



## ANALYSIS OF ISSUES AND CONCERNS REGARDING THE PAYMENT OF WAGES ACT, 1936

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### Abstract

The Payment of Wages Act of 1936 governs how wages are paid to employees (direct and indirect). The statute is intended to protect employees from unlawful employer deductions and/or unjustifiable wage delays. The historical context that led to the creation of the legislation is discussed in this study. We also go over the issues with the act that lead to the 2017 changes.

It is necessary to comprehend the numerous revisions to the Payment of Wages Legislation that have been implemented from time to time in order to match the needs of today's employees in order to appreciate the relevance of this act in the current period. Furthermore, the act's current issues as a result of COVID-19 have been discussed.

Overall, the report emphasises the necessity for changes to the act in order to fulfil the demands of both employees and employers as new conditions occur.

### Historical perspective of Payment of Wages Act, 1936

The Payment of Wages Act, 1936) was enacted during colonization with the object, as outlined by the preamble of the Act: to regulate the payment of wages to certain classes of employed persons.[Payment of the Wages Act (Act 4 of 1936), Preamble]

Therefore, it is a labour welfare legislation which is enacted with two fold aim: first, is to fix the date of payment of wages and secondly, to regulate the deductions from wages whether as fine or otherwise.

As observed in the case of Bombay High Court in **Arvind Mills Ltd. v. K.R. Gadgil**[ AIR 1941 Bom 26], the general purpose of the Act is to provide that employed persons shall be paid their wages at regular intervals without any unauthorized deductions and in a particular form.

The Payment of Wages Act, 1936 was passed by the Legislative Assembly on basis of recommendation of Royal Commission on Labour, when India was under the colonial rule in the background of circumstances of that period. Because of colonial rule, the bulk of enterprises or factories were controlled by English capitalists who operated them for their own profit, regardless of the wellbeing of Indian workers, and the labour movement was weak enough to bargain with the employer.

This resulted in the problem of arbitrary deductions from wages by the employer and wage delays, resulting in the obvious problem of workers being unable to support their families and being forced to live in deplorable conditions, requiring the Government of India to pass legislation to address the above-mentioned two issues and contribute to the welfare of workers.

The Payment of Wages Act, 1936, was passed to ensure that deductions from wages are proper, i.e. for valid reasons communicated to the worker well in advance, and that only the amount that is proportional is deducted from the worker's wages. The



same is evident from the Preamble of the Payment of Wages Act, 1936.

### **Historical issues that gave rise to the Act**

The traditional industry in India was shattered under colonial rule due to industrial revolution in Britain and the place was taken up by the British Capitalist Industries which had complete control over the resources of production and therefore they had the authority to abuse.

On the other hand, there were few contemporary Indian industries, meaning that the factors of production were in the hands of a small number of Indians, and they were also subject to Crown inspection and control through tariffs, laws, and regulations. They attempted but failed to revive the cottage industry. To put it another way, the factors of production were confined to a few hands, giving them the power to take arbitrary actions as per once whims and fancies.

At the same time, India had plenty of workers willing to labour in dangerous industries with few or no safety precautions, poor living conditions, extended working hours, and no food, all for pitiful or starving wages (as the Minimum Wages Act did not come until 1948 i.e. around the independence).

Although trade unionism existed in India, it did not achieve the same level of success as its counterparts in other countries in terms of establishing enough negotiating power to command authority in discussions over matters such as wages, working hours, safety measures, and social security. In other words, the working conditions were deplorable, and they had no bargaining power.

All of this contributed to a worsening of working conditions, as did the factory owner's or managers' exploitative techniques, such as deducting an arbitrary amount of wages due to the worker on grounds they found suitable because of which the meagre salary which they were entitled to receive was even further deducted that on no wrong of their own or even if they committed any wrong or act of neglect then an unproportionate amount.

To further contribute to the misery of labourers, there existed a variety of wage period and even then the wages were not paid on time, that is, wages were delayed for months and the working class which hardly was acquainted with the concept of savings, required the timely payment to support their families by providing food, giving clothes and maintaining shelter above their heads. These essential needs are vital for any person to survive, and denying them to workers, even if indirectly, resulted in a huge labour crisis.

This is how the combined effects of colonisation, the British industrial revolution, and a lack of proper trade unionism resulted in the exploitation of workers, with deductions from wages and delayed payment of wages being just a few of the factors among others such as poor working conditions, low wages, long working hours, and so on.

The issue of wage deductions and non-uniform wage payment was not given much attention because labour was the oppressed class, until a Private Bill called the Weekly Payment Bill was introduced in the Legislative Assembly in 1925, which addressed these issues, but the government



declined the Bill at the time, citing that the issue was already under consideration.

In 1926, the Government of India kept in touch with the state or provincial governments and asked them to investigate and collect the requisite information, material etc. regarding the said issues. The material collected clearly showed that the issues very much existed, that is, the high amount of wages were being deducted arbitrarily by the employers and payment of wages to the workers were not prompt and uniform which had put the workers in the worst situation possible.

The material collected from the provincial governments by the Government of India was kept before the Royal Commission on Labour designated in 1929 under the Chairmanship of John Henry Whitley: 'to enquire into and report on the existing conditions of labour in industrial undertakings and plantations in British India, on the health, efficiency and standard of living of the workers, and on the relations between employers and employees and to make recommendations.'

The Royal Commission on Labour's report covered vast issues faced by the workers in the different factories such as cotton factories, leather factories, mine workers, railway workers, workers engaged in public work department as well as plantation workers and covered almost all the issues faced by the workers from less wages, long working hours, no holidays to health and welfare, housing, trade unions, workmen compensation, industrial dispute etc.

The report is comprehensive that almost all the labour welfare legislations and industrial

laws which we now have from Trade Union Act 1926, Industrial Dispute Act 1947 to Payment of Wages Act 1936, and Minimum Wages Act 1948 etc. owe the origin some way or the other to this report.

**Some of the findings and recommendations of the Commission are as follows:**

- i. It appeared that fining was a fairly general practice in perennial factories and in railways. It was much less common in mines and other sorts of industrial activity, and it's almost non-existent on plantations. It appeared to be more common in cotton textile mills, and as a result, it grew in size in the Bombay Presidency more than everywhere else.
- ii. The average fine deduction was roughly 1% of a worker's total income, but it was more important to look at individual situations rather than the average.
- iii. There were other deductions for medical attendance, education, reading rooms, interest on advances of their own salaries, charities, religious purposes chosen by the employer, and a variety of additional advantages or causes that were mandated.
- iv. Another practice followed in some mills was the deduction of two days' pay for one day's absence.
- v. Deductions from wages fall roughly into three classes, that are, fines which are imposed for disciplinary reasons, deductions on account of damage sustained by the employer and deductions for the use of material and tools and for other benefits provided by the employer. And in all three cases the Commission considered that there were strong grounds for legislative



- regulation.
- vi. The employer, or more usually his subordinate, decides when a deduction should be made and the amount that should be deducted from the worker's salary; similar processes in other nations have resulted in a number of statutory rules.
- vii. The Commission observed the fact that in many cases the workers' wages suffice for little more than the purchase of the primary necessities of life makes even a small deduction a definite hardship, while the larger deductions increased their indebtedness and even crippled their resources for some time.
- viii. Children should be exempt from fine due to their inexperience and low scale of wages.
- ix. The payment of a fine should not be spread over an extended period, and the Commission recommend that the maximum period should be one month from the date on which the fine was imposed.
- x. The minimum amount which could be deducted by way of fine should not exceed in any month half an anna in the rupee of the worker's earnings.
- xi. The sum realised as fine should be utilised for some purpose beneficial to the employees as a class and should be approved by some recognised authority.
- xii. In order to protect the workers from arbitrary fines, a notice specifying the acts and omissions in respect of which fines may be imposed should be posted and any other fine should be deemed to be illegal.
- xiii. Any deduction made for goods having been damaged should not exceed the wholesale price of the goods damaged and the damage should directly be attributable to carelessness and negligence of the worker.
- xiv. In deductions for damages of goods, the employers should maintain the registers of the same which will in any case provide the material necessary to determine whether or not further regulation is required.
- xv. Deductions may be made on account of provision for housing accommodation and of tools and raw materials.
- xvi. Imposition of any fine and deduction made which is not permitted by law should be made penal.
- xvii. On premise of these proposals of the Commission, the Government of India reconsidered the subject and in February 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and flowed to remove conclusions yet couldn't take the state of the Act due to the disintegration of the Assembly.
- xviii. In 1935 the Payment of Wages Bill, considering vague guidelines from the earlier Bill of 1933 yet inside and out updated was introduced in the Legislative Assembly on fifteenth February 1935. The Bill was alluded to the Select Committee. The Select Committee showed its report on second September 1935. Solidifying the recommendations of the Select Board of trustees, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly lastly the Payment of Wages Act was passed in 1936 and came into further on 21st March, 1937.



**Scope and Object of Payment of Wages Act, 1936**

During the colonial government's reign, the Payment of Wages Act was enacted on April 23, 1936. As previously stated, this act was enacted to regulate the payment of wages to a specific class of workers. Except for the specific exemptions granted under this act, the term wages is defined in the Payment of Wages Act as the recompense paid to workers for their job.

Any monetary value for living accommodations or bonuses, travel allowances, gratuity, and so on are all eliminated. This law sets a system for controlling wage payments. The first is to figure out when the wages are paid, and the second is to see if the specified deduction from pay is reasonable.

Section 1(4) of the Act has mentioned that the payment of wages will be applicable to any person who has been employed in a factory, any person who has been employed by the Railway Administration or through the sub-contractor or any person who has been employed in industrial and other establishments.

The state government has the power that after giving a three months' notice in the Official Gazette of India can extend the provisions of the act to any class of person employed (Section 1(d)).

Section 3 mandates that all employers assume responsibility for paying the required salaries as set forth in the act to all of the above-mentioned employees. If any of the

employers violate Sections 5 and 7 of the act, which deal with timely payment of salaries in current coinage and currencies, the employer may be fined not less than 1000 rupees but not more than 5,000 rupees.

**Amendments introduced in the act in 2017 due to problems faced**

For understanding the relevance of the Payment of Wages in the current era there is a need to understand the various amendments which have been introduced in this act, from time to time in order to adjust the need of the present-day employees.

Through the creation of The Payment of Wages (Amendment) Bill, 2017, major revisions to the 1936 act were made. The Minister of Labour and Employment introduced this bill in the Lok Sabha.

The most notable change brought about by the new act is that employers are no longer needed to obtain written consent for the payment of salaries via check or bank account.

Section 6 of the 1936 Act authorizes the employer to pay the wages in coin or currency only, however, the proviso provided that if the employer wants, he or she can pay the wages through the cheque or by crediting the bank account of the employees; but only after obtaining the due permission from them. In the modern scenario, technology has developed and changed as compared to the time when the 1936 act came into force. Nowadays a large number of employees have their bank accounts.



Approximately 80% of workers or labourers have a bank account. As a result, it has become more easy for both companies and employees to transfer pay through bank accounts or by check. Employee complaints about salaries being paid late or not at all will be minimised as a result of this. The government has set provisions for payment to be paid only by cheque or digital transfers for the industrial and other establishments listed in the act. This will assist in achieving the digital economy's goal.

Many State governments have already introduced the said amendments in their acts like Punjab, Haryana, Kerala, Andhra Pradesh, etc. Through this legislation, the Central Government has established a critical policy of prioritising electronic transactions. Adopting such a strategy will be beneficial in the modern era since it will undoubtedly streamline the process of salary payment while also making the task of maintaining salary payment records less burdensome.

In 2017, the government through the notification increased the threshold of salary from 18,000 to 24,000 for the applicability of the act. This threshold was increased so that the scope of the act will cover more employees. Every normal and lower-middle-class home now has at least one earning member who earns 20,000 rupees or more. As a result, raising the barrier broadened the reach of the statute.

### **Problems with Payment of Wages due to COVID-19**

The government has ordered a nationwide lockdown owing to the COVID-19 crisis in

the country, which has impacted many workers. However, in March, the Ministry of Labour and Employment published an advise in which it urged all companies not to reduce their employees' pay or salaries and to avoid terminating them.

These additional options were made available to casual and contract workers in particular. Because many statutes in India already govern the rules in regard to the payment of wages or termination of employees, such as the Payment of Wages Act and the Industrial Dispute Act, the Ministry simply issued an advise rather than issuing an order instructing them to follow.

However, it is important to recognise that the lockdown affects not only employees but also employers, and that the government is responsible for not only the employees' but also the employers' economic suffering. Because under Article 19(1)(g) of the Constitution, both the employer and the employee have the right to carry on the trade or occupation. However, on March 29, 2020, both the State and Union governments issued an order instructing companies to take steps to ensure that salaries are paid to all employees at their individual workplaces, benefiting only the employees or workers and not the employers.

As a result, a new set of issues arise in the workplace, where the real payment of wages and deductions under the payment of wages act must be updated to benefit both the employer and the employee.

Although the requirements of the Payment of Salaries Act govern the timely payment of wages to all workers, However, due to the



global status of COVID, the provision for prompt payment will not be applicable in the current circumstance.

Due to the non-applicability of the provisions, the Ministry of Labour and Employment passed the order for governing the payment of the wages until the situation of lockdown is not over. Due to the order which has been issued on 29th March 2020 by the government, directing the employers to pay full salary to all the employees and workers, there should be no termination of the employees during the period of the lockdown.

If an employer fails to comply, legal action will be taken against that employer under the provisions of the Disaster Management Act 2005. A number of Public Interest Litigations were brought in court in response to this decree, questioning the validity of the Ministry's directive. As the order passed by the Ministry has mostly affected the employers there were a couple of P.L which has been filed in the court.

In the case of *Ludhiana Hands Tools Association v. Union of India*, a Public Interest Litigation was filed in the Supreme Court claiming that the order is beyond the scope of the Government under the Disaster Management Act as this act empowers the committee to fight the disasters and is not formed for the purpose of directing the employers to pay the wages in the time of lockdown. Therefore this order is outside the scope of the act under which it is passed. Also, Section 10(2)(1) of the Disaster Management Act 2005, which has been interpreted in an above-mentioned manner is arbitrary and is violative of Article 14 and

19(1)(g) and 300 A of the constitution. In this case, although the Supreme Court has granted the interim relief and directed that no coercive action would be taken against the petitioners.

In the other case of *Twin City Industrial Employers Association v. Union of India*, the same arguments were presented however the Supreme Court did not interfere in the order passed by the Ministry from protecting the small scale enterprises from paying any wages to the employees.

In both cases, the Supreme Court has issued contradicting orders, but in the first, the requirements of the Payment of Wages Act are being impacted since wages are not being paid on time to workers.

#### **Other issues not included in the act**

For the purposes of the Wages Act, 'wages' include:

- remuneration payable under any award or settlement between parties or an order of a Court;
- remuneration in respect of overtime work / holiday / leave period;
- additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- termination dues; and
- any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include the following:

- any bonus (whether under a scheme of profit sharing or otherwise) which does not form



part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or an order of a Court;

- the value of any house-accommodation, supply of light, water, medical attendance or other amenity or service excluded from the computation of wages by a general or special order issued by an appropriate government;
- pension or provident fund contribution paid by the employer;
- travel allowance / any travel concession; or
- special allowances.

Some of these were later covered by other pieces of legislation. The Payment of Bonus Act of 1965, for example, tries to regulate the amount of bonus to be paid to employees in businesses based on profit and productivity.

### Conclusion

Lastly, the Act is a safeguarding piece of legislation. It aims to govern the payment of salaries to a specified class of industrial workers. The primary goal of the Act is to ensure that workers receive their earned salaries on time and without being subjected to unjustified deductions. The Act controls the manner of payment of wages at regular intervals in order to ensure timely payment of wages. It establishes allowable deductions in order to safeguard employees against arbitrary or unjustified deductions from their earnings. With the passage of time and the emergence of new conditions, the act must be updated to meet the demands of both employees and employers.

### Bibliography

- Payment of the Wages Act, (Act 4 of 1936)

- Royal Commission on Labour, Report of the Royal Commission on Labour in India (1929)
- Natasha kwat, British Colonial Rule on the Indian Economy, Economic Discussion, available at <http://www.economicdiscussion.net/indian-economy/british-colonial-rule-on-the-indian-economy/19007>
- Swadeshi Movement: Timeline and Important Facts you must know, India Today, 07.08.2015  
<https://www.indiatoday.in/education-today/gk-current-affairs/story/swadeshi-movement-286966-2015-08-07>
- [https://shodhganga.inflibnet.ac.in/bitstream/10603/66s023/15/15\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/66s023/15/15_chapter%201.pdf)
- Industrial Revolution, available at: <https://www.history.com/topics/industrial-revolution/industrial-revolution>
- Payment of the Wages Act (Act 4 of 1936), Preamble
- Industrial Revolution, available at: <https://www.history.com/topics/industrial-revolution/industrial-revolution>
- [https://shodhganga.inflibnet.ac.in/bitstream/10603/66s023/15/15\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/66s023/15/15_chapter%201.pdf)
- Royal Commission on Labour, Report of the Royal Commission on Labour in India i (1929)
- <https://paycheck.in/labour-law-india/work-and-wages/payment-of-wages-act>
- <https://www.mondaq.com/india/employee-benefits-compensation/627248/payment-of-wages-act-salary-threshold-revised>
- <https://www.mondaq.com/india/employment-and-workforce-wellbeing/929816/payment-of-wages-during-period-of-lockdown-implemented-to-contain-covid-19>
- [https://www.prsindia.org/sites/default/files/bill\\_files/Payment%20of%20Wages%20Bill%202017.pdf](https://www.prsindia.org/sites/default/files/bill_files/Payment%20of%20Wages%20Bill%202017.pdf)
- <https://indiankanoon.org/doc/1223608/>



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- [https://labour.gov.in/sites/default/files/ThePaymentofWagesAct1936\\_0.pdf](https://labour.gov.in/sites/default/files/ThePaymentofWagesAct1936_0.pdf)
  - <https://paycheck.in/labour-law-india/work-and-wages/payment-of-wages-act>
  - <https://gradeup.co/ugc-net-study-notes-on-payment-of-wages-act-1936-i>
  - <https://www.indiafilings.com/learn/payment-of-wages/>
  - <http://www.egyankosh.ac.in/bitstream/123456789/6940/1/Unit-20.pdf>

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