

EMPLOYEES' OLD-AGE BENEFITS ACT 1976

REALITY AND MYTH



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History and application

Before 1972 there was no legislation in the shape of Old-Age Benefits in the country. First time in 1972, the Federal Government indicated its desire to introduce a pension scheme by promulgating the Employees' Old-Age Pension Ordinance 1972 (Ordinance X of 1972). This Ordinance was issued on 13.4.1972, which was an enabling legislation to provide Old-Age Pension to workers. Pension @. Rs. 60/- per month was suggested, which was proposed to be given on completion of twenty years of service. It was to apply only to those establishments which employed 100 or more workers, and wages for coverage under this scheme were proposed to be fixed at Rs. 500/- per month. The contribution rate was 5% to be paid entirely by the employer. The retirement age was fixed as fifty-five years (fifty years in the case of women). The operational details were to be prescribed separately by all Provincial Governments in accordance with the framework provided in this Ordinance. But unfortunately, none of the Provincial Government enacted any legislation to give effect to the provisions of the above Ordinance.

Later on, a better scheme was introduced by the federal government on 23rd December, 1975, through Employees' Old-Age Benefits Ordinance 1975 (Ordinance XXVII of 1975) which was to repeal and re-enact the law relating to Old-Age Benefits for persons employed in industrial, commercial or other organisations employing at least ten persons.

The Employees Old-Age Benefits Ordinance was substituted by the Employees' Old-Age Benefits Act 1976 (Act No. XIV of 1976) (hereinafter referred to as EOB Act) which was passed by the Parliament in April, 1976 and was published in the Gazette of Pakistan, Extra on 15th April, 1976. It came into force at once, but contributions were made payable with effect from 1st day of July, 1976. The scheme envisaged under this Act was implemented from 1st day of July 1976.

The Act requires that the administration of the scheme be carried out through the establishment of a body corporate and pending such an establishment through the nomination of a body corporate with the head of such body as head of the Institution. Therefore, at first State Life Insurance Corporation of Pakistan was given the responsibility of running the said Institution and the Chairman of State Life acted as Chairman, EOBI also. In 1981, however, an independent Institution namely Employees' Old-age Benefits Institution came into being.

After the promulgation of the “Employees’ Old-Age Benefits Act, 1976”, many amendments were made therein. The first amendment was made in 1983 through Employees’ Old-Age Benefits (Amendment) Ordinance, 1983. Thereafter till June 2008 this law has been amended through various statutes, including Finance Acts as below:-

1. Employees’ Old-Age Benefits (Amendment) Ordinance, 1983. (Ord No. XVII of 1983),
2. Labour Laws (Amendment) Act, 1985 (Act No. XVI of 1985),
3. **Finance Act, 1986. (Act 1 of 1986),**
4. Labour Laws (Amendments) Ordinance, 1993 (Ord XXIII of 1993),
5. Labour Laws (Amendments) Act, 1994 (Act XI of 1994),
6. **Finance Act, 1995, (Act 1 of 1995),**
7. Employees Old-Age Benefits (Amendment) Ordinance, 2000 (Ord IX of 2000),
8. Labour Laws (Amendment) Ordinance, 2001. (Ord LIII of 2001),
9. Employees’ Old-Age Benefits (Amendment) Ordinance, 2002 (Ord I of 2002),
10. Employees' Old-age Benefits (Amendment) Ordinance, 2002 (Ord XLVI of 2002),
11. **Finance Act, 2005, (Act 1 of 2005),**
12. **Finance Act, 2006 (Act 1 of 2006),**
13. **Finance Act, 2007, (Act 1 of 2007) and**
14. **Finance Act, 2008, (Act 1 of 2008).**

The whole scheme of the Employees’ Old-age Benefits stands on a tripartite pedestal: the employer, the Institution and the Insured Person¹. Most of the responsibilities under the law are laid on the shoulders of the employers.

¹ The Employees’ Old-age Benefits (Board of Trustees) Rules, 1977 (SRO 438(I)/77 dated 12th May, 1977)

Registration of Employers and Insured Persons

Employers' responsibilities:

1. Submission of information regarding the establishment; (S. 11)²
2. Submission of information regarding all persons in his insurable employment; (S. 11)²
3. Submission of records and periodic returns to the Institution; (S. 10)³
4. Production of demanded books & record to the Authorised Officer; (S. 12)⁴
5. Payment of contribution on due dated to the EOB Fund; (S. 9)⁵
6. Payment of increased contribution on delayed payment of contributions (S. 13)⁵

Institution's responsibilities:

1. Registration of establishment and issuance of registration certificate; (S. 11)²
2. Registration of insured person and issuance of registration card; (S. 11)²
3. Inspection of employer's record; (S. 12)⁴
4. Assessment of contribution; (S. 12)⁴
5. Recovery of due contribution; (S. 13)⁴
6. Payment of old-age pension; (S. 22)⁶
7. Payment of old-age grant; (S. 22A)⁶
8. Payment of survivors' pension; (S. 22B)⁶
9. Payment of invalidity pension; (S. 23)⁷
10. Decision of complaints, questions and disputes; (S. 33 to 35)⁸
11. Prosecution of offences. (S. 37 & 38)⁹

² The Employees' Old-age Benefits (Registration of Employers and Insured Persons) Rules, 1976 (SRO 709(I)/76 dated 12th July, 1976.

³ The Employees' Old-age Benefits (General) Regulations, 1980 (SRO 759(I)/80 dated 19th July, 1980

⁴ The Employees' Old-age Benefits (Verification) Regulations, 2007 (SRO 1025(i)/2007 dated 9th October, 2007

⁵ The Employees' Old-age Benefits (Contribution) Rules, 1976 (SRO 802(I)/76 dated 9th August, 1976

⁶ The Employees' Old-Age Benefits (Payment of Old-Age Pension, Old-Ae Grant and Widows Pension) Regulations, 1983

⁷ The Employees' Old-Age Benefits (Payment of Invalidity Allowance) Regulations, 1981 (SRO 448(I)/82 dated 17th May, 1982

⁸ The Employees' Old-Age Benefits (Determination of Complaints, Questions and Disputes) Regulations, 2007 SRO 703(I)/2007 dated 2nd July, 2007

⁹ S.R.O. 398 (1)86. In exercise of the powers conferred by Sub Section (1) of Section 38 of the Employees' Old-Age Benefits Act 1976 (XIV of 1976), the Federal Government is pleased to authorise the Chairman, Employees' Old-Age Benefits Institution, to institute prosecution for offences committed under the said Act. Islamabad, the 16th April, 1986 amended on S.R.O 692 (1) 86 dated 6th July 1986 To the effect that for the word "Institute" the word "Sanction" shall be substituted.

Insured persons' responsibilities:

1. Communicate his name and other particulars, if not communicated by his employer; (S. 11)²
2. Pay insured persons share of contribution; (S. 9B)⁵
3. Apply for old-age pension/old-age grant in due time; (S. 22 & 22A)⁶
4. Apply for invalidity pension; (S. 23)⁷
5. For survivors' pension, survivors of the deceased insured persons will apply

Application of Law

At the time of promulgation in 1976, the EOB Act was applicable to all such to every industry or establishment wherein **ten or more persons** were employed or were so employed during the preceding twelve months¹⁰.

In 1983, through Employees' Old-Age Benefits (Amendment) Ordinance, 1983 the Federal Government was also made empowered to extend its application by notification in the official Gazette¹¹.

In 2001, through Labour Laws (Amendment) Ordinance, 2001 **voluntary application** of law was introduced to establishments having **less than ten persons**.

In 2006, through Finance Act, 2006, an amendment was introduced in clause (i) of sub-section (4) of section 1 and a proviso was added which provided that for an industry or establishment setup on or after first day of July, 2006 the number of persons shall be **enhanced from ten to twenty**.

Again in 2008, through Finance Act 2008, the number of persons for the application of laws was **reduced to five**.

It would not be out of place to refer that the Hon'able Supreme Court in the matter of Workers Welfare Fund and others v/s East Pakistan Chrome Tannery (Pvt) Ltd and others¹² decided that amendments made in labour laws through Finance Acts are ultra-vires and hence

10 S. 1(4) of the EOB Act, 1976

11 S. 1(4)(ii) of ibid

12 PLD-2017-SC-28

amendments of 2006, 2007 and 2008 in the EOB Act are declared to be *ultra-vires* to the Constitution of the Islamic Republic of Pakistan.

Similarly, the Honorable Sindh High Court vide its decision dated 3-10-2012, in the matter of Soneri Bank and others¹³, was pleased to decide that the contribution under the Employees' Old-age Benefits Act, 1976 (EOB Act) is in the nature of fee and not a tax, therefore, amendments brought in the EOB Act by the Finance Act, 2008 are without law full authority and are of no legal effect.

Further in the matter on Nishat (Chunian) v/s Federation of Pakistan & others¹⁴ Hon'able Lahore High Court ordered that *"For the reasons discussed above, the Writ Petitions are allowed and section 5 of the Finance Act 2005 whereby section 9 of the Employees' Old-age Benefits Act, 1976 has been amended is held to be ultra vires of the Constitution of the Islamic Republic of Pakistan and is stuck down accordingly"*.

The Hon'able Supreme Court in the case: "Ali Azhar Khan Baloch and others versus Province of Sindh and others¹⁵", decided that "once the Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law".

The Crux of the above-said decisions is that all amendments made in the EOB Act, at least in years 2005, 2006, 2007 and 2008, through the Finance Acts of the respective years, are ultra vires to the constitution of Pakistan so **the intra-vires law is the same as it was applicable on 30-06-2005.**

In fact, the Institution still persuading the employers having five or more employees to register their establishment, the correct application of law is that the law is applicable **only to such establishments which have ten or more persons in their insurable employment** and registration of establishment having less than ten insured persons is void ab-initio.

As per sub-section (1) of section 11 the employer is bound to communicate to the Institution the name and other prescribed particulars of the industry or establishment and of every insured person employed in the industry or establishment to the Institution. However, if

¹³ 2013-PLC-134

¹⁴ W.P. No. 26106/2011

¹⁵ 2015 SCMR 456

employer fails to communicate name and other particulars of any insured person, the said insured person may also communicate his name and other prescribed particulars to the Institution.

As per law only on receipt of a communication under sub-section(1) or sub-section (2) of section 11 the Institution shall register the name of the industry or establishment or the insured person in such a manner, and issue to the insured person a registration card in such form, as may be prescribed. Thus, **there is no provision for so-called “suo-moto” registration in the Act** and any such registration is absolutely illegal¹⁶. However, in case of failure of an employer to communicate the particular as per section 11, the officer of the Institution can file a complaint under section 33 before the Adjudicating Authority and/or the Institution can prosecute the employer under section 38 before the court of law and Institution is also free to press into service section 12 of the Act for verification of record.¹⁷ This power also includes an assessment of contribution, if the Act is found applicable.

The term employer is of wide importance in EOB Act. It is basic responsibility of the employer to get the establishment and persons in insurable employment and also to pay the contribution in respect of all employees in his insurable employment. Originally in 1976 the definition of employer was introduced as under:

c) ‘employer’ means owner of an establishment or industry and includes an agent, manager or representative of the owner and, where any work or undertaking is carried on by or on behalf of the State, the contractor or licensee executing or carrying on such work or undertaking;

Thereafter by Employees Old-age Benefits (Amendment) Act, 1983, it was substituted as:

“Employer” in relation to any industry or establishment means any person who employs, either directly or through any other person, any employee, and includes:-

- (i) in the case of an individual, an heir, successor, administrative or assign;*
- (ii) a person who has ultimate control over the affair of an industry or establishment, or where the affairs of an industry or establishment entrusted to any other person whether called a managing agent,*

¹⁶ 2013-PLC-178

¹⁷ 1995-PLC-494

managing director, manager, superintendent, secretary or by any other name, such other person;

(iii) a person responsible to the owner for supervision and control of an employee or for payment of his wages;

Later on through the amendment by Finance Act, 1986 the sub-clause (iii) of clause (c) of section 2 *ibid* was omitted to remove the ambiguity.

However, since the amendments in the EOB Act, 1976 through Finance Acts have been declared *ultra-vires*, the sub-clause (iii) is still valid and the **person responsible to the owner for supervision and control of an employee or for payment of his wages is included in the definition of “employer”**.

In 1976, in clause (e) of section 2 of the EOB Act, 1976, the establishment was defined as “(e) ‘establishment’ means an organization whether industrial, commercial or otherwise;”.

Thereafter through the EOB (Amendment) Ordinance, 1983 it was substituted as under (e) “ ‘establishment’ means:-

(i) an establishment to which the West Pakistan Shops and Establishments Ordinance, 1969 (West Pakistan Ordinance No. VIII of 1969) for the time being applies, and, notwithstanding anything contained in section 5 thereof, includes clubs, hostels, organizations and messes not maintained for profit or gain and establishment, including hospitals, for the treatment or care of sick, infirm, destitute or mentally unfit persons;

(ii) a construction industry as defined in the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (West Pakistan Ordinance No. VI of 1968);

(iii) a factory as defined in the Factories Act, 1934 (XXV of 1934);

(iv) a mine as defined in the Mines Act, 1923 (IV of 1923);

(v) a road transport service as defined in the Road Transport Workers Ordinance, 1961 (XXVIII of 1961); and

includes any class of industries or establishments which the Federal Government may, by notification in the official Gazette, declare to be establishment for the purpose of this Act.ⁱ

The matter regarding the definition of establishment has been decided by various superior courts. Some references are given hereunder.

- *Organisations of charitable or religious nature fall under the definition of establishment and employees of such organizations are entitled to Old-Age Benefits.¹⁸*
- *Schools not being run for profit are covered by the definition of an establishment¹⁹.*
- *All the 175 shops and 15 wholesale depots of Service Sale Corporation (Pvt) Ltd, separately registered under Shop and Establishment Ordinance 1969, having less than ten employees in each of them were declared to come within the term of establishment by Appellate Authority of EOBI (appeal No. 6 of 1987-88). The case went up to Hon'able Supreme Court which upheld this in its judgement.²⁰*
- *Fauji Foundation and all its projects come within the ambit of the scheme²¹.*
- *United Christian Hospital is covered by the term²².*
- *Punjab Club declared as establishment²³.*
- *Charitable and religious establishments are also covered under the definition of establishment.²⁴.*
- *School being run on no profit basis are covered.²⁵*

¹⁸ Anjuman Faizul Islam v/s Pakistan and others W.P No. 4178 of 1979

¹⁹ Don Bosco High School v/s Assistant Director EOBI PLD-1989-SC-128

Saint Peter High School Gujranwala v/s Assistant Director EOBI 1990-PLC-244

Sacred Heart High School Faisalabad V/s Director Social Security and others 1997-PLC-729

²⁰ 2001-SCMR-1599 (b).

²¹ appeal No.8 of 1984-85

²² appeal No. 7 of 1985-86

²³ 1991-PLC-72

²⁴ 1988-PLC-937

²⁵ 1988-PLC-746 & 1990-PLC-244

The definition of employee was first time added in the Act by the Employees' Old-age Benefits (Amendment) Ordinance, 1983 (XVII of 1983).

“Employees” means any person employed , whether directly or through any other person, for wages, or otherwise, to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection with the affair of an industry or establishment, under a contract of service or apprenticeship, whether written or oral, express or implied, and includes such persons when laid off;

Thereafter two provisos were added by Finance Act, 1986 (Act No. 1 of 1986) in clause (bb) of section 2 namely:

Provided that a person who is employed mainly in a managerial or administrative capacity or a person possessing professional degree, fellowship or membership of a recognized university or institution shall be treated as an employee for the purpose of this Act only if either his monthly wages do not exceed one thousand and five hundred rupees or he had at any time been in insurable employment:

Provided further that a director of a limited company or of a corporation set up under any law shall not be treated as an employee under this Act, irrespective of his wages or emoluments;

To enhance the scope of the scheme and to provide benefits to the maximum number of employees the first proviso of the clause was omitted by the Labour Laws (Amendment) Ordinance, 1993 (Ordinance No. XXIII of 1993), resulting in that from 1st September, 1993 all the employees irrespective of cadre, profession stands covered under this scheme.

Now the definition reads as under:

***“Employees”** means any person employed , whether directly or through any other person, for wages, or otherwise, to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection with the affair of an industry or establishment, under a contract of service or apprenticeship,*

whether written or oral, express or implied, and includes such persons when laid off;

Provided that a director of a limited company or of a corporation set up under any law shall not be treated as an employee under this Act, irrespective of his wages or emoluments;

It is also pertinent to note that in the original Act of 1976, in accordance with clause (h) of section 47, nothing in the Act applied to any person employed on wages exceeding one thousand rupees per mensem. Later on by an amendment through the Employees' Old-age Benefits (Amendment) Ordinance, 1983 the clause (h) was amended to the effect that:

"persons who, on the date on which this Act becomes applicable to the industry or establishment wherein they are employed, are drawing wages exceeding one thousand rupees per mensem or persons who, not having been in insurable employment at any time before becoming employees of an industry or establishment to which this Act applies, becomes such employees on wages exceeding that amount."

This new clause was omitted through the Finance Act, 1986. Since the superior courts have declared that amendments in the EOB Act through Finance Acts are ultra-vires ab initio the amended clause (h) through 1983 Ordinance is now applicable. Although the amendments made in the EOB Act through Finance Act 1986 and Finance Act 1995 have never been impugned before any court, but in view of the principle laid down by the courts, impliedly all persons drawing wages exceeding one thousand rupees per mensem are out of the ambit of the law. Inference is made to the judgement of the Supreme Court of Pakistan in Welfare Fund and others v/s East Pakistan Chrome Tannery (Pvt) Ltd and others²⁶, Sindh High Court in the matter of Sonari Bank v/s Government of Pakistan & Others reported as 2013-PLC-134 and Supreme Court of Pakistan in "Ali Azhar Khan Baloch and others versus Province of Sindh and others"²⁷.

Section 3 of the Act provides for compulsory registration. In the original Act of 1976, it was provided that:

²⁶ reported as PLD-2017-SC-28

²⁷ 2015 SCMR 456

“all persons employed in an industry or establishment under a contract of service or apprenticeship, whether written or oral, express or implied, shall be insured in the manner provided by or under this Act.”

Thereafter through the Finance Act, 1986 it was amended as “all employees in an industry or establishment shall be insured in the manner prescribed by or under this Act.” However, in the light of the dicta of the superior court 1986 amendment is *ultra-vires* consequently the original provision is to be read. In this section the words “all persons” are of immense importance. All persons who come under the definition of employees as per section 2 (bb) are required to be insured under the Act.

Contribution

The responsibility to contribute was solely on the employer at the time of promulgation of the Act in 1976. The charging section 9, then read as under:

Originally in 1976

Rates and Assessment:

- (1) On and from the first day of July, 1976, contributions shall be payable every month by the employer to the Institution in respect of every person in his insurable employment, at the rate of five percent of his wages in the prescribed manner;*
- (2) Where an insured person does not receive any wages from the employer for any period, the Institution shall, subject to regulations, determine the amount of wages with reference to which the contributions shall be computed.*
- (3) Notwithstanding any agreement to the contrary, the employer shall not deduct from the wages of an insured person or otherwise recover from him any portion of contribution.*
- (4) Where the mode of payment of remuneration, whether in cash or in kind, makes it difficult to determine the amount of wages for computing the contribution, the Institution may, subject to regulation, determine such wages.*

The term wages was defined in clause (p) of section 2 of the Act as under:

(p) 'wages' means wages as defined in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (Act No. IV of 1936)²⁸;

In the original law as per clause (h) of section 47 nothing in the EOB Act was applicable to any person employed on wages exceeding one thousand rupees per mensem²⁹. Clause (h) was later on amended by Employees' Old-age Benefits (Amendment) Act 1983, as already mentioned hereinabove. In view of this, the contribution was payable on the actual amount of wages earned by an insured person subject to the maximum amount of rupees one thousand per mensem.

As stated earlier after the promulgation of the "Employees' Old-Age Benefits Act, 1976", many amendments were made therein. The first amendment was made in 1983 through Employees' Old-Age Benefits (Amendment) Ordinance, 1983 and the last amendment was made through the Finance Act, 2008. However, the constitutionally last, *intra-vires*, amendment, was made by the Employees' Old-Age Benefits (Amendment) Ordinance, 2002, as particularly amendments made in 2005, 2006, 2007 and 2008 through Finance Acts of the respective years have been declared *ultra-vires* by the courts.

This may be kept in mind that the effect of the declaration made by the superior courts is that amendments made in the EOB Act, 1976 through the Finance Acts are void ab initio, devoid of any force of law". As clause (e) of section 47 of the Act was omitted by the Finance Act, 2008 Hon'able Lahore High Court in the matter of MCB Bank v/s Federation of Pakistan³⁰ and Allied Bank v/s Federation of Pakistan³¹ decided that payments made by the complainants shall either be returned in lump sum/instalments or the same may be adjusted towards any future obligations.ⁱⁱ

²⁸ (vi) "wages" means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include ___ (a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the Provincial Government; (b) any contribution paid by the employer to any pension fund or provident fund ; (c) any travelling allowance or the value of any travelling concession ; (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or (e) any gratuity payable on discharge.

²⁹ (h) any person employed on wages exceeding one thousand rupees per mensem.

³⁰ WP No. 2419/2012

³¹ WP No. 26713/2013,

The Crux of the above-mentioned decisions is that **all amendments made in the EOB Act at least in years 2005, 2006, 2007 and 2008 are ultra vires to the constitution of Pakistan** so, the amendments relating to the payment of contributions by the employers and the insured persons i.e. in charging sections of the EOB Act (section 9 and 9B) through the Finance Acts *ibid* are struck down by the courts and become void *ab initio*. Therefore, the amendments made in the Act of 1976 through the above-mentioned Finance Acts are not being discussed in this paper and only *intra-vires* amendments are included and *intra-vires* amendments till promulgation of Employees' Old-age Benefits (Amendment) Ordinance, 2002. (Ord XLVI of 2002) are reviewed.

As stated above the first amendment in the Act was made in 1983 by the Employees' Old-Age Benefits (Amendment) Ordinance, 1983. Through this amendment clause (p) of the section was amended as under:

(p) 'wages' means remuneration for services paid or payable in cash or in kind to an insured person, not being less than the remuneration based on the minimum rates of wages declared under the Minimum Wages Ordinance, 1961 (XXXIX of 1961), without taking account of deductions for any purpose, under a contract of service or apprenticeship, express or implied, and shall be deemed to include any dearness allowance or other addition in respect of cost of living, and any payment by the employer to an insured person in respect of any period of authorized leave, illegal lock-out or legal strike; but does not include:-

- (i) any payment for overtime; or*
- (ii) any sum paid to the employee to defray special expenses entailed by the nature of his employment;*
or
- (iii) any gratuity payable on discharge; or*
- (iv) any sum paid as bonus; and*

Simultaneously clause (h) of section 47 of the Act was also substituted as under:

h) persons who, on the date on which this Act becomes applicable to the industry or establishment wherein they are employed, are drawing wages exceeding one thousand rupees per mensem or persons who, not having been in insurable employment at any time before becoming employees of an industry or establishment to which this Act applies, becomes such employees on wages exceeding that amount.

Section 9 was also amended and in section 9 in sub-section 1, and following provisos were added, namely:-

“Provided that no contribution shall be payable on so such of an insured person’s wages as in excess of one thousand rupees:

Provided further that contribution in respect of an insured person who continues in insurable employment shall cease on his attaining the age of sixty years, or fifty-five years in the case of a woman.”

The cumulative effect of these amendments was that the insured persons who ceased to be insured persons on crossing of wage limit again came in the ambit of the Act ab initio and employers were obliged to pay contribution arrears. Keeping in view the hardship of the employer the Federal Government exempted payment of contribution by such employer through a notification.ⁱⁱⁱ

The section 9 of the Act was further amended through the Labour Laws (Amendment) Act, 1985 and in section 9, in Sub-Section (1), in the first proviso, for the words “one thousand” the words “one thousand five hundred” were substituted as such, the wage limit for computation of contribution was raised from rupees one thousand to the tune of rupees one thousand five hundred. The section 9 of the Act was again amended through the Labour Laws (Amendment) Ordinance, 1993 in the first proviso, for the words “one thousand five hundred” the words “three thousand” were substituted. Consequently, the wage limit for computation of contribution was now raised from rupees one thousand five hundred to rupees three thousand.

The amendment in section 9 through the Labour Laws (Amendment) Ordinance, 2001, related to the self-assessment scheme where the contribution was to be computed on a maximum of five thousand rupees.³² In addition to this for the first time, the insured persons were also made liable to pay contribution w.e.f July 2001 at the flat rate of rupees twenty per month by insertion of a new section 9B.^{iv}

Because of the above and in the light of judgments of superior courts, the present status of charging sections of the EOB Act, 1976 (Sections 9 and 9B) is as under:

Section 9. RATES AND ASSESSMENT:

(1) On and from the first day of July, 1976, contributions shall be payable every month by the employer to the Institution in respect of every person in his insurable employment, at the rate of five percent of his wages in the prescribed manner:

Provided that no contribution shall be payable on so much of an insured person's wages as in excess of three thousand rupees:

Provided further that contribution in respect of an insured person who continues in insurable employment shall cease on his attaining the age of sixty years, or fifty-five years in the case of a woman:

Provided also that in case an employer opts for a self-assessment scheme, he shall be liable to pay a fixed amount of one hundred and fifty rupees in respect of every person in this insurable employment irrespective of his wages or emoluments, and the wages for the purpose of calculation of benefits shall be treated as three thousand rupees per month.

(2) Where an insured person does not receive any wages from the employer for any period, the Institution shall, subject to regulations, determine the amount of wages with reference to which the contributions shall be computed.

³² S. 9(1) Proviso "Provided also that in case an employer opts for a self-assessment scheme, no contribution shall be payable on so much of an insured persons' wages as is in excess of five thousand rupees."

(3) *Notwithstanding any agreement to the contrary, the employer shall not deduct from the wages of an insured person or otherwise recover from him employers share of contribution.*

(4) *Where the mode of payment of remuneration, whether in cash or in kind, makes it difficult to determine the amount of wages for computing the contribution, the Institution may, subject to regulation, determine such wages.*

9B. Contribution by Insured Person.-

On and from the 1st day of July, 2001, the contribution shall be payable every month by an insured person at the rate of twenty rupees in the prescribed manner.”

Hence, it is crystal clear that as per the *intra-vires* provisions of the Law of 1976, (amendment by general statutes passed by National Assembly & Senate or by Ordinances), the employers are obliged to pay Rs. 150/- per insured person per month as a contribution under section 9 being 5% of Rs. 3000 and the insured person is to pay Rs. 20/- per month under section 9B.³³

Assessment and Recovery

The subject of assessment of unpaid contribution, or the matter where the employer is a defaulter or reluctant or failed to produce the record pertaining to the employment and/or payment of wages to the insured person is dealt in section 12.^v

The Self-Assessment was provided by the insertion of section 12A in the Act, which was inserted by Employees' Old-Age Benefits (Amendment) Ordinance, 2002 (XLVI of 2002)^{vi}.

The plain reading of the above provisions of the Act clearly shows that the powers of the officers of the Institution to call and inspect the books of accounts of any establishment are not unqualified. The main points to note are:

³³ Since the amendment by two Finance Acts of 1986 and 1995 have never been challenged before any competent forum, therefore, in this paper these are treated as valid. Nevertheless the most dangerous provision is clause (h) of section 47, which was omitted by amendment through Finance Bill of 1986; if it is invoked there would be no insured person in any industry or establishment. Moreover almost all benefits would be fiddled out.

1. Only the official of the Institution, duly authorized by a certificate in a form specified in the regulations can perform the job of calling the employer and inspection of record and not all officer, how high the post he holds, can inspect the industry or establishment.
2. The said officer can only examine such accounts, books and other documents which are relating to the employment of persons and payment of wages. He cannot call other document such as Balance Sheet, Trial Balance, Profit and Loss Account, Income Tax Returns, Vouchers for payment to contractors etc.
3. The said officer can only demand production of account books and other documents refer to in clause (b) of sub-section (1) for last two years and not beyond that. However, checking of record in case of those employers who have not opted for self-assessment scheme shall only be done once in a year, with fifteen days prior notice, by an officer not below the rank of Assistant Director. This is not valid presumption that since the books have not been checked for the last, say 5 years, therefore, the checking of old record is due. It is duty of the officers of the Institution and upon their failure, employers cannot be penalized for that.
4. The said officer is also bound to secrecy as regard all matters with which he becomes acquainted in the performance of his duties and which do not relate to matters provided for in this act.
5. Any employer can opt and apply for registration under the self-assessment scheme by declaring the number of employees and their required particulars on the prescribed form. The declaration so made shall be accepted without any question provided no demand of contributions previously created remains outstanding against such employer.
6. The officials of the Institution cannot enquire into or inspect any establishment which has opted for Self-Assessment Scheme for a period of two years from the date of submission of the application for ascertaining the amount of the contribution and number of insured persons. The words used by the legislature are very significant i.e.

“from the date of submission of application”. There is no mention of acceptance by the Institution.

Sub-section (3) of Section 12 *ibid* empowers the Institution to assess the unpaid contribution in certain circumstances. The law provides that if an employer fails to maintain records or to submit returns as required by the regulations, or otherwise fails to comply with the provisions of sub-section (1) and thereby makes it difficult to ascertain the identity of persons required to be insured or the amount of contribution payable, the contribution shall be assessed on the basis of such evidence as the Institution may find satisfactory for this purpose.

The simple reading of the provision provides conditions in which the authorized officer can inspect the establishment or industry and books and other documents which are relating to the employment of persons and payment of wages. These conditions are scribed as under:

- (i) if an employer fails to maintain records; or
- (ii) fails to comply with the provisions of sub-section (1); and
- (iii) makes it difficult to ascertain the identity of persons required to be insured; or
- (iv) makes it difficult to ascertain the amount of contribution payable.

If any one or more of the above conditions are met, then the Institution can assess the unpaid contributions on the basis of such evidence as the Institution may find satisfactory for this purpose³⁴. The law does not give arbitrary powers to the Institution.

Section 13^{vii} of the Act relates to the increase of unpaid contributions and recovery of contributions as arrears of land revenue. Sub-section (1) of section *ibid* provides that if any employer fails to pay, on the due date, the contribution payable by him under **sub-section (1) of section 9** the contribution payable by him shall be increased by such percentage or amount as may be prescribed. However, the maximum limit is fifty percent. It is very pertinent to note that the increase is leviable only on the amount of contributions payable by the employer under section 9(1) and it has no nexus whatsoever with the contribution payable by the insured person under section 9B. Therefore, no increase can be levied on the portion of contribution payable under section 9B.

³⁴ Employees Old-age Benefits (Verification) Regulations, 2007 SRS 1025(I)/2007 dated 9th October, 2007

Sub-section (2) of section 13 relates to the recovery of due contribution along with the increase thereon as arrears of land revenue. Here the words used by the legislature are very important. The officers of the institution can “asses” the contribution and such assessed contribution cannot be recovered unless it is determined to be “due” according to the law. There are numerous court decisions on this subject i.e. **1984 SCMR 1047^{viii}**, **1987 CLC 2531 + 1993 PLC 335^{ix}**, **1990 PLC 21^x**.

Benefits

The term benefits is defined in section 2(a) of the EOB Act to be meant as “old-age pension”, “invalidity pension”, “widow’s pension”, “old-age grant” and such other **payments as may be determined by the Federal Government** from time to time.

In the original Act 1976 only two benefits namely “Old-age Allowance” and “Invalidity Allowance” were provided. Later of in 1983 a comprehensive pension scheme was announced and Old-age Grant and Widows Pension were introduced. The word “Allowance” was substituted by the word “Pension”. And two new benefits i.e. “Old-age Grant” and “Survivor’s Pension” were introduced.^{xi} Through Finance Act 1986, the Widows’ Pension was substituted by the Survivor’ Pension. Now, there are now four benefits, *viz*

1. Old-age pension,
2. Invalidity pension,
3. Survivors’ pension, and
4. Old-age grant.

Old-age Pension

In the original Act it was provided that an insured person shall be entitled to old-age allowance at the rate of Rs. 75/- per month, if :

- (a) he is over fifty-five years of age, in case of woman fifty years;
- (b) he has retired from insurable employment; and
- (c) contributions in respect of him were payable for not less than fifteen years.

It was also provided that old-age allowance should be increased by Rs. 5/- per month by every year of insurable employment beyond the age of fifty-five years or fifty years as the case may be. The period of insurable employment was to be reduced from fifteen years to seven

years for those insured persons who were over forty years of age (thirty-five years in the case of woman) on 1.7.1976 or any other day on which the Act becomes applicable to the industry/establishment in which they were employed.

The insurable employment of a person for the purposes of this Act was to be commenced on the date from which the first contribution in respect of him becomes payable. The old-age allowance was set to commence as from the month following that in which the insured person satisfies the condition for entitlement thereto and the allowance payable to an insured person was to be terminated at the end of the month in which the death of such person occurs. ^{xii}

In the basic law two conditions, leaving the age aside, were very important:

1. he should have **retired** from insurable employment; and
2. contributions in respect of him should have been **payable** for not less than fifteen years.

Therefore, in contrast to the present scenario, where only the attainment age required age (60 for males and 55 for females) is sufficient for the grant of old-age pension, in basic law actual retirement was the pre-condition. Moreover, now payment of contribution by the employer is a must, but in the original law if it was established that the person was in insurable employment and no contributions were paid by the employer, even then the old-age allowance was paid to the insured person.

The old-age allowance was, at the request of an insured person, to be commuted on such grounds and in such manner as may be specified in the regulations, as in the case of civil/government servants. However, no regulations were framed, but now this facility is not available to the pensioners.

Later on by the Employees' Old-Age Benefits (Amendment) Ordinance, 1983 (Ordinance XVII of 1983) the old-age allowance was substituted by old-age pension, and for the purpose of entitlement of pension three categories of insurable employment were introduced with respect to their age at the time of application of the Act. ^{xiii}

The law provided that if an insured person, on the 1st day of July, 1976 or is on any day thereafter on which this Act becomes applicable to an industry or establishment was:-

- (a) over forty years of age, or thirty –five years in the case of a woman, the contribution period of fifteen years was reduced to “seven” years, and
- (b) over forty-five years of age, or forty years in the case of a woman, to “five” years only.

The Institution was paying old-age pension to the insured person with respect to age at the time of first registration, i.e. when a person entered into insurable employment at the age of over forty years of age, or thirty –five years in the case of a woman, the required contribution period of fifteen years would reduce to seven years. Similarly, if the insured person would be of over forty-five years of age, or forty years in the case of a woman, the period would reduce to five years.

However, now the Supreme Court of Pakistan in CP 3532/2021 decided on 18-01-2024 declared that the reduction in insurable employment is allowed only to those persons on the 1st day of July, 1976 or on any other date on which the Act became applicable to the industry or establishment where they employed and started insurable employment. Consequently, now the pension is payable subject to attainment of age and completion of 15 years of insurable employment.^{xiv}

The rate of pension was also enhanced and linked with wages and period of insurable employment with a condition that in no case pension should be less than Rs. 90/- per month. The Schedule was introduced in the law to calculate the rate of pension.^{xv} This schedule provides that :

- (1) “The monthly rate of invalidity pension or old-age pension payable to an insured person shall be a percentage of his average monthly wages equal to 2.5 per cent for every year of contributions payable up to four years and 0.5 per cent for every additional year of contributions payable, a period of six months or over to be taken as one full year. No account shall be taken of any period of insurable service completed by the insured person after becoming entitled to an old-age pension.
- (2) The average, monthly wages of an insured person as referred to in paragraph (1) shall be calculated on the basis of wages on which contributions were payable in respect of the thirty-six calendar months immediately preceding the date on which the insured person fulfils the conditions specified in section 22. Provided

that the old-age pension or invalidity pension payable to an insured person shall not be less than ninety rupees for month.

- (3) If an insured person continues in insurable employment beyond the age specified in clause (a) of section 22, the old-age pension computed under paragraph (1) shall be increased at the rate of six per cent for each year of insurable employment after attaining the said age. The old-age pension at enhanced rates shall become payable in lieu of the pension payable as computed under paragraph (1), on the insured person's attaining the age of sixty years, or fifty-five years in the case of a woman, or the actual retirement date if earlier:

Provided that the old-age pension or invalidity pension payable to an insured person shall not be less than ninety rupees for month."

The Act was again amended in 1986. Now the age for entitlement for old-age pension was enhanced from fifty-five years to sixty years (fifty to fifty-five years in the case of women). But by virtue of sub-section (2A) a protection has been given to all insured persons who were insured on or before 30.6.1986 and would attain the age of fifty-five years (fifty years in case of a woman) on or before 30.6.1991, they would be entitled to an old-age pension at the age of fifty-five years (fifty years in the case of a woman).

For the first time, an actuarial formula was introduced to calculate the rate of pension as under:

- (1) "The monthly rate of old-age pension or invalidity pension payable to an insured person shall be calculated in accordance with the following formula, namely:-

Average monthly wages x Number of years of insurable employment

50

A period of six months or more insurable employment shall be treated as one full year. No account shall be taken of any period of insurable employment completed by the insured person after becoming entitled to old-age pension.

- (2) The average monthly wages of an insured person, referred to in paragraph (1) shall be calculated on the basis of wages on which contributions were

payable in respect of the twelve calendar months immediately preceding the date on which the insured person fulfills the conditions specified in section 22 and section 23 as the case may be;"

In simple words the rate of pension is 2% of wages on which contributions are payable per year.

The rate of minimum pension was further enhanced by Labour Laws (Amendments) Ordinance, 1993 (Ord XXIII of 1993), Employees Old-Age Benefits (Amendment) Ordinance, 2000 (Ord IX of 2000), Employees' Old-Age Benefits (Amendment) Ordinance, 2002 (Ord I of 2002), and the minimum pension was raised to Rs. 700/- per month. Later on the Act of 1976 was also amended by the **Finance Act, 2005, (Act 1 of 2005), Finance Act, 2006 (Act 1 of 2006), Finance Act, 2007, (Act 1 of 2007)** and **Finance Act, 2008, (Act 1 of 2008)**. However, amendments in all labour laws have been set aside by the Supreme Court of Pakistan through Finance Acts of 2005 to 2008. As such legally the minimum pension is Rs. 700/- and over and above amount is being paid as "other payment" notified u/s 2(a) of the Act.^{xvi}

As per the second proviso of sub-section (1) of section 22 the age specified in clause (a) sixty years for men and fifty-five years for women was reduced to be five years in the case of an insured person employed in the occupation of mining for at least ten years immediately preceding retirement.^{xvii}

As per the Mine Act, a person is said to be employed in a mine who **works under appointment or with the knowledge of the manager** whether for wages or not in any mining operation or in cleaning or oiling any part of any machinery used in or about the mine or in **any other kind of work what so ever incidental to or connected with miner operation.**

A new concept of reduced old-age pension was introduced for those insured persons who retire from insurable employment before attaining the age of sixty years (fifty-five in the case of a woman) due to establish HR Policy of the employer and employer certifies that the insured person is actually retired on superannuation age. The pension is to be reduced by one-half per cent of the old-age pension specified in the Schedule for each completed month by which the age falls short of sixty years (fifty-five years in the case of a woman) and the minimum old-age pension shall also be reduced in the aforesaid manner in the case of retirement from insurable

employment before attaining the age of sixty years (fifty-five years in the case of a woman). The reduced pension once allowed is never to be restored upon attaining the age of sixty/fifty-five as the case may be. **The reduced pension allowed is for a lifetime** and shall not be restored on the insured person's attaining the normal pension age. However, if the insured person does not opt for a reduced pension and applies for an old-age pension on attaining the age of sixty years (fifty-five years in the case of a woman) irrespective of the fact that he or she was retired by the establishment at an earlier age he will be given a full pension.^{xviii}

The old-age pension is payable as from the month following that the insured person satisfies the conditions for entitlement provided that arrears of only six months are payable and be terminated at the end of the month in which death of the such person occurs.

Thereafter, vide the Employees' Old-age Benefits (Amendment) Ordinance, 2002 (Ordinance XLVI of 2002), the word 'payable' was substituted by 'paid', the net effect of this is that if the contribution is not paid by the employer in respect of an insured person, such insured person is entitled for any benefit under this act. However, to give protection to the insured person a proviso has been inserted in the above section according to which if the insured person had got himself registered with EOBI and PI-03 card/registration number stands issued/allotted before 30-06-2002, or the insured person has been paying the contribution under section 9B regularly, his right to entitlement of pension will be protected even in case of default of employer's share of contribution under section 9 of EOBI Act 1976.^{xix}

Calculation of rate of pension

Illustration-I

The employee insured at the age of	45 Years
Attained the age of	60 Years
Total insurable employment at the age of 60 (25 +15)	15 Years
Formula Old-age pension rate at the age of 60 (MW) $32,000 \times 15 / 50$	Rs 9,600
Minimum pension notified by Government	Rs. 10,000
Insured person will get pension @	Rs. 10,000

Illustration- II

The employee insured at the age of	20 Years
Attained the age of	60 Years
Total insurable employment at the age of 60 (25 +15)	40 Years
Old-age pension rate at the age of 60 (MW) $25000 \times 40 / 50$	Rs. 25,600
Minimum pension notified by Government	Rs. 10,000
Insured person will get pension @	Rs. 25,600

OLD-AGE GRANT

This benefit was first time added in the Act by the Employees' Old-Age Benefits (Amendment) Ordinance, 1983 (Ordinance XVII of 1983), according to which in the case of retirement of an insured person after the age of fifty-five years (fifty years in the case of woman) who not otherwise entitled to old-age pension but contribution in respect of him was payable not less than five years was entitled to old-age grant payable in lump sum **equal to fifty percent of average monthly wages** for every completed year of insurable employment or part thereof in excess of six months.^{xx}

This section was amended in 1986. The age for retirement was enhanced from fifty-five years to sixty years and fifty to fifty-five years in the case of women and mine workers. The rate was also been enhanced from fifty per cent to a hundred per cent of average monthly wages. This provision then read as "If an insured person, not otherwise entitled to old-age pension, retire from insurable employment after attaining the age of sixty years, or fifty-five years in the case of a woman and a mine worker, and contributions in respect of him were payable for less than fifteen years, **but not less than five years**, he shall be entitled to an old-age grant payable in a lump sum **equal to his one month's** average monthly wages for every completed year of insurable employment or part thereof in excess of six months."

The period of required insurable employment was **reduced from five years to two year** vide Labour Laws (Amendments) Ordinance, 1993 Ordinance No. XXIII of 1993.

As per provision of the above-referred section first old-age grant was to be submitted in 1987 in case of a woman or mine worker who had been insured at the age of forty-four years in 1976 and retired at the age of fifty-five before completing seven years of insurable employment but had completed five years of the same. It is clearly evident from the provisions of 22-A that woman and mine worker are entitled for old-age grant on attaining the age of 55 years and retirement from service. Till July 2002 the insurable employment was meant as employment of a person under a contract of service or apprenticeship, whether written or oral, express or implied and in respect of which **contributions are payable** under this Act. However, later on through the Employees' Old-age Benefits (Amendment) Ordinance, 2002 (Ordinance XLVI of 2002) the word '**payable**' was substituted with '**paid**' resulting that if contributions in respect of an insured person are not paid by his employer due to any reason whatsoever, that particular insured person will not be entitled for benefit. Albeit to give protection to the insured person a proviso has been inserted in the above section according to which if the insured person had got himself registered with EOBI and PI-03 card / registration number stands issued / allotted before 30-06-2002, or the insured person has been paying the contribution under section 9B regularly, his right to entitlement of pension will be protected even in case of default of employer's share of contribution under section 9 of EOB Act 1976.

In view of the above situation, now the position is that if an insured person, not otherwise entitled to old-age pension, (means he has not completed the required insurable employment for any reason such as "left the employment, joined any establishment which is not registered under the Act, had an overseas employment, became self-employed etc) attains the age of sixty years, or fifty-five years in the case of a woman and a mine worker,(as no contributions are payable after this age and impliedly this is retirement age under this Act) and contributions in respect of him were paid for less than fifteen years, **but not less than two years**, he shall be entitled to an old-age grant payable in a lump sum **equal to his one month's** average monthly wages for every completed year of insurable employment or part thereof in excess of six months.

Calculation of rate of Old-age Grant**Illustration -I**

The employee insured at the age of	35 Years
Left the insurable employment at the age of	45 years
Attained the age of	60 Years
Total insurable employment at the age of 60	10 Years
Minimum insurable employment required for old-age pension	15 years
Insured person entitled for Old-age Pension	No.
Old-age grant (MW) 32000 X 10 (Onetime payment)	Rs. 320,000

Illustration -II

The employee insured at the age of	20 Years
Left the insurable employment at the age of	24 years
Attained the age of	60 Years
Total insurable employment at the age of 60	4 Years
Minimum insurable employment required for old-age pension	15 years
Insured person entitled for Old-age Pension	No.
Old-age grant (MW) 32000 X 4 (Onetime payment)	Rs. 128,000

SURVIVORS' PENSION

In the original text of 1976, there was no provision for widow/survivor pension. It was first time introduced vide the Employees' Old-Age Benefits (Amendment) Ordinance, 1983 (Ordinance XVII of 1983) and a new section 22B under the title Widow Pension.^{xxi}

As per the provision of law, a widow was only entitled for a widow's pension, if her husband was either getting an old-age pension or had become entitled to old-age pension before his death. The said widow's pension was to be ceased either on the death or re-marriage of said widow. In 1986 drastic changes were made. To enhance the scope of benefit the title was changed from Widow's Pension to Survivor's Pension. Now not only the widow is entitled but the

widower also becomes entitled to get a pension. Further, a clause was added for the so-called estate pension also.^{xxii}

In the Ordinance of 1983 only in case of death of an insured person who was in receipt of a pension or had become entitled to pension, his widow was entitled to get a pension equal to 60% of his pension. Through an amendment of 1986 if the insured person dies while in insurable employment and has a credit of 36 months of insurable employment the survivor becomes entitled to a pension equal to 60% of the minimum pension.

In 1993 through Labour Laws (Amendments) Ordinance, 1993 Ordinance No. XXIII of 1993 the rate of survivor pension was enhanced from 60% to 100% and a new scheme of survivor's pension was introduced, which *inter-alia* provides as under.^{xxiii}

- (1) In the case of the death of an insured person while in insurable employment but after he had completed not less than thirty-six months of insurable employment, the surviving spouse, if any shall be entitled to a **life pension equal to a hundred percent of the minimum pension.**
- (2) In case of the death of an insured person, while not in insurable employment but after he had completed five years of insurable employment, the surviving spouse, if any, shall be entitled to a **life pension equal to the minimum pension.**
- (3) In the case of the death of an insured person who had become entitled to an old-age pension or invalidity pension before his death, the surviving spouse shall, **if the spouse had married the deceased person before he had attained the minimum age prescribed for old-age pension, receive life pension equal to pension of such person.**
- (4) In the case of death of the surviving spouse in receipt of survivor's pension the minor child of the deceased insured person, if any, shall be entitled to the survivor's pension in the equal share, in case of a **male child, until he attains eighteen years of age and in case of a female child, until she attains eighteen years of age or until marriage whichever is earlier.**
- (5) In the case of cessation of survivor's pension of any of the children of the deceased insured person on his attaining the age of eighteen years or marriage in case of

female or death as the case may be, **the share of survivor's pension received by such child shall be distributed among the rest of the minor children** of the deceased insured person.

(6) In the case of death of the surviving spouse in receipt of survivor's pension **within five years after the death of the insured person and not survived by any minor child of the deceased insured person, the survivor pension shall be paid to the surviving parent of the deceased insured person if any for a period of five years from the death of the said spouse.**

(7) In the case of death of an insured person who is not survived by a spouse, the survivor pension shall be paid to the minor children of the deceased insured person referred to in sub-sec (3) and sub-sec (3A) and in the case of the insured person not surviving by any minor child, **the survivor pension shall be paid to the surviving parents of the deceased insured person, if any, for a period of five years from the death of the insured person.**

EOB Act is a beneficial legislation and it is the general principle that while interpreting it's any clause a wider meaning should be given. On the same principle, the Ombudsman had decided that the survivor of all the insured persons having the credit of 5 years of insurable employment irrespective of the date of death of said insured person are entitled for survivor pension from the date of amendment in the Act. Similarly, all the insured persons who die while in insurable employment but having the credit of 36 months or more insurable employment their survivors are entitled for the survivor's pension. It is also pertinent to note that the first three clauses of section 22B narrate the condition for entitlement of pension while all other clauses describe the beneficiaries.

These are the most important points to note regarding the survivor's pension:

(i) **It is not a continuation of the old-age pension. It is an independent benefit. Any person who had received his old-age grant having more than five years of insurable employment, before death, the surviving spouse would be entitled for a survivor's pension under section 22B(1A).**

- (ii) If both spouses are insured persons and upon the death of one the other is receiving survivor's pension, then on attaining the required age and completion of the required insurable period, such person will get old-age pension in addition to survivor's pension.**
- (iii) It is paid if the spouse had married the deceased person before he had attained the minimum age prescribed for an old-age pension.**
- (iv) The survivor's pension is paid to the spouse for life. It is not discontinued upon remarriage.**
- (v) Survivor's pension is paid to male child, until he attains eighteen years of age and in the case of a female child, until she attains eighteen years of age or until marriage whichever is earlier.**
- (vi) The survivor pension is paid to the surviving parent of the deceased insured person, if any, for a period of five years.**

INVALIDITY PENSION

This benefit was introduced in the original text as an invalidity allowance.^{xxiv} It was payable only in case the insured person was below 55 years, or 50 years of age in case of woman. By amendment vide the Employees' Old-Age Benefits (Amendment) Ordinance, 1983 (Ordinance XVII of 1983), it was renamed as invalidity pension and the amount was enhanced from Rs. 75/- per month and linked with wages and insurable employment according to the formula given in the schedule subject to a minimum of Rs. 90/- per month. The rate of minimum Invalidity Pension is equal to the Old-age Pension. By the Finance Act of 1986, the age has been enhanced to 60 years, 55 years in the case of women and the rate of pension was also enhanced.

Here are few important points:

- (i) The invalidity should not be due to employment injury to the insured person below the age of 60 years in case of male or 55 in case of woman. The employment injury means any personal injury to an insured person caused by an accident, or by occupational disease arising out of and in the course of his employment.^{xxv}**

(ii) To be entitled for invalidity pension contribution in respect of him must be paid for 15 years or for not less than 5 years since his entry in insurable employment and for not less than 3 years, during the preceding 5 years from the date he sustains invalidity.

This can be explained as under. An insured person got invalid after having 10 years of registration but with some breaks up in contribution. We see whether the said person is eligible for an invalidity pension or not

Entitlement to Invalidity Pension															
Case No.	Total no of years since registration= 10											Eligibility	Total	Last 5 years	
	1	2	3	4	5	6	7	8	9	10					
1	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Eligible	10	5
2	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Eligible	8	5
3	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Eligible	9	4
4	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Eligible	8	4
5	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Eligible	7	3
6	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Not Eligible	6	1
7	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Not Eligible	7	2
8	No	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Not Eligible	4	3
9	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Not Eligible	4	4

Section 23 read with section 24 of the EOB Act 1976 provides that period in respect of which invalidity pension, maternity benefit, sickness benefit, injury benefit or total disabled pension under Social Security Ordinance or EOB Act, 1976 has been paid to an insured person

shall be deemed to be contribution period i.e. the insurable employment. In view of this if any insured person was in receipt of any of the said benefits prior to reaching of the age for entitlement of old-age pension, all such period will be counted as insurable employment and the formula pension will be granted. Similarly, if an insured person dies while he was in receipt of any of the benefits he shall be treated as in insurable employment at the time of death and his survivors shall be entitled to a survivor's pension.

Illustration

A person insured at the age of	40 years
Invalid at the age of	50 years
Insurable employment	10 years
Invalidity pension granted at minimum rate of pension	Rs. 8500
Invalidity pension received for (till attainment of 60 years of age)	10 years
Insurable employment at 60 years of age (10 years pre-invalidity + 10 years Invalidity)	20 years
The new rate of Old-age pension is $32,000 \times 20/50$	Rs. 12,800

SUSPENSION OF OLD-AGE PENSION AND SURVIVORS' PENSION

It is provided in section 27 of the Act that subject to regulations, payment of old-age pension and survivors' pension shall be suspended when and so long as the insured person or the survivor entitled to it is absent from Pakistan except where the regulations provide otherwise.^{xxvi}

The legislature has used the word "suspended" in this section. It is, therefore, clear that on return the insured person or the survivor as the case may be shall be entitled to receive all the unpaid amount of pension and the same shall not be extinguished. However, till date, no regulations have been framed.

Adjudication of disputes

Decisions on complaints, questions and disputes

The Employees' Old-age Benefits Act, 1976 provides a detailed machinery for correcting wrong and illegal orders passed by different functionaries, any question raised in respect of any matter enumerated in section 33 thereof or any dispute raised by any aggrieved person for resolution. In the series, section 33 comes first and if a complaint is received or any question or

disputed arises as to matters detailed in section 33, the same is to be decided by the Institution. The said section is reproduced hereunder for ready reference.

33. Decision on complaints, questions and disputes. -

If any complaint is received or any question or dispute arises as to –

- (a) Whether a person is an insured person within the meaning of this Act;*
- (b) The amount of wages of an insured person for the purpose of this Act;*
- (c) The amount of contribution payable by an employer in respect of an insured person;*
- (d) The person who is employer in respect of an insured person;*
- (e) Entitlement to any benefit under this Act or as to the amount and duration thereof;*
- (ee) registration of an industry or establishment; or*
- (f) Any other matter in respect of any contribution or any benefit referred to in clause (e), or dues payable or recoverable under this Act relating to contribution or aforesaid benefits;*

the matter shall be decided by the Institution, in such manner and within such time, as the regulations may provide and the Institution shall notify its decision to the person concerned in writing, stating therein the reasons for its decision.

The Employees' Old-age Benefits (Determination of Complaints, Question and Disputed) Regulations 2007, notified on 2nd July, 2007 vide SRO No. 703 (I)/2007 in the Gazette of Pakistan, laid down a detailed procedure in this respect. The regulation 3 of the regulations of 2007 ibid provides the procedure for the nomination of officers and the status of its decisions. The said regulation is reproduced for ready reference.

3. Nomination of Officers to hear and decide complaints.- (1) The Chairman shall by an administrative order nominate an Officer as Adjudicating Authority

for disposal of the complaints, questions and disputes (hereinafter referred to as complaint) received under section 33 of the Act.

*(2)An Officer nominated under sub-regulation (1) shall hear and decide the petitions in accordance with the procedure laid down by these regulations and **decision given by such officer shall be deemed to be the decision of the Institution.***

As provided in regulation 3(2) of the Employees' Old-age Benefits (Determination of Complaints, Question and Disputed) Regulations 2007, the decision of the Adjudicating Authority is deemed to be the decision of the Institution. Therefore, in the eyes of law the decision of the Adjudicating Authority is binding of all employees, irrespective of their posting or status, as being employees of the **INSTITUTION**.

If the petitioner/ complainant has new facts that he could not produce at the time of hearing of the petition and he is dissatisfied by the decision of the Adjudicating Authority, he can apply for review under section 34. The Adjudicating Authority may, at its own review modify or reverse its decision. However, no review can be made without giving the opportunity of being heard and adducing evidence in support of or against the decision, as the case may be, to all parties to the complaint.

Any person aggrieved by the decision under section 33 or review under section 34 may file an appeal to the Board of Trustees. The appeal under section 35 of the Act is regulated under the Employees' Old-age Benefits (Board of Trustees) Rules, 1977 notified on 12-05-1977 vide SRO 438(I)/77. Rule 18 of the said rule deals with Appeals to the Board. The said rule is reproduced hereunder for ready reference.

18. Appeals to Board:

The Board may entertain appeals from aggrieved persons under Section 35 subject to the following requirements, namely:-

*(i) **Any person objecting to the decision of the Institution in respect of the items enumerated in Section 33 or review thereof under Section 34 may prefer an appeal to the Board in writing within thirty days of the decision.***

(ii) The Board may admit an appeal after the expiry of the period aforesaid if it is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(iii) The Board shall fix a day and place for hearing of the appeal and may, from time to time, adjourn the hearing.

(iv) When hearing an appeal, the Board shall not admit any documentary material or evidence which was not produced before the Institution, unless the appellant can show that he was prevented by sufficient cause from producing such material or evidence.

(v) The Board may, instead of hearing the appeals itself, appoint a committee of the Board to hear and decide the appeals on its behalf, and any decision of the Committee so given and communicated to the aggrieved person shall be as fully effective and binding as if given by the Board itself.

Now it is quite clear that the officials of the institution have no right to file an appeal u/s 35 of the EOB Act before the Board against the order of the Adjudicating Authority, being **order of the Institution as provided in section 33 of the Act** as well as regulation 3(2) of the Employees' Old-age Benefits (Determination of Complaints, Question and Disputed) Regulations 2007. Any appeal filed by the officials of the institution and/or decided under section 35 would be illegal and in gross violation of the law.

Further in the light of Rule 18 of the Employees' Old-age Benefits (Board of Trustees) Rules, 1977 the appeals under section 35 can only be admitted and fixed by the Board of Trustees and not by the Chairman of EOBI. It is quite clear from provisions of Rule 18, governing the subject if Appeals that:

- (a) Only the Board of Trustees of EOBI may entertain appeals from aggrieved persons under Section 35. No other person, even the President of the Board or any member of the Board (Chairperson EOBI) can entertain any appeal.
- (b) Only the **person** objecting to the decision of the Institution in respect of the items enumerated in Section 33 or review thereof under

Section 34 may prefer an appeal to the Board in writing within thirty days of the decision. The officials of the Institution cannot object the decision of the Institution being servants of the Institution.

- (c) Only the **Board may fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing** and not any single member or Committee of the Board has such powers.
- (d) However, only **after admission and fixation of appeal**, at the time of hearing, the Board may, **instead of hearing the appeals itself, appoint a committee of the Board to hear and decide the appeals** on its behalf, and any decision of the Committee so given and communicated to the aggrieved person shall be as fully effective and binding as if given by the Board itself.^{xxvii}

Limitations for filling of complaint/review/appeal

S. No	Nature of the case	Limitation Period
1.	Complainant u/s 33 of the Act	1 year of the occurrence of event (Reg 4(3)) ³⁵
2.	Review u/s 34	30 days of passing order u/33 (Reg 8) ³⁵ 35 ³⁵
3.	Appeal u/s 35	30 days of decision u/s 33 or 34 as the case may be (Rule 18(i)) ³⁶

Miscellaneous Issues

Self-Assessment Scheme

The Self-Assessment Scheme was introduced in the Act by Employees' Old-age Benefits (Amendment) Ordinance, 2002 (Ordinance XLVI of 2002) as section 12A. It was thereafter omitted by the Finance Act 2005 (Act No, VII of 2005). However, as all the amendments made in labour laws including the Employees' Old-age Benefits Act, 1976 in years 2005, 2006, 2007 and 2008 through Finance Acts of the respective years have been declared as ultra vires to the

³⁵ The Employees' Old-age Benefits (Determination of Complaints, Questions and Disputes) Regulations, 2007

³⁶ The Employees' Old-age Benefits (Board of Trustees) Rule, 1977

constitution of Pakistan, thus the scheme has been revived since 2002. This scheme provides as under:

12A. Self-Assessment Scheme.-

(1) Any employers may opt and apply for registration under the self-assessment scheme to the Institution by declaring the number of employees and their required particulars on the prescribed form. The declaration so made shall be accepted without any question provided no demand of contributions previously created remains outstanding against such employer.

(2) Any employer who is already registered under a normal pension scheme and opts for registration under a self-assessment scheme shall not decrease the total amount of contributions and number of insured persons already registered immediately prior to exercising his option for the self-assessment scheme.

(3) The employer shall ensure that the amount of contribution and number of registered insured workers declared by him shall not decrease during the period of two years of the self-assessment scheme.

(4) The officials of the Institution shall not enquire into or inspect any establishment which has opted for the self-assessment scheme for a period of two years from the date of submission of the application for ascertaining the amount of the contribution and number of insured persons.

(5) At the expiry of two years period, if the employer wishes to continue on the self-assessment scheme, one time checking of the record shall be done, as provided in subsection (1) of section 12, by an officer not below the rank of Deputy Director and no question will be asked about the previous years.

Any employer who opts for this scheme shall have to fill in form PR-10. The declaration made by the employer shall be accepted without any question provided no demand of contribution previously created remains outstanding against such employer. The Form PR-10 received in the Regional Office shall be acknowledged after entering the form in the register. The contribution payment record of the opting employer will be checked in the Regional Office. If any outstanding dues are found against the said employer, a show cause notice will be issued to him.

All such cases will be decided within a period of one month irrespective of the fact that the employer has responded in the matter or not.

The Form PR-10 has to be filled in the Regional Office which shall be acknowledged by the EOBI after entering the form in the register. PR-02 forms shall be provided to the applicant and be filed in the Region and contributions shall be deposited on PR-03 in the authorized branch of the Bank along with a copy of the PR-02 form in the first month of the financial year. It will be the responsibility of the applicant to fill in the name of a particular of his employees and submit the duly filled-in form in the Region. The contribution shall be calculated based on the number of persons declared in form PR-02.

Section 12(A) lays down that the declaration so made shall be accepted without any question provided no demand of contributions previously created remains outstanding against such employer. It is obvious that the employer desiring to avail SAS has to pay the arrears before submission of the form PR-10. As per third proviso of sub-section (1) of Section 9 fixed amount of two hundred and fifty rupees in respect of every person in insurable employment plus contribution u/s 9B by the insured persons shall be paid.

No separate certificate of acceptance is required to be issued by the Regional Heads under the scheme. Submission of duly filled-in form PR-10 along with PR-03 showing deposit of contribution @ of Rs. 250/- per month per insured person plus contribution u/s 9B by the insured persons shall be sufficient. The PR-10 form shall be deemed to have been accepted.

Offences and Penalties

Any person who is guilty of any contravention of, or non-compliance with, any of the provisions of the Act or the rule or the regulations, shall be punished with imprisonment of a term which may extend to two years, or with a fine which may extend to ten thousand rupees or with both.

No court inferior to a Magistrate of the first class can try any offence under the Act. No prosecution shall be instituted except with the previous sanction of the Federal Government or

any officer authorised on this behalf. The Chairman of EOBI authorised to sanction of prosecution³⁷.

Power to exempt

The Federal Government has the power to exempt any establishment or industry from all or any of the provisions of the Act.³⁸

Act not to apply to certain persons

It is imperative to note that no exemption whatsoever has been provided for any establishment in the Act. Exemption power is only with the Federal Government. However, the Act grants exemption to certain persons who are employed in given establishment as under:

- (a) persons in the service of the State, including members of the Armed forces, Police force and Railway servants;
- (b) persons in the service of a local council, municipal committee, a cantonment board or any other local authority;
- (c) persons who are employed in services or installations connected with or incidental to the Armed forces of Pakistan including an Ordnance factory maintained by the Federal Government or Railway Administration;
- (d) persons in the service of Water and Power Development Authority;
- (e) persons in the service of a bank or banking company;
- (f) persons in the service of statutory bodies other than those employed in or in connection with the affair of factory (as defined in section 2 (j) of the Factories Act, 1934 (XXV of 1934) or a mine as defined in the Mines Act, 1923 (IV of 1923):

37 S.R.O. 398 (1)86 dt 16-4-1986. In exercise of the powers conferred by Sub Section (1) of Section 38 of the Employees' Old-Age Benefits Act 1976 (XIV of 1976), the Federal Government is pleased to authorise the Chairman, Employees' Old-Age Benefits Institution, to institute prosecution for offences committed under the said Act. Islamabad, the 16th April, 1986 amended on S.R.O 692 (1) 86 dated 6th July 1986 To the effect that for the word "Institute" the word "Sanction" shall be substituted.

38 S.R.O. 132 (1) 84 --- In exercise of the powers conferred by Section 46 of the Employees Old-Age Benefits Act, 1976 (XIV of 1976), the Federal Government dt 16-4-1986 exempted all establishments from the provisions of Section 9 of the said Act, for the period beginning on the 1st July, 1976, and ending on the 30th June, 1983.

S.R.O. 834 (1)/79---- In exercise of the power conferred by Section 46 of the Employees' Old-Age Benefits Act, 1976 (XIV of 1976), the Federal Government is pleased to exempt the carpet industry from all the provisions of the said Act.

S.R.O.133 (1) 84.---In exercise of the powers conferred by Section 46 of the Employees' Old-Age Benefits Act, 1976 (XIV of 1976), the Federal Government is pleased to exempt the establishment carrying on the Garment Industry as a cottage industry from all the provisions of the said Act.

provided that workshops maintained exclusively for the purpose of repair or maintenance of equipment or vehicles used in such statutory bodies shall not be treated as factories for the purposes of this clause;³⁹

(g) members of the employer's family that is to say, the husband or wife and dependent children of the employer living in his house in respect of their work for him.

Because of the **above, it is quite clear that the present legislation is practically unimplementable and it requires firm steps to survive the scheme as well as the Institution.**

Some of the urgent steps are given hereunder:

RECOMMENDATIONS

1. To put the Scheme as well as the Institution back on track, a new law repealing and re-enacting the 1976 law is required to be promulgated to give legal cover to the computation of contribution, payment of benefits, and the minimum pension.
2. The new Act should give legal protection to the self-registration scheme, which was initiated but dropped due to the non-availability of any provision in legislation. In this case, the fund will receive contributions for at least fifteen years and largely no payment will be due to such insured persons.
3. The new Act may introduce a package scheme for insured persons who want to get more benefits at the time of retirement and for their spouses. This means if a person opts for payment of double contribution, the second one including the employer's share, he may get the double pension.
4. The new law should provide special provisions for domestic workers, home-based workers, platform workers and part-time workers.
5. The new law should expressly include construction workers.
6. The new law should provide a special formula for computation of contribution for mines workers to be calculated on a production basis.
7. The new law should provide for bulk contributions for construction workers to be collected with the fee of approval of the plan on a percentage of the expected cost of construction on a covered area basis.

³⁹ Supreme Court of Pakistan 1993-PLC-606, 2004-PLC-255(d)

8. The new law should allow workers' welfare associations to get themselves registered as employers in respect of their members and pay contributions for them. This will cover a large number of informal sectors in the scheme.
9. The new law should provide for the minimum age for registration as sixteen and the maximum age as fifty-eight. This will provide an opportunity for the registration of young workers, given the minimum age for employment as sixteen years. On the other hand, since the lowest benefit "old-age grant" is payable to a person who has not less than two years of insurable employment, the employee with more than fifty-eight years of age cannot get any benefit.
10. The present enactment restricts an insured person from getting a pension if he is absent from Pakistan, which is against the norms of natural justice. Therefore, the new law should be amended by allowing the pensioner to continue his right to a pension while he is residing abroad as in the case of civil servants. The inference can also be made to the agreements signed by the Government of Pakistan with the respective governments of the Netherlands, Libya and other countries.
11. The new law should give legal cover to the minimum pension (which is presently being paid under SRO).
12. The new law should allow enhancement in the rate of pension to be linked with enhancement of contribution only.
13. The new law should provide Survivors' Pension in line with Family Pension being paid to the government servants.
14. The new law should provide for self-contribution in case of a change of employment to a non-registerable establishment or being unemployed.
15. New law should eliminate various exclusions provided in section 47. It would be pertinent to note that apart from government employees the persons in the service of nationalized institutions were included and presently no such institution is available as those are either de-nationalised, privatized or registered as private limited companies, including Banks and banking institutions.

16. The new law should provide for the issuance of an annual statement to insured persons showing contributions made by their employers.

END NOTES

ⁱ As per Shop and Establishment Ordinance, 1969, “ establishment” means a shop, commercial establishment, industrial establishment, private dispensary, maternity home, residential hotel, restaurants, eating house, café, cinema, theatre, circus or other place of public amusement or entertainment and such other establishments or class thereof as Government may by notification in the Official Gazette, declare to be establishment for the purpose of this Ordinance.

Sec 5(2) Nothing in clause (a) of sub-section (1) of section 6 and in section 7 shall apply to– (i) clubs, hostels and messes maintained for profit or gain, so far as service and attendance upon customers is concerned; (ii) shops dealing solely in any vegetables, meat, fish, dairy products, bread, pastries, sweet-meats and flowers, so far as the sale of these articles is concerned; (iii) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites, so far as the sale of these articles is concerned; (iv) shops dealing in articles required for funerals, burials or cremations, so far as the sale of these articles is concerned; (v) shops dealing mainly in tobacco, cigars, cigarettes, biries, pan, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned; (vi) automobile service stations (not being repair shops) and petrol pumps for the retail sale of petrol; (vii) barbers and hair-dressers’ shops, so far as service to customers is concerned; (viii) cinemas, theatres and other places of public entertainment

As per 2(e) of the said Act “commercial establishments” means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession, and includes:

- (i) A society registered under the Societies Registration Act, 1880 (XXI of 1880) and charitable or other trust, whether registered or not which carries on, whether for the purpose of gain or not, any business, trade or profession, or any work in connection with or incidental or ancillary thereto;
- (ii) An establishment wherein there conducted the business of advertising, commission, forwarding or a commercial agency;
- (iii) A clerical department of a factory or any industrial or commercial undertaking;
- (iv) An insurance company, joint stock company, bank, broker’s office or exchange and office of lawyers, income tax practitioners, registered accountants, contractors and engineers;
- (v) Such other professional establishments or class thereof as Government may, by notification in the Official Gazette declared to be the commercial establishments for the purpose of this Ordinance, but does not include a factory, shop, residential hotel , restaurant, eating house, theatres or other place of public amusement or entertainment.

But does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

Whereas the industrial establishment has been defined in clause (o) of section 2 of the same Act as under:-

“Industrial establishment” means a workshop or other establishment in which the work of making, altering, repairing, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery, or disposal is carried on or where any such service is rendered to a customer, and includes such other class or classes of establishment as Government may by notification in the Official Gazette declared to be industrial establishment for the purpose of this Ordinance but does not include a factory.

As per Section 5 nothing in the said Ordinance is applicable to:-

- (a) Office of or under Federal or Provincial Government;
- (ii) Offices of or under the Pakistan Railway Board including Railway Stations;
- (iii) Offices of all under any local authority, a trust, a corporation or any other public statutory body which is not run for profit or in the course of its business does not make any profit or gain;
- (iv) Shop or stalls in any public exhibition or show, in so far as such shops or stalls deal in retail trade which is solely subsidiary or in ancillary to the main purpose of such exhibition or show;
- (v) Shops or stalls in any public fair or bazaar held for religious or charitable purposes;
- (vi) Clubs, hostel and messes not maintained for profit or gain;
- (vii) Establishment for the treatment and care of the sick infirm, destitute or mentally unfit persons;
- (viii) Stalls and refreshment rooms at Railway Stations, Steamers and launch stations, docks wharves and air ports, and on trains, steamer or air crafts, so far as the sale of commodities is concerned;
- (ix) Any person employed as manager, travelling agent, canvasser, messenger, watchman, caretaker or conservancy staff or any person employed exclusively in connection with the collection, dispatch, delivery and conveyance of or custom formalities on goods;
- (x) Any person employed for the business of any shop or commercial establishment mentioned in clauses (i) to (viii).

“Construction industry” has been defined in section 2 (bb) of West Pakistan Standing Ordinance, 1968 as under:-

Construction industry means an industry engaged in construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbor, dock, pier, canal, inland water way, road, tunnel, bridge, dam, viaduct, sewer, drain, water works, well, telegraphic and telephonic installation, electrical

undertaking, gas work or other work of construction as well as the preparation for, or laying the foundation of, any such work or structure.

Factory has been defined in section 2 (j) of the Factories Act, 1934 as under:-

Factory means any premises including the precincts thereof, wherein ten or more workers are or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power but does not include a mine, subject to operation of Mines Act, 1923 (IV of 1923).

Mines has been defined in section 2 (f) of the Mines Act, 1923 as under:-

Mines means any excavation where any operation for the purpose of searching for or obtaining mineral has been or is being carried on, and includes all works, machinery, tramways and sidings whether above or below ground in or adjacent to or belonging to a mine:

Provided that it shall not include any part of such premises from which a manufacturing process is being carried on unless such process is in a process of coke making or dressing of mineral.

A road transport service has been defined in section 2 (7) of the Road Transport Workers Ordinance 1961 as under:

Road Transport Service means a service carrying passenger or goods or both by road in vehicles for higher or reward.

ii *“Furthermore. As held by the apex Court in the case :ALI AZHAR KHAN BALOCH and others versus PROVINCE OF SINDH and others” (2015 SCMR 456), once the Court declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose to any liability, **therefore, if any payment have been made by the complainants, the same shall either be returned in lump sum/instalments or the same may be adjusted towards any future obligations”**,*

(Emphases added)

iii S.R.O. 132 (1) 84 --- In exercise of the powers conferred by Section 46 of the Employees Old-Age Benefits Act, 1976 (XIV of 1976), the Federal Government is pleased to exempt all establishments from the provisions of Section 9 of the said Act, for the period beginning on the 1st July, 1976, and ending on the 30th June, 1983, in respect of employees who had ceased to be insured persons or crossing the wages of one thousand rupees per mensem but have again become insured persons under the Employees Old-Age Benefits (Amendment) Ordinance 1983 (XVII of 1983), subject to the conditions that such establishment clear their other dues and furnish such records of their employees as may be required by the Institution .

^{iv} “9B. *Contribution by insured person.- On and from the 1st day of July, 2001, the contribution shall be payable every month by an insured person at the rate of twenty rupees in the prescribed manner.”*

^v **12. Officials of Institution to check employer’s books.-**

(1) *Any official of the Institution, duly authorized by a certificate in a form specified in the regulations, may, for the purpose of inquiring into the correctness of any of the particulars stated in the records or returns referred to in Section 10 or for the purpose of ascertaining whether any of the provisions of this Act have been complied with:-*

(a) *require an employer to furnish to him such information as he may consider necessary; or*

(b) *at any reasonable time, enter any establishment or other premises occupied by such employer and require any person found in charge thereof to produce and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages, or to furnish to him such information, as he may consider necessary; or*

(c) *examine with respect to any matter relevant to the purpose aforesaid, the employer, his agent or any person found in such establishment or other premises or any other person whom the said official has reasonable cause to believe to be or to have been an insured person;*

(2) *The official refer to in section (1) shall not ordinarily demand production of account books and other documents refer to in clause (b) of sub-section (1) for more than two years and shall be bound to secrecy as regard all matters with which he becomes acquainted in the performance of his duties and which do not relate to matters provided for in this act;*

*Provided that checking of record in case of those employers who have not opted for **Self-Assessment Scheme** shall only be done once in a year, with fifteen days prior notice, by an officer not below the rank of Assistant Director.^v*

(3) *If an employer fails to maintain records or to submit returns as required by the regulations, or otherwise fails to comply with the provisions of sub-section (1) and thereby makes it difficult to ascertain the identity of persons required to be insured or the amount of contribution payable, the contribution shall be assessed on the basis of such evidence as the Institution may find satisfactory for this purpose.*

^{vi} **12. A SELF ASSESSMENT SCHEME**

(1) Any employers may opt and apply for registration under the self-assessment scheme to the Institution by declaring the number of employees and their required particulars on the prescribed form. The declaration so made shall be accepted without any question provided no demand of contributions previously created remains outstanding against such employer.

(2) Any employers who is already registered under normal pension scheme and opts for registration under self-assessment scheme shall not decrease the total amount of contributions and number of insured persons already registered immediately prior to exercising his option for self-assessment scheme.

(3) The employer shall ensure that the amount of contribution and number of registered insured workers declared by him shall not decrease during the period of two years of self-assessment scheme.

(4) The officials of the Institution shall not enquire into or inspect any establishment which has opted for self-assessment scheme for a period of two years from the date of submission of application for ascertaining the amount of the contribution and number of insured persons.

(5) At expiry of two years period, if the employer wishes to continue on self-assessment scheme, one time checking of the record shall be done, as provided in sub-section (1) of section 12, by an officer not below the rank of Deputy Director and no question will be asked about the previous years.

^{vii} **13. Increase of unpaid contribution & recovery of contribution, etc, as arrears of land revenue:**

1) If any employer fails to pay, on the due date, the contribution payable by him under sub-section (1) of Section 9, the amount so payable by him shall be increased by such percentage or amount as may be prescribed:

Provided that in no case shall such increase exceed fifty per cent of the amount due.

(2) Without prejudice to any other remedy, the amount of the contribution due, together with the increase provided for under sub-section (1), may be recovered as an arrears of land revenue.

^{viii} The recovery of dues as arrears of land revenue by the Government coercive machinery could only be set into motion after claim had actually ripened into dues and determined on the basis of some adjudication in accordance with law and justice.

^{ix} If the question of liability to pay contribution is determined through the machinery/forums provided under a particular enactment, the same will be become due and resort can be made to the provisions of the Land Revenue Act for recover as arrears of land revenue.

^x S. 13(2) – West Pakistan Land Revenue Act (XVII of 1967), Ss 81 & 83 – Recovery of contribution of arrears as land revenue – Company had regularly been depositing contribution regarding its insured employees with Authority from the date of its registration with Authority, but Authority without taking into consideration uncontroverted documents on record showing deposit of contribution and without determining amount validly due from company, directed recovery as arrears of land revenue – Hasty and hostile manner in which proceedings for recovery by way of land revenue was pressed by Authority without properly determining amount due, held, were not only was unjust, but also *mala-fide* – Notice of demand issued by Authority to Company and proceedings initiated by the Authority for recovery were declared to be illegal.

7. ^{xi} Amendment of section 22, Act XIV of 1976.-

In the said Act, in section 22, for sub-section (1) and (2) the following shall be substituted, namely:-

“(1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the schedule:

Provided that-

- (a) he is over fifty-five years of age, or fifty years in the case of a woman; and
- (b) contributions in respect of him were payable for not less than fifteen years.

(2) If an insured person was on the 1st day of July, 1976 or is on any day thereafter on which this Act become applicable to an industry or establishment:-

- (i) over forty years of age, or thirty –five years in the case of a woman, clause (b) of the sub-section (1) shall have effect as if for the word “fifteen” therein the word “seven” were substituted; or
- (ii) over forty-five years of age, or forty years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word “fifteen” therein the word “five” were substituted.

11. Insertion of new section 22A and 22B, Act XIV of 1976.-

In the said Act, after section 22 amended as aforesaid, the following new section shall be inserted, namely:-

“**22A. Old-age grant.**- If an insured person, not otherwise entitled to old-age pension, retires from insurable employment after attaining the age of fifty-five year, or fifty years in the case of a woman, and contributions in respect of him were payable for less than fifteen years but not less than five years, he shall be entitled to an old-age grant payable in lump sum equal to fifty per cent of his average monthly wages for every completed year of insurable employment or part thereof in excess of six months.

22B. Widow's pension. –

- (1) In the case of the death of an insured person in receipt of old-age pension, the surviving widow, if any, shall be entitled to a widow's pension equal to sixty per cent of the old-age pension of the deceased insured person.
- (2) A widow's pension shall be payable as from the month following that in which the insured person dies and shall terminate –
 - (a) upon the death of the widow; or
 - (b) when the widow remarries.
- (3) In case of the deceased insured person is survived by two or more widows, the widow's pension shall be divided equally among them."

12. Amendment of section 23, Act XIV of 1976.-

In the said Act, in section 23, in sub-section (1), for the words "of seventy-five rupees per month" the words "to be calculated according to the formula set out in the Schedule" shall be substituted.

^{xii} **22. OLD-AGE ALLOWANCE:**

- (1) An insured person shall be entitled to old-age allowance at the rate of seventy five rupees per month provided that:-
 - (a) he is over fifty-five years of age or, in the case of a woman, fifty years;
 - (b) he has retired from insurable employment; and
 - (c) contributions in respect of him were payable for not less than fifteen years:

Provided that the Old-Age allowance shall be increased by five rupees per month for every additional year of insurable employment beyond the age specified in clause (a).

- (2) If, on the 1st day of July, 1976 or on any day thereafter on which this Act becomes applicable to an industry or establishment, an insured person is over forty years of age, or over thirty-five in case of a woman, clause (c) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "seven" were substituted.
- (3) Subject to regulations, the old-age allowance shall commence as from the month following that in which the insured person satisfies the condition for entitlement thereto, provided that no allowance shall be payable retro-actively for more than six months preceding the month in which an application for old-age allowance is submitted.
- (4) Insurable employment of a person for the purposes of this Act shall commence on the date from which the first contribution in respect of him becomes payable.

(5) The old-age allowance payable to an insured person shall be terminated at the end of the month in which the death of such person occurs.

(6) The old-age allowance may, at the request of an insured person, be commuted on such grounds and in such manner as may be specified in the regulations.

^{xiii}“(1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the schedule:

Provided that-

- (a) he is over fifty-five years of age, or fifty years in the case of a woman; and
- (b) contributions in respect of him were payable for not less than fifteen years.

If an insured person, on the 1st day of July, 1976 or is on any day thereafter on which this Act become applicable to an industry or establishment was:-

- (a) over forty years of age, or thirty –five years in the case of a woman, the contribution period of fifteen years was reduced to “seven” years, and
- (b) over forty-five years of age, or forty years in the case of a woman, to “five” years only.

^{xiv} CP No, 3531/2021 etc.

9. Section 22(1) provides that an insured person is entitled to monthly old-age pension if (a) he is over sixty years of age, or over fifty- five years of age in the case of woman, and (b) the contribution in respect of such insured person was paid by the employer for not less than fifteen years. It is only when both these conditions are fulfilled that an insured person is entitled to monthly old-age pension under the said provision. An exception is provided under Section 22(2) of the Act whereby the number of years of contribution paid by the employer on behalf of the insured person is reduced to seven and five years, respectively instead of fifteen years under section 22(2) if on the first day of July, 1976 or on any day thereafter on which the Act becomes applicable to an industry or establishment; (i) the insured person is over forty years of age, or over thirty-five years of age in the case of a woman

10. The first cut-off date i.e., first day of July 1976 is the date when the Act was implemented. As per section 9 of the Act, the first contribution was paid by the employer applicable to an industry or establishment. Section 1 (4) of the Act provides three different modes through which the Act becomes applicable to an industry or establishment. It is at these two points in time when the age of the insured person in terms of Section and (ii) becomes relevant for invoking the exception of reduced years of contribution under the said provision. The age of the insured person alone is not the determining factor for the case to fall within the exception under Section 22(2) but it is also that the age must be so at the relevant cut-off dates mentioned above, As such, an insured person cannot avail the exception under Section 22(2) if he was employed after the cut-off date, i e, first day of July 1976 or after the date when the Act became applicable to the industry or establishment under Section 1(4) of the Act, Therefore, to avail the exception under Section 22(2) of the Act, the insured person must satisfy that he was in employment in the industry or

establishment on the first day of July 1976 or on the day the Act became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act.

^{xv}**13. Addition of new Schedule, Act XIV of 1976.-**

In the said Act, after section 47, the following new Schedule shall be added, namely:-

SCHEDULE

[See sections 22 and 23]

- (1) The monthly rate of invalidity pension or old-age pension payable to an insured person shall be a percentage of his average monthly wages equal to 2.5 per cent for every year of contributions payable up to four years and 0.5 per cent for every additional year of contributions payable, a period of six months or over to be taken as one full year. No account shall be taken of any period of insurable service completed by the insured person after becoming entitled to old-age pension.
- (2) The average, monthly wages of an insured person as referred to in paragraph (1) shall be calculated on the basis of wages on which contributions were payable in respect of the thirty-six calendar months immediately preceding the date on which the insured person fulfils the conditions specified in section 22.
- (3) If an insured person continues in insurable employment beyond the age specified in clause (a) of section 22, the old-age pension computed under paragraph (1) shall be increased at the rate of six per cent for each year of insurable employment after attaining the said age. The old-age pension at enhanced rates shall become payable in lieu of the pension payable as computed under paragraph (1), on the insured person's attaining the age of sixty years, or fifty-five years in the case of a woman, or the actual retirement date if earlier:
Provided that the old-age pension or invalidity pension payable to an insured person shall not be less than ninety rupees for month.

^{xvi} History of increase in minimum pension under EOB Act

S. No	Title of the amending law	w.e.f	Minimum Pension
1.	EOB Act 1976	To be paid from 1991	75
2.	EOB (Amendment) Ordinance 1983	July 1983	90
3.	Finance Act 1986	July 1986	306
4.	Finance Act 1986	July 1987	323
5.	Finance Act 1986	July 1988	349
6.	Finance Act 1986	July 1989	374
7.	Finance Act 1986	July 1990	400
8.	Finance Act 1986	July 1991	425

9.	EOB (Amendment) Ordinance 2000	January 2000	630
10.	Labour Laws (Amendment) Ord 2002	November 2001	700
11.	Finance Act 2005	July 2005	1000
12.	Finance Act 2006	July 2006	1500
13.	Finance Act 2007	July 2007	15% increase
14.	Finance Act 2008	July 2008	2000

History – Rate of Minimum Pension & Other Payment u/s 2(a) Of EOB Act, 1976

S. No	Period	Minimum Pension as per Schedule Rs.	Other payment notified U/s 2(a) Rs.	Total payment Rs.
1.	July 1983 to June 1985	75	-	75
2.	July 1985 to June 1986	90	-	90
3.	July 1986 to June 1987	306	-	306
4.	July 1987 to June 1988	323	-	323
5.	July 1988 to June 1989	349	-	349
6.	July 1989 to June 1990	374	-	374
7.	July 1990 to June 1991	400	-	400
8.	July 1991 to Dec 1999	425	-	425
9.	Jan 2000 to Oct 2001	630	-	630
10.	Nov 2001 to Dec 2004	700	-	700
11.	Jan 2005 to June 2006	1000	-	1000
12.	July 2006 to June 2007	1300	-	1300
13.	July 2007 to June 2008	1500	-	1500
14.	July 2008 to June 2010	2000	-	2000
15.	July 2010 to Dec 2011	2000	1000	3000
16.	Jan 2012 to March 2015	2000	1600	3600
17.	April 2015 to Aug 2018	2000	3250	5250
18.	Sept 2018 to Dec 2019	2000	4500	6500
19.	Jan 2020 to June 2023	2000	6500	8500
20.	July 2023	2000	8000	10000

The minimum pensions increased through government notifications are without jurisdiction. Even otherwise, after 2002, no change in rate of contribution or pension can be made even through legislative process without actuarial valuation. No amendment in the law has been made after Finance Act, 2008. However, amendments in all labour laws through Finance Acts of 2005 to 2008. i.e. enhanced by Finance Act 2005, Finance Act 2006, Finance Act 2007 and Finance Act 2008 have been set aside by the Supreme Court of Pakistan. As such legally the minimum pension is Rs.700/- and over and above amount is being paid as "other payment" notified u/s 2(a) of the Act.

^{xvii} (1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the schedule.

Provided that:-

- (a) he is over sixty years of age, or 55 years in the case of a woman; and
- (b) contributions in respect of him were payable for not less than fifteen years.

Provided further that the age specified in clause (a) will be reduced by five years in the case of an insured person employed in the occupation of mining for at least ten years immediately preceding retirement.

(2) If an insured person was on the first day of July, 1976, or is on any day thereafter on which this Act becomes applicable to an industry or establishment:-

- (i) over forty years of age, or thirty-five years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "seven" were substituted; or
- (ii) over forty-five years of age or forty years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted.

^{xviii} (2C) An insured person who retired from insurable employment before attaining the age of sixty years (fifty-five years in the case of a woman) but after attaining the age of fifty-five years (fifty years in the case of a woman) shall be entitled to a reduced old-age pension on fulfilling the following conditions, namely:-

- (a) the Institution is satisfied through documentary evidence that the employer has a definite established retirement age of less than sixty years (fifty-five years in the case of a woman);
- (b) the employer certifies that the insured person has been retired by him on attaining the age of superannuation; and

(c) the contributions in respect of him were payable for the period required under the provisions of this Act.

(2D) The old-age pension shall be reduced by one-half per cent of the old-age pension specified in the Schedule for each completed month by which the age falls short of sixty years (fifty-five years in the case of a woman) and the minimum old-age pension shall also be reduced in the aforesaid manner in the case of retirement from insurable employment before attaining the age of sixty years (fifty-five years in the case of a woman).

(2E) The reduction in old-age pension specified in sub-section (2D) shall be for life and shall not be restored on the insured person's attaining the normal pension age.

^{xix} 8. Amendment of section 22, Act XIV of 1976.- In the said Acts, in section 22.-

(a) in sub-section (1),-

(i) In the first proviso, in clause (b) for the word "payable" the word "paid" shall be substituted;

(ii) in second proviso, for the semicolon, at the end, a colon shall be substituted; and

(iii) after the second proviso, amend as aforesaid, the following shall be added, namely;-

"Provided also that where the employee was insured under the provisions of this Act on or before 30th June 2002, and contributions payable under the Act by the employer prior to 30th June, 2002, in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word "payable" the word "paid" were not substituted:

"Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with prescribed procedure, his entitlement to the benefit shall not be affected by default in payment of employer's share of contribution under section 9."; and

(b) in sub-section (2C), in clause (c), for the word "payable" the word "paid" shall be substituted,

9. Amendment of section 22-A, Act XIV of 1976.- In the said Act, in section 22A,

(a) for the word "payable" occurring twice the word "paid" shall be substituted; and

(b) for the full stop, at the end, a colon shall be substituted and thereafter the following provisos shall be added, namely:-

"Provided that where the employee was insured under the provision of this Act on or before 30th June 2002, and contributions payable under the Act by the employer prior to 30th June 2002 in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word "payable" the word "paid" were not substituted:

Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with prescribed procedure, his entitlement to the benefit shall not be affected by default in payment of employer's share of contribution under section 9."

10. Amendment of section 23, Act XIV of 1976.- In the said Act, in section 23,-

(a) for the word "payable" wherever occurring the word "paid" shall be substituted; and

(b) in sub-section (1), for the full stop, at the end, the colon shall be substituted and thereafter the following provisos shall be added, namely;-

"Provided that where the employee was insured under the provision of this Act on or before 30th June 2002, and the contribution payable under the Act by the employer prior to 30th June 2002, in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word "payable" the word "paid" were not substituted in clause (a) and (b):

Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with prescribed procedure, his entitlement to the benefit shall not be affected by default in payment of employer's share of contribution under section 9."

^{xx} **“22A. Old-age grant.-** If an insured person, not otherwise entitled to old-age pension, retires from insurable employment after attaining the age of fifty-five year, or fifty years in the case of a woman, and contributions in respect of him were payable for less than fifteen years but not less than five years, he shall be entitled to an old-age grant payable in lump sum equal to fifty per cent of his average monthly wages for every completed year of insurable employment or part thereof in excess of six months.

^{xxi} **22B. Widow's pension. –**

- (4) In the case of the death of an insured person in receipt of old-age pension, the surviving widow, if any, shall be entitled to a widow's pension equal to sixty per cent of the old-age pension of the deceased insured person.
- (5) A widow's pension shall be payable as from the month following that in which the insured person dies and shall terminate –
 - (c) upon the death of the widow; or
 - (d) when the widow remarries.
- (6) In case of the deceased insured person is survived by two or more widows, the widow's pension shall be divided equally among them.”

xxii **22B. SURVIVORS' PENSION**

- (1) In the case of the death of an insured person while in insurable employment but after he had completed not less than thirty-six months insurable employment, the surviving spouse, if any, shall be entitled to a life pension equal to sixty per cent of the minimum pension.
- (2) In the case of the death of an insured person who had become entitled to old-age pension, before his death, the surviving spouse, shall, if the spouse had married the deceased person before he had attained the minimum age prescribed for old-age pension, receive life pension of sixty per cent of the pension of such person.
- (3) In the case of the death of the surviving spouse in receipt of a survivor's pension within five years after the death of the insured person, the survivor's pension for the balance of the said five years shall be paid to the estate of the deceased spouse.
- (4) In the case of the death of an insured person not survived by a spouse, the survivor's pension shall be paid to the estate of the deceased for a period of five years.

xxiii **22B. SURVIVORS' PENSION**

- (1) In the case of the death of an insured person while in insurable employment but after he had completed not less than thirty six months insurable employment, the surviving spouse, if any shall be entitled to a life pension equal to hundred percent of the minimum pension.
- (1A) In case of the death of an insured person, while not in insurable employment but after he had completed five years insurable employment, the surviving spouse, if any, shall be entitled to a life pension equal to the minimum pension.
- (2) In the case of death of an insured person who had become entitled to old-age pension or invalidity pension before his death, the surviving spouse shall, if the spouse had married the deceased person before he had attained the minimum age prescribed for old-age pension, receive life pension equal to pension of such person.
- (3) In the case of death of the surviving spouse in receipt of survivor's pension the minor child of the deceased insured person, if any, shall be entitled to the survivor's pension in the following equal share

-
- (i) in case of male child, until he attains eighteen years of age and
 - (ii) in case of female child, until she attains eighteen years of age or until marriage whichever is earlier.

(3A) In the case of cessation of survivor's pension of any of the children of the deceased insured person on his attaining the age of eighteen years or marriage in case of female or death as the case may be, the share of survivor's pension received by such child shall be distributed among the rest of the minor children of the deceased insured person.

(3B) In the case of death of the surviving spouse in receipt of survivor's pension within five years after the death of the insured person and not survived by any minor child of the deceased insured person, the survivor pension shall be paid to the surviving parent of the deceased insured person if any for a period of five years from the death of the said spouse.

(4) In the case of death of an insured person who is not survived by a spouse, the survivor pension shall be paid to the minor children of the deceased insured person referred to in sub-sec (3) and sub-sec (3A) and in the case of the insured person not surviving by any minor child, the survivor pension shall be paid to the surviving parents of the deceased insured person, if any, for a period of five years from the death of the insured person.

^{xxiv} **Invalidity Allowance:** (1) An insured person who sustains invalidity shall be entitled to an invalidity allowance at the rate of seventy-five rupees per month:-

Provided that :-

- (a) contribution in respect of him were payable for not less than fifteen years; or
- (b) contribution in respect of him were payable for not less than five years since his entry into insurable employment and for not less than three years during the period of five years preceding the month in which he sustains invalidity; and
- (c) in either case, he is under fifty-five years of age, or fifty years in the case of a woman.

(2) Subject to regulations, the invalidity allowance shall be payable from the month following that in which the insured person satisfies the conditions for entitlement thereto:

Provided that the invalidity allowance shall not be payable retro-actively for more than six months preceding the month in which an application for the invalidity allowance is submitted.

(3) The invalidity allowance shall be payable so long as invalidity continues:

Provided that an insured person who has been in receipt of the invalidity allowance for not less than five continuous years or attains the age specified in clause (a) of sub-section (1) of section 22 shall be entitled to the invalidity allowance for life.

^{xxv} For the purpose invalidity pension following three diseases have been declared as occupational disease in the 15th meeting of Board of Trustees held on 3.9.1986.

- 1) Anthrax (2) Twister's Cramp (3) Byssinosis

The brief details of the occupation which may lead to above diseases are as under:-

ANTHRAX: The handling of wool, hair, hides or skin or other animal product or contact with animal infected with Anthrax.

TWISTER'S CRAMP: Twisting of cotton (including worsted yarns) involving prolonged period of a repeated muscular action.

BYSSINOSIS: Employment in cotton rooms, blowing or card rooms, in factories where spinning of Raw or waste cotton, involving exposure to the inhalation of dust containing fibers.

27. ^{xxvi} **Suspension of old-age pension and widow's pension:-** Subject to regulation, payment of old-age pension and widow's pension shall be suspended when and so long as the insured person or the surviving widow entitled to it is absent from Pakistan except where the regulation provide otherwise."

^{xxvii} Some important case law which provide that unless remedies proved under sections 33-35 have been exhausted, jurisdiction of civil court or even High Courts under constitution petitions (Art .199) would remain barred.

PLD-1976-Karachi-1228

Sunshine Diaries Ltd. Versus Sind Employees Social Security Institution.
Creation of special forum above bars jurisdiction of civil court.

PLD-1978-Karachi-612

Mushtaq Hussain Shah versus Riaz Muhammad.
Jurisdiction --- principle --- that where a statute create right and also provide machinery for its enforcement, resort must be had to procedure prescribed in statute creating right for its enforcement and jurisdiction of civil court barred in such matter.

PLD-1978-Lahore-441

Abdul Aziz versus Syed Arif Ali
Civil court jurisdiction --- suit to challenge order of a tribunal --- can not be filed in civil court without exhausting all the remedies provided by the law governing such tribunal exception unless tribunal provide to have not acted in conformity with fundamental principle of judicial procedure or acted potently without jurisdiction.

1988-PLC-421

Faiz Talkies versus Chairman, Employees' Old-Age Benefits Institution.

Forum for deciding question of registration --- civil court jurisdiction barred --- forum for deciding question as to whether plaintiff was liable to be registered under EOB Act or not being the respondent authority --- civil --- held could not assume such jurisdiction.

1991-PLC-318

Rupali Polyester Limited versus Employees Old-Age Benefits Institution.

--- contention that establishment could not be legally directed to produce general ledger etc. had no force. Constitutional petition --- maintainability --- petitioner having three adequate remedies available to resort to under provision of section 33, 34 and 35 of EOB Act, 1976 which did not avail before invoking constitutional jurisdiction.

1994-PLC-545

Dean Children Dress Co. versus EOBI

General and special provision in a statute dealing with a situation --- special provision must be applied to that particular situation instead of general provision

Complaint against registration of any industry or establishment --- Adjudicating Authority under the Act had the jurisdiction to entertain such complaints.

1994-PLC-694

Shams Textile Mills versus EOBI.

Constitutional petition --- maintainability --- detailed machinery had clearly been provided in the Act for correcting wrong and illegal order passed by different functionaries of the Institution --- employer could safely raised that question in complaint only and it had simultaneously filed constitutional petition against its grievance which could easily be remedied by filing complaint as prescribed by law --- disputed questions of facts raised by employer could not be gone into by High Court in constitutional petition --- employer having alternative remedy under section 33 and it is also having file complaint under that section, constitutional petition filed by employer company, was rendered incompetent.

