F cases
- Register on 110CrPC cases are



# Role of APFC/RPFC

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- To collect all vital information.
- To ensure coverage of all coverable establishments.
- To exercise proper control and supervision of Enforcement Officers.
- To examine the Investigation Reports.
- To ensure the particulars of ownership.
- To conduct the inquiry u/s 7A and 14B.



# Role of APFC/RPFC (contd.)

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- To ensure that all eligible employees are enrolled.
- To take action u/s 8F and 8B to 8G of the Act for the recovery of dues.
- To ensure achievement of RFD targets.
- To examine application for exemption.
- To conduct inspection of exempted units.
- To initiate action for prosecuting the defaulting employers.



## Role of APFC/RPFC (contd.)

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- To ensure the initiation of action u/s 405/406/409 of IPC.
- To ensure the proper conduct of court cases.
- To ensure that the prescribed returns are submitted by the exempted and unexempted establishments.



# Role of APFC/RPFC (contd.)

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- To ensure submission of TP/TD.
- To arrange for submission of various returns and reports.
- To ensure the receipt of defaulters' list.
- To keep liaison with trade unions.



# Coverage

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- Section 1(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) 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





# Coverage

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- (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.
- Section 1(3)(a): Factory
  - “factory” means **any premises**, including the precincts thereof, in any part of which a **manufacturing process** is being carried on or is ordinarily so carried on, whether **with the aid** of power or **without the aid of power**.



# Coverage.....

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- Section 1(3)(b): Establishment(Factory or non-factory): Undefined in the Act.
- The term “**Establishment**” must be given its ordinary meaning
  - Denotes a house of **business** or an **organization**.
  - **Employing** a certain no. of person, for a **purpose**,
  - and between whom and the establishment there exists the **relationship of employee and employer**.
  - RPFC Vs. Vittal Das Jagannathdas, 1969(2) LLJ 145, Mad.,  
Cosmopolitan club Vs. RPFC, 1973(44)FJR 229 ,  
Srivaradaraja Swami Transports(P) Ltd. Vs. RPFC,  
1966(1)LLJ 966(Mad.), K .Gopalan Vs UOI, 1973 LAB.IC 287(Del.)<sup>18</sup>



# Coverage.....

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## ■ Section 1(3)(a)

- Subject to section 16.
- Every factory.
- Engaged in any industry, Specified in Schedule 1.
- Employing 20 or more persons.

## ■ Section 1(3)(b)

- Any other establishments
- Employing 20 or more persons
- Class of establishments notified by the Central Govt.
- Proviso :
- Central Govt. can notify any establishment employing such no. of persons less than 20 by giving a notice of two months



# Coverage.....

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- Act comes into force **on its own vigour**, no specific order of RPFC necessary. {Associated Industries (P) Ltd Vs RPFC, AIR 1962 SC 314, Motor Bus Operator Union Vs RPFC, 1992(65)FLR(Sum.)30 Raj, Mohan Raj Vs. RPFC, 1987(1)CLR 217(Ker.)}
- Act **applies to establishment** and not to owner. (Bajaj Enterprises vs. Deputy RPFC, 1980(41)FLR112(Mad.)



# Coverage.....

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- **Hardship** not relevant.
- It is **immaterial** whether the establishment is **profit making/commercial/charitable.**

Padiyaur Sarvodaya Sangh Vs. UOI,  
1999(2)LLN 224(Mad.),

Ventakramanna Dispensary Aurvedic College  
Vs. UOI 1986 II LLN 942(Mad.)SC.



# Coverage.....

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- Applicable **even where no eligible member** of Scheme employed

Daulat Ram Dharam veer Vs. RPFC, 1977 LIC 1010(Del.) HC

- Section 1(5): Act **continues to apply** even where the no. of persons employed **falls below 20.**
- New entity created after dissolution of Old- Act is not applicable.(Pratap Chand Sukhoni Vs. RPFC, 1980(41) FLR 325(Cal.)



# Coverage.....

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- Section 1(4):

- Establishment only liable **from the date of notification**

Edel Starhl Agencies(P) Ltd Vs. RPFC, 2005(1)CLR  
341(Bom.)

- **Withdrawal** from Voluntary Coverage **permissible**

Sampath Kumaran & Company V.s RPFC, 1974(28)FLR  
331(Mad.)

- **No proceedings** u/s 7A , 8B to 8G **in absence notification.**

J. Engg Company, Madurai Vs. APFC, 2001(4)LLN  
930(Mad.), Tech Movers Systems(I) Pvt Ltd. V.s RPFC,  
1995(2)LLN 938(Bom.)



# Exclusions

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- **Section 16: The Act shall not apply-**
- **Infancy** period benefits-Upto three years from the date of setup-Provision **deleted w.e. from 22.09.1997**
- **Sec 16(1)(a):Cooperative Society-** Registered under Co-operatvie Societies Act, 1912 or
- Any other law of any State pertaining to Co-operative Societies.
- Conditions:
- Employing **less than 50 employees** and
- Working **without the aid of power**





## Exclusions (Contd.)....

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- Sec 16(1)(b): Any estt. **belonging** to or under the **control** of Central or State Govt.
- Conditions:
  - (i) Benefits of contributory provident fund or
    - old age pension
  - (ii) as per the scheme or rules framed by such Central or State Govt.



## Exclusions (Contd.)....

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- Sec 16(1)(c): **Any estt. set up** under any **Central, Provincial or State Act**
- Conditions:
  - (i) Benefits of contributory provident fund or  
old age pension
  - (ii) as per the scheme or rules framed under such Central, Provincial or State Govt. Act.



## Exclusions (Contd.)....

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- An estt. can claim benefit of clause (b) or (c) of sub-section (1) of section 16 only if-
- (1) It is a government estt; and
- (2) Its employees are entitled to-
  - (i) Contributory provident fund or
  - (ii) old age pension,

**under any Scheme framed by the Govt.**



## Exclusions (Contd.)....

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- **Sec 16(2)**: “If the **Central Government** is of opinion that having regard to the **financial position** of **any class** of establishments or **other circumstances** of the case, it is necessary or expedient to do so, it may, by **notification** in the Official Gazette, and subject to **such conditions**, as may be specified in the notification, **exempt** whether **prospectively or retrospectively** that class of establishments from the **operation of this Act** for **such period** as may be specified in the notification.”



# Definitions

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- Object:
  - To singly avoid the necessity of frequent repetition
  - To give the restrictive, exhausting, extensive meaning of the word
- “Unless the context otherwise requires”
  - To be read in the context in which and the purpose for which it is used



# Definitions

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## Section 2: Definitions-

- Section 2(a): “Appropriate Government” means –
- (i) in relation to an establishment belonging to, or under the control of, the **Central Government** or in relation to, an establishment connected with **a railway company, a major port, a mine or an oil-field or a controlled industry** or in relation to an **establishment having departments or branches in more than one State**, the Central Government: and
- (ii) in relation to any other establishment, the State Government:



## Definitions (contd.).....

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- Sec 2(aa) **“authorised officer”** means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;



# Definitions-“Basic Wages”

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- **Section 2(b):** “basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include

It means:

- **All emoluments** earned by the employee in terms of the contract of his employment, and
- Which are **paid or payable** in cash, while the employee is—
  - **On duty**, or
  - **On leave**, or for such holidays as admit of payment of wages.





# Definitions- "Basic Wages"

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- It excludes:
  - The value in cash for any food concession;
  - Any dearness allowance which means all cash payments by whatever name called, as paid to an employee on account of rise in the cost of living;
  - House-rent allowance;
  - Overtime allowance;
  - Bonus;
  - Commission; or
  - Any other similar allowance, payable to the employee in respect of his employment; and
  - Any presents made by the employer.



# Definitions- "Basic Wages"

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- Criteria of basic wages is emoluments earned  
(**Bridges and Roofs Co. Ltd Vs. UOI, AIR 1962 SC 1474.**)
- Basic wage is mixed question of law and fact(T.R. Industries Vs. CBT, 1988(57) FLR 130(Del.)



# Definitions- "Basic Wages"

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- What is included in basic wages;
  - **Retaining allowance**  
(Keshoraipatan Sahkari Sugar Mills Ltd. Vs RPFC, 1993(67)FLR 1044(Raj.)
  - **Allowance or reward for good work**  
(DCM Ltd Vs. RPFC, 1998(2)LLJ 979(Raj.)
  - **Production bonus**  
(Jay Engg Works Ltd. Vs. UOI, AIR 1963 SC 1480.)
  - **Special allowance** paid indefinitely.  
(Gordon Woodroffe Ltd. VS. RPFC, 1980 (2)LLJ 308(Cal.).



# Definitions- "Basic Wages"

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- What is included in basic wages;
  - **Interim advance lump sum** and settlement benefits
    - (Dalmia cement Bharat Ltd. Vs. RPFC, 2002(3)LLN 1190(Mad.)
  - **Arrears of revised pay**
    - (Prantiya Vidyut Mandal Mazdoor Federation Vs Rajasthan State Electricity Board, AIR 1992 SC 1737)
  - **Increase in wage**
    - (Dalmia Cement Bharat Ltd. Vs. RPFC, 2008(3)CLR 451(Mad.)



# Definitions- "Basic Wages"

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- What is included in basic wages;
  - **Ad hoc wages paid under settlement**-included in basic wage
  - (Shree Changdeo Mills Vs UOI, AIR 2001 SC 557)
  - Any payment for work done between quota & norm **cannot** be treated as 'any other similar allowance'.
  - Jay Engineering Works Ltd. Vs UOI, AIR 1963 SC 1474



# Definitions- "Basic Wages"

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- **What is not included in basic wages;**
  - Notice pay
  - Payment of incentive for work in excess of norms
  - Commission paid to employees
  - Special allowance (Bridges and Roofs Co. Ltd Vs. UOI, AIR 1962 SC 1474.)
  - Ad hoc payment under package deal – not a basic wage



# Definitions- "Basic Wages"

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- **What is not included in basic wages;**
  - Payment under Proviso to section 33(2)(b) of Industrial Disputes Act, 1947
  - Production bonus
  - Incentive bonus – not wages
  - Leave encashment
  - Food allowance.



## Definitions (contd.).....

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- Sec 2(c) **“Contribution”** means
  - a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies;
- Sec 2(d) **“controlled industry”** means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest;





# Definitions-“Employer”

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- Sec2(e) “**employer**” means-
  - (i) in relation to an establishment **which is a factory**, the **owner** or **occupier** of the factory, including the **agent of such owner or occupier**, the **legal representative** of a deceased owner or occupier and, where a person has been named as a **manager of the factory** under clause (f) of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
  - (ii) in relation to **any other establishment**, the **person who, or the authority** which, has the **ultimate control** over the affairs of the establishment, and where the said affairs are entrusted to a **manager, managing director or managing agent**, such manager, managing director or managing agent;



# Definitions-“Employee”

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- ***Section 2(f) “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.***
- Two most important conditions:
  - (i) Employee should be **working in or in connection with the work** of the establishment;
  - (ii) Their **wages** are to be **paid directly or indirectly**



# Definitions-“Employee”

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- ‘Employee’- Who is
  - Beedi workers(**P.M. Patel Vs UOI, AIR 1987 SC 447**)
  - Part-time workers(**Silver Jubilee Tailoring House vs Chief Inspector of Shops & Establishments, 1974 Lab. IC 133(SC)**)
  - Counter-holder –Held employees(Ahmedabad Cooperative Deptt Stores Ltd Vs UOI, 1997 (2)LLN 935(Guj.))
  - Liaison officer(South India Research Institute vs RPFC, 1982(1)LLN 53(AP)DB).



# Definitions-“Employee”

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- ‘Employee’- Who is
  - Accountant working at home(**Satish Plastics Vs RPFC, 1982(44)FLR 207(Guj.)DB**)
  - **Khadi Workers** making khadi at their home(**Saharsa Zila Khadi Gramodyog Sangh Vs UOI, 1996(72) FLR 279(Pat.)DB**)
  - **Apprentice**(**RPFC Vs. Precise Wire Cloth Company(P) Ltd, 1992(1)LLN 288(Mad.)DB**)
  - Medical officer(**Bangal ingot company Ltd Vs. RPFC, 1996(3)LLJ 176(Cal.)DB**)



# Definitions-“Employee”

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- ‘Employee’- Who is
  - **Circus Artistes**(K.Gopalan Vs UOI, 1973 Lab. IC 287(Del.)DB)
  - Cine workers(Murugan talkies Vs UOI, 1996(1)LLN 160(Mad.)DB)
  - **Paid sons of employer**(Goverdhan Lal Purohit vs RPFC, 1994(2) CLR 880(Raj.))
  - **Paid members of co-operative society**(ROFC Vs Madathupatti Weavers Cooperative Production & Sales Society Ltd, AIR 1998(1) SC)



# Definitions-“Employee”

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- ‘Employee’- Who is
  - **Employees of club attached to factory**(Mysore Kirloskar Ltd Vs, RPFC, Karnataka 1999(1)Kar.L.J. 115(DB))
  - **Casual daily wager or stipendiary workers**(RD, ESIC Vs South India Flour Mills (P) Ltd, 1996(2)LLN 358(P&H))
  - **Retainers**(Gain Financial Consultants Pvt. Ltd Vs RPFC, 2001(2)CLR 853(Bom.))
  - Person appointed after voluntary retirement (Harrison Malayalam Ltd. RPFC, 2001(1)LLJ 1160(Cal.))



# Definitions-“Employee”

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- ‘Employee’- Who is
  - **Employees of cycle stand** run by hospital(Santokba Durlabhaji Memorial Hospital Vs APFC, 2000(3)CLR 684(Raj.)DB)
  - **Home workers** engaged through contractors (S.K.Naseeruddin Beedi Merchant Ltd. Vs CPFC, 2001 Lab IC 730)
  - **Personal drivers** of Managers(BASF India Ltd. Vs. M. Guruswamy, RPFC, 2004(2)LLJ 500(Bom.)DB)



# Definitions-“Employee”

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- ‘Employee’- Who is
  - Stevedore(Inspector of PF Vs B.Paul Abrao, AIR 1965 Ker. 239)
  - Sales persons in regional offices(Kirloskar Brothers Ltd. Vs ESIC, AIR 1996 SC 3261)
  - **Workers engaged in unloading of bamboos from trucks in paper mill** (Orient Paper mills Vs RPFC, 2005 Lab IC 40921(MP))





# Definitions-“Employee”

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- ‘Employee’- Who is not
  - **Partner** of firm(S.G. Tin Printers Pvt. Ltd. Vs RPFC, 2001(88)(Cal.))
  - Khadi weaver taking home yarn for weaving (Punjab Kahdi Mandal Vs RPFC, Punjab, 1996(3)LLJ(P&H))
  - Employees of other firms (**Karachi Bakery, Hyderabad Vs RPFC Hyderabad, 1991 (62) FLR (AP)DB**)
  - **Loading-unloading workers/coolies** (ESIC vs Premier Clay Products, 1995 SCC(L&S) 162)
  - Drivers and conductors of buses on hire with school (Springdales School Vs RPFC, 2006 LLR 47(Del.))



# Definitions-“Employee”

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- ‘Employee’- Who is not
  - **Trainees Apprentice** (RPFC VS. Central Aercanut & Coca Marketing & Processing co. Ltd, JT 2006(2) SC 45)
  - Motor mechanic in Petrol-pump (ESIC Vs Malhotra & Company, Chandigarh, 1981 Lab.IC 475(P&H))
  - **Priests of seminary** (Reverend Father Angelo Gracias Vs RPFC, 2005(1)CLR 674(Bom.)DB)
  - Driver employed by owner of car for purpose of owner(Ratanlal vs RPFC, 1977 Lab IC 1765(Del.)



# Definitions (contd.).....

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- Sec 2(ff) **“exempted employee”** means
  - an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied;
- Sec 2 (fff) **“exempted establishment”** means
  - an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein



# Definitions (contd.).....

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- Sec 2(g) **“factory”** means
- any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;
- Sec 2(h) **“Fund”** means the Provident Fund established under a Scheme;
- Sec 2(i) **“industry”** means
- any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;



# Definitions (contd.).....

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- Sec 2(ia) **“Insurance Fund”** means
  - the Deposit-linked Insurance Scheme framed under sub-section 2 of section 6C;
- Sec 2(ib) **“Insurance Scheme”** means
  - the Employees’ Deposit-linked Insurance Scheme framed under sub-section 1 of section 6C;
- Sec 2(ic) **“manufacture” or “manufacturing process”** means
  - any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;



# Definitions (contd.).....

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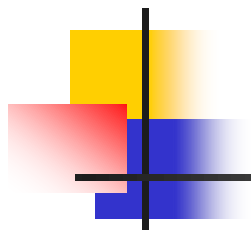
- Sec 2(j) **"member"** means
  - a member of the Fund;
- Sec 2(k) **"occupier of a factory"** means
  - the person, who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;
- Sec 2(kA) **"Pension Fund"** means
  - the Employees' Pension Fund established under sub-section 2 of section 6A;
- Sec 2(kB) **"Pension Scheme"** means
  - the Employees' Pension Scheme framed under sub-section 1 of section 6A;



# Definitions (contd.).....

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- Sec 2(ka) **"prescribed"** means
  - prescribed by rules made under this Act;
- Sec 2(kb) **"Recovery Officer"** means
  - any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act;
- Sec 2(l) **"Scheme"** means
  - the Employees' Provident Funds scheme framed under section 5;
- Sec 2(l1) **"superannuation"**, in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.
- Sec 2(m) **"Tribunal"** means
  - the Employees' Provident Funds Appellate Tribunal constituted under section 7D.



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**Thank You**