

FOURTEENTH REPORT
COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

MINISTRY OF LABOUR AND
EMPLOYMENT

(Presented to Speaker, Lok Sabha on 21.07.2011)

(Presented to Lok Sabha on 03.08.2011)



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COMPOSITION OF THE COMMITTEE ON PETITIONS
(2010-11)

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Rajendra Agrawal
3. Shri Khiladi Lal Bairwa
4. Shri E.T. Mohammed Basheer
5. Shri N.S.V. Chitthan
6. Shri Gurudas Dasgupta
7. Shri Dip Gogoi
8. Shri Devendra Nagpal
9. Shri Jagdambika Pal
10. Prof. Ramshankar
11. Shri Sarvey Sathyanarayana
12. Shri Rakesh Singh
13. Dr. Sanjay Sinh
14. Shri Kabir Suman
15. Shri Joseph Toppo

SECRETARIAT

- | | | |
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Krishna | — | <i>Executive Assistant</i> |

FOURTEENTH REPORT OF THE COMMITTEE ON PETITIONS

(FIFTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorized by the Committee to present the Report on their behalf, present this Fourteenth Report of the Committee to the House on the representation from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress and forwarded by Shri Gurudas Das Gupta, MP, Lok Sabha regarding default in the contribution to the Provident Fund by the employers.

2. The Committee considered and adopted the draft Fourteenth Report at their sitting held on 20th June, 2011.

3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;
20 June, 2011

30 Jyaishta, 1933 (Saka)

ANANT GANGARAM GEETE,
Chairman,
Committee on Petitions.

REPORT

REPRESENTATION FROM SHRI H. MAHADEVAN, DEPUTY GENERAL SECRETARY, ALL INDIA TRADE UNION CONGRESS AND FORWARDED BY SHRI GURUDAS DAS GUPTA, MP, LOK SABHA REGARDING DEFAULT IN THE CONTRIBUTION TO THE PROVIDENT FUND BY THE EMPLOYERS

Shri Gurudas Das Gupta, MP, Lok Sabha forwarded a representation dated 22 October 2009 signed by Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress, regarding default in the contribution to the Provident Fund by the employers.

2. In his representation, the petitioner stated that the default in the contribution by employers to the Provident Fund is on a higher scale in the country, causing immense hardships to many workers under the Scheme. The Central Provident Fund Commissioner and Regional Offices are failing in their duty to realize the defaulted sum and ensure that payment to the workers is made. The petitioner, therefore, requested the Committee on Petitions to look into the matter.

3. The Committee took up the matter for examination in accordance with Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the representation was forwarded to the Ministry of Labour and Employment for furnishing comments on the points raised therein.

4. The Ministry of Labour and Employment *vide* its O.M. No. 11025/4/2009-SS.II dated 4 November, 2009 in a written reply *inter-alia* stated as under:—

"For detection of default in the contribution by employers to the Provident Fund, Employees' Provident Fund Organization is having a system assisted Computerized Compliance Tracking System (CCTS) whereby defaulting establishments are pointed out and action is taken as per various provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes to address the default. Further, on receipt of any complaint regarding such default, matter is investigated by officers of EPFO and corrective measure/actions are undertaken as per provisions of the Act and Schemes. Detection of default amount, assessment of dues and recovery thereof, is an ongoing process which is performed by authorized offices of Regional Office/Sub-Regional Offices of EPFO.

However, in respect of closed establishments where contribution by employer has not been received, members' accounts are being settled by Operating Special Reserve Fund subject to certain conditions as laid down by the Central Board of Trustees, EPF."

5. In response to a question as to whether the Government has formulated any Provident Fund Scheme for the employees of any establishment/organization, the Ministry stated:—

"The Government has formulated a Provident Fund Scheme namely the Employees' Provident Funds Scheme, 1952 based upon the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for the employees of establishments/organizations. The said Act/Scheme is generally applicable to factories/establishments engaged in 186 Scheduled industries/classes of establishments employing 20 or more employees. The salient features of the Scheme are:—

	Employees' Provident Fund Scheme, 1952
Benefits	Accumulation plus interest upon retirement, resignation, death. Partial withdrawals allowed for specific expenses such as house construction, higher education, marriage, illness, etc.
Contributions:	
Employer	12% (for 181 industries) 10% (for 5 industries)
Employee	12% (for 181 industries) 10% (for 5 industries)
Government	None
Administrative Charges (Un-exempted only)	1.10%
Inspection Charges (Exempted only)	0.18%

Note: The percentage of contribution is fixed on the remuneration Basic Wages + DA + Cash value of food concession (if any) payable to the employee."

6. In reply to a query by the Committee in regard to mechanism available for the administration of the Provident Fund of the employees, the Ministry replied as under:—

"There is a Central Board of Trustees constituted under section 5A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to administer the Fund vested in it in such a manner as specified in the scheme. Employees' Provident Fund Organization (EPFO), an autonomous organization under Ministry of Labour and Employment is implementing the Scheme on the advice of the Central Board."

7. When the Committee asked about the functions of the Central Provident Fund Commission, the Ministry stated:—

"Section 5D(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides:

'The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.'

Accordingly, the Central Provident Fund Commissioner is exercising all the administrative financial and statutory powers conferred upon him by the Central Board of Trustees, Employees' Provident Fund and the Government of India to run the Employees' Provident Fund Organization."

8. In response to a question about the complaints received by the Government regarding the default in contribution by employers and the action taken by the Government against the defaulters, the Ministry commented as under:—

"The Government has been receiving complaints regarding default in contributions by the employer to Provident Fund. On receipt of the same, the complaints are referred/forwarded to the respective field offices/Head Office of EPFO. These complaints are investigated into by deputing the officers of EPFO to the establishment as well as by calling the relevant records from the establishment. On detection of default, corrective measures/actions are undertaken as per provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Scheme framed thereunder."

(ii) The dues payable under the Scheme are assessed from month to month. The dues when run into arrears, the Organization also levies damages and penal interest taking into account the period of delay from the date due. The following actions were taken by the organization against the defaulting establishments for recovery of dues:—

- (a) Assessment of dues under section 7A of the Act.
- (b) Demand of interest under section 7Q of the Act.
- (c) Levy of damages under section 14B for belated remittances.
- (d) Recovery measures under section 8 of the Act/Provisions of the Second and Third schedules to Income Tax Act, 1961.
- (e) Prosecution cases under section 14 of the Act.
- (f) Filing FIR under section 406/409 of the Indian Penal Code filed with the police in respect of employees' share in default.
- (g) Filing complaint under section 110 of Criminal Procedure Code for filing applications before Executive Magistrate against persistent defaulters to execute bond for rendering good behaviour.

(iii) It was added by the Ministry that apart from the above actions, instructions have also been issued to all Regional Provident Fund Commissioners to take the following steps for recovery of arrears:—

- To seek the help of the State Government for recovery of arrears.
- To display the names of 10 biggest defaulters of the region/sub-region in the front area of the office at a prominent place.
- To seek full co-operation of the State Police for attachment of movable and immovable properties of the defaulter employers.
- To have the jails notified as civil prisons by the appropriate authorities.
- Flash the names of major defaulters on the website of the organization.

9. On being enquired by the Committee about the mechanism to monitor the contribution of the employer and the effective/remedial measures being taken by the Government to protect the interest of the workers, the Ministry informed as follows:—

"There is computerized mechanism to monitor the contribution of the employer towards the fund on a regular basis namely, the Computerized Compliance Tracking System (CCTS).

The CCTS is a tool, which gives a broad idea regarding the compliance pattern of the employer. It checks for any variation in compliance/payment of contribution and generates the list of defaulting establishments. A special watch is kept on such establishments and appropriate actions are taken as mentioned at para 8 above."

10. The Ministry further informed the Committee that the defaulting establishments are inspected by Enforcement Officers/Squad of Employees' Provident Fund Organization and suitable actions are taken immediately against such establishments as recommended by the inspecting authority.

11. The Committee, thereafter, took oral evidence of the representatives of the Ministry of Labour and Employment on 10 November, 2009, 22 June, 2010 and 21 October, 2010.

12. At the outset, the Secretary, Ministry of Labour and Employment explained the matter as under:—

"Sir, it is a fact that we receive a large number of complaints about defaults from the employer's side and these defaults can be categorized into four broad categories where the employees and employers contribution both are not deposited; employees contribution recovered, not deposited; administrative charges not deposited and inspection charges on wages not deposited by those industries which are exempted. Whenever there is a default, we take action against employers under various provisions of the Act. I will briefly mention them. First is the assessment of dues under Section 7A. As soon as the default takes places we start the assessment proceedings, then demand of interest which is mandatory under Section 7Q, then levy all damages. Recovery measures

under Section 8 are initiated if still default persists after the payment is finalized and prosecution also takes place of the employers. We are also in Provident Fund resorting to the provisions of IPC, that is, criminal breach of trust. So, certainly it is not a criminal offence under the Act but we file complaints under Sections 406 and 409 of IPC for criminal breach of trust in the Magistrate's court and also we file complaints with the Executive Magistrate under Section 110 for asking them to execute a bond for good behavior. Sir, we are resorting to actions that are possible under the provisions of the Act and we have also taken certain administrative measures where directions are given to the field organizations just to seek help of the State Governments for recovery of arrears; to display the names of ten biggest defaulters of the regions. This is just to create public pressure or peer group pressure that their names are publicized that these are the defaulters. We seek cooperation of police force wherever it is required. We have also now requested to State Governments because sometimes we were facing difficulties when we made arrests, the difficulty was as to which jail has been designated as the civil prison. Now all the State Governments have designated the civil prisons. We are putting the names of big defaulters on our website. So, we are trying to take all possible measures under the Act and all administrative measures under the Act to see that the defaulters can be handled and wherever we get such kind of complaints we are taking action.

.....We are also trying to talk to all the industry organizations like CII, FICCI, ASSOCHAM and the Laghu Udyog Bharti to see that they do not see the provident fund contribution as a wasteful expenditure. Some people have a mindset that this is just an expenditure. We try to convince them that this is an investment for the welfare of their labour force to make more secure and more productive. We are in constant dialogue with them to see that the voluntary compliance improves.

Another thing that we have recently initiated which will help us in detecting defaulters is that we are computerizing all our records in the Employees Provident Fund Offices in a phased manner and all the 100 plus offices all over the country will be computerized. I think within next six months we will be computerizing almost all our offices. This computerization will help us in timely detecting the defaulters. Although we already have a computerized tracking system but it is not fully efficient because the other documents have not been computerized. So, we are taking that action also. We do hope that by using ITC and by constant efforts and dialogue with all the stake-holders, we will be in a position to reduce the defaults."

The Ministry further submitted:—

"We have divided this work in two phases. Under the first phase 27 large offices have been covered, where we have our major subscribers and we will try to computerize these offices by the end of January. Thereafter, we shall wait for five months and meanwhile, the software developed by NIC would be tested and stabilized. Thereafter, it would not take much time and we shall install that software in our remaining hundred offices within next four to five months. We hope that

it will be fully computerized by September 2010. Then the situation will improve and we shall also be able to administer it more efficiently."

13. Giving latest status on computerization process of all the EPF Offices, the Ministry *vide* their subsequent O.M. dated 9 May, 2011 submitted as follows:—

"(a) Sub-Regional Office, Karnal was the first office to start working in the new project on 7 September 2009. Thereafter, 28 offices were computerized upto March, 2010 in the first phase of the project. However, the project took time to stabilize and there was a need for constant improvements.

(b) However, in the 3rd phase, 119 offices were computerized out of a total of 120 EPFO offices, which are now operating smoothly by and large. The only office left is Keonjhar, which could not be computerized due to lack of availability of space/any building in spite of all efforts."

14. On being enquired as to whether display/flashings of defaulter name for recovering of arrears towards Provident Fund has resulted in any positive outcome, the Ministry in their written reply stated:—

"The display of defaulter's name on the EPFO website helps in recovery of the arrear dues. However, the remittance of arrears by defaulting establishment is result of compound effect of recovery measures initiated against the defaulting establishments. It is difficult to find out the remittances made towards EPF dues solely due to displaying/flashings of defaulter's name on the website."

15. When the Committee desired to know about the action being taken on the complaints against the employers for non-payment of provident fund dues to the employees, the witness responded as under:—

"Sir, whenever we have to take any action, we seek help from the State Government. On receiving any complaint, we first find out who has made the complaint. If the complaint is against the employer who was earlier giving his contribution but has discontinued now, we conduct investigation regarding the complaint. If the complaint is found genuine, action is taken against him. Provident Fund Organization is fully empowered under the Act. The officers of the Provident Fund Organization have all the powers to file the case for prosecution. They can arrest and can even attach the property. Whenever it seems that problems may arise, we take help from State Police."

16. When the Committee desired to know about the total amount of default in the country, the witness replied as under:—

"We would like to present the data which we have with us. I will submit rest of the information in writing later on. A default of Rs. 1,724 crore had occurred in the year 2006-07 to which Rs. 1,014 crore were added and the total amount of default came to Rs. 2,738 crore. Out of this, recovery of Rs. 900 crore was made and due to various reasons recovery of remaining amount of Rs. 1,838 crore could not be made. Rs. 1,098 crore was added to this amount in year 2007-08 and the total amount of arrears reached Rs. 2,936 crore. Out of this amount Rs. 817 crore have

been recovered. Sir, the total figure in 2008-09 was Rs. 3,021 crore. Out of this recovery of Rs. 814 crore was made and arrears amounting to Rs. 2,207 crore remained."

17. Responding to the observations of the Committee about the amount of realization from the defaulters, the witness responded as under:—

"Sir, I would like to place some figures which pertain to unexempted institutions before you. Our total collected contribution during the years 2006-07, 2007-08 and 2008-09 has been about Rs. 22,175 crore, Rs. 28,103 crore and 34,103 crore respectively. This shows that the contribution is not decreasing rather it is increasing."

18. When the Committee pointed out specifically that during 2006-07, an amount of Rs. 2,738 crore was due against defaulters but the said amount rose by one thousand crore in two years to Rs. 3,320 crore in 2008, the witness clarified as under:—

"Sir, law of the country permits every person to get relief in any manner he see fit. The non-realizable amount in 2006-07 was Rs. 576 crore. This increased upto Rs. 1,570 crore in 2007-08 and Rs. 1,727 crore in 2008-09. Out of this amount, the court stayed the recovery of Rs. 1,032 crore and the remaining amount could not be recovered due to liquidation of funds and other reasons. When courts order such stay, we have no other alternative to present our case before the court as per law. It is also our job to convince the court not to issue stay order."

19. On being asked by the Committee as to the means available with the Ministry to recover the amount from the defaulters after adjusting the amount which has been stayed by the court, and whether there is any time limit for the purpose, the witness replied:—

"Sir, we can do the recovery by following the legal process. This procedure takes time. The realization is possible only after adopting the legal procedure."

The witness further added:—

"Sir it is a continuous process. They are the employers and they have to deposit the money and the same people are defaulters."

20. On being observed by the Committee that when the quantum of defaulters amount is increasing then the overall realization should also increase as well, the witness responded as under:—

"Sir, our quantum is also increasing in that respect, but the percentage of recovery amount is decreasing against total contribution received. At the end of the year 2008-09, the recovery amount was Rs. 814 crore whereas the amount received as contribution was 34,000 crore. Thus, you can see that the total recovery amount is 2.39% of the total contribution so the percentage is decreasing. As it is a continuous process, the recovery process continues and the courts also continue to stay the recovery. It is a continuous process. With a view to improve it we have undertaken the computerization of this work. Now the employer can pay its contribution online. Thus, if any employer defaults we will know about that

immediately. As per the existing tracking system, the default in payment is noticed after two months or when someone makes a complaint in this regard. Thus, we are trying to improve it."

The witness further clarified:—

"The increase in the amount of arrears in spite of enhanced performance of the recovery machinery is due to addition of fresh demand in the respective year. As a result of enhanced performance of compliance machinery, there were greater number of coverage of establishments and more number of cases of defaults were detected and dealt with. This resulted in increased assessment of dues against the defaulting establishments."

The witness further added as under:—

".....As a result of computerization, we will be able to know about the defaulters, if the contribution is not deposited upto a particular date on which contribution was supposed to be deposited. We will immediately ask for that contribution from the defaulters."

21. Subsequently, as desired by the Committee, during the course of evidence, the Ministry *vide* O.M. dated 25.11.2009 submitted a statement indicating status of provident fund arrears and penal action taken by Employee's Provident Fund Organization during the last three years (*Annexure D*).

22. On being asked about the feasibility of making a provision to constitute/set up separate mini-courts or any forum for early disposal of pending prosecution cases, the Ministry in their written reply stated as under:—

"At present, action is being taken under sections 7A and 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Prosecution cases are also filed before various courts under section 406/409 of Indian Penal Code. There is a Employees' Provident Fund Appellate Tribunal at New Delhi to cater to appeals filed before it. Further, a Working Group has been constituted by the Government of India with employees' and employers' representatives of Central Board of Trustee to suggest comprehensive amendment to the Act and Scheme. This Working Group will review the existing provisions and suggest amendments to the Act and Scheme including issues related to the penal provisions to make it more effective and stringent."

23. When enquired about the details of cases that are categorized under 7A Cases, the Ministry in a written reply stated:—

"Cases categorized as 7A cases are instances in which summons u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 have been issued to establishments for assessment of defaulted contributions under the Act. Such cases are initiated on *prima facie* evidence of default committed by the concerned establishments."

24. When asked about the number of prosecution cases filed under section 14 of EPF and MP Act, 1952 and the number of cases disposed off by the Ministry in the last 3 years, the Ministry in a written reply stated as under:—

"The prosecution cases are filed against the defaulters under section 14 of the Act before Hon'ble Courts. The details regarding filing of prosecution cases against the defaulters and their outcome during the year 2008-09 are as follows:—

Name of Scheme	Opening Balance	Decided			Closing Balance
		Convicted	Others	Total	
EPFS, 1952	25,267	329	784	1113	24,154
EPS, 1995	16,771	257	599	856	15,915
EDLI, 1976	17,485	249	607	856	16,629
TOTAL	59,523	835	1990	2,825	56,698

The details regarding convicted cases by the Hon'ble Courts for the year 2008-09 are given at *Annexure II*.

25. As regards the details of prosecution cases under section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for the year 2009-10, the Ministry submitted as below:—

Prosecution cases under section 14 of the Act	Cases launched upto the year	Decided	Pending
1. Employees' Provident Funds Scheme, 1952	24,289	503	23,786
2. Employees' Pension Scheme, 1995	16,033	398	15,635
3. Employees Deposit Linked Insurance Scheme, 1976	16,135	459	15,676
Total	56,457	1,360	55,097

26. On being asked about the amount recovered from the defaulters in the last four years *i.e.* from 2006-2007, the Ministry in their written reply submitted as follows:—

Details of amount recovered from defaulters for the last four years are as below:—

Year	Work-load	Amount Recovered	Closing Balance
2006-07	3,843.85	1,236.38	2,607.47
2007-08	3,950.57	1,103.99	2,846.58
2008-09	3,911.27	918.16	2,993.11
2009-10*	4,180.22	1,239.36	2940.86

*Provisional

27. The Ministry further submitted that during the year 2008-09, action under section 7A of the Act for assessment of dues has been initiated in respect of 25,456 defaulting establishments. The details of arrears and realization during 2008-09 are as follows:—

Un-Exempted Sector:				(Rs. in crores)
Year	Total arrears	Realized during the year	Closing Balance (As on 31.3.2009)	Not immediately realizable out of col. No. (4)
2008-09	3020.92	813.93	2,206.99	1,727.49 (78.27%)

- Figures in bracket are percentage with respect to closing balance.

Exempted Sector:				(Rs. in crores)
Year	Total arrears	Realized during the year	Closing Balance (As on 31.3.2009)	Not immediately realizable out of col. No. (4)
2008-09	890.36	104.23	786.13	624.51 (79.44%)

- Figures in bracket are percentage with respect to closing balance.

28. When the Committee sought to know as to what are the specific reasons for not immediately realizing Rs. 1727.49 crore from the Un-exempted Sector and Rs. 629.51 crores from Exempted Sector and the time by which the same are expected to be realized, the Ministry of Labour and Employment in its written reply submitted as follows:—

“The arrear amount of Rs. 1,727.49 crore of the un-exempted sector and Rs. 624.51 crores of the exempted sector as on 31.03.2009 belongs to the Not Immediately Realisable (NIR) category. This involves cases under stay by various courts, dues of companies under liquidation where the dues are to be recovered by the Official Liquidator and not by the EPFO recovery machinery, cases in which rehabilitation package is sanctioned by the Board for Industrial and Financial Reconstruction (BIFR) and cases in which instalments have been granted. Efforts are being made to liquidate the NIR arrears by filing applications for vacation of stays, liaison with Official Liquidator/BIFR authorities.”

29. When asked about fixing of only 50% recovery target in respect of 'Not Immediately Realisable' dues as compared to cent per cent recovery target fixed for realisable arrear dues, the Ministry in its written reply stated as under:—

“The NIR category includes cases of stay granted by various courts over recovery proceedings, cases where winding up process of companies is underway and cases where rehabilitation scheme has been sanctioned by BIFR. In such cases, it is not possible to immediately recover the dues by way of Miscellaneous Provisions Act, 1952. Recovery of dues in such cases involves vacation of stay, liaison with Official Liquidator/BIFR authorities. In view of this the target for recovery of NIR dues has been fixed at 50%.”

30. When asked about the total number of State-wise cases of default reported during the last three years for the Exempted and Un-exempted sectors, the Ministry of Labour and Employment in its written reply submitted as follows:—

State	2009-2010	2008-2009	2007-2008
Andhra Pradesh	2,529	2,828	2,855
Bihar	299	177	214
Chhattisgarh	104	129	218
Delhi	949	305	841
Goa	168	298	356
Gujarat	1,549	1,575	1,271
Haryana	1,754	378	1,263
Himachal Pradesh	313	228	475
Jharkhand	576	322	102
Karnataka	2,160	2,458	2,389
Kerala	2,572	2,512	1,259
Madhya Pradesh	1,322	948	725
Maharashtra	1,852	2,384	2,591
NER	399	392	691
Orissa	436	344	727
Punjab	1,117	1,329	1,726
Rajasthan	1,200	722	868
Tamil Nadu	7,855	6,715	6,569
Uttar Pradesh	1,326	593	918
Uttarakhand	77	72	172
West Bengal	761	747	1,003
Total	29,318	24,456	27,233

31. As regards the State-wise list of total amount involved in the default cases, the Ministry of Labour and Employment submitted as follows:—

(Rs. in lakhs)

State	Total demand pending for the period 2009-2010 (Data is provisional)
Andhra Pradesh	13,994.58
Bihar	5,870.10
Chhattisgarh	2,835.18
Delhi	7,826.99
Goa	512.29
Gujarat	16,102.54

State	Total demand pending for the period 2009-2010 (Data is provisional)
Haryana	6,513.66
Himachal Pradesh	742.98
Jharkhand	12,990.27
Karnataka	17,710.42
Kerala	16,882.77
Madhya Pradesh	23,352.09
Maharashtra	49,438.72
NER	2,281.56
Orissa	8,952.97
Punjab	7,883.43
Rajasthan	3,899.83
Tamil Nadu	27,548.05
Uttar Pradesh	23,870.25
Uttarakhand	5,164.35
West Bengal	29,713.01
Total	2,84,086.04

32. On being asked about the number of persons arrested and convicted in the case of default during the last three years, in different States of the Ministry of Labour and Employment furnished as follows:—

State	2007-08		2008-09		2009-10	
	Arrested	Convicted	Arrested	Convicted	Arrested	Convicted
Andhra Pradesh	7	0	5	3	3	2
Bihar	1	0	1	0	0	0
Chhattisgarh	3	0	4	0	0	0
Delhi	0	0	2	0	1	0
Goa	0	0	0	0	1	1
Gujarat	7	7	0	0	0	0
Haryana	0	0	0	0	0	0
Himachal Pradesh	0	0	0	0	0	0
Jharkhand	1	0	0	0	0	0
Karnataka	1	0	5	0	2	0
Kerala	1	0	1	0	1	0
Madhya Pradesh	2	0	6	0	3	0
Maharashtra	2	0	1	1	1	0
NER	0	0	4	0	0	0
Orissa	0	0	0	0	0	0
Punjab	0	0	0	0	0	0
Rajasthan	0	0	0	0	2	0
Tamil Nadu	1	0	0	0	3	3

State	2007-08		2008-09		2009-10	
	Arrested	Convicted	Arrested	Convicted	Arrested	Convicted
Uttar Pradesh	0	0	1	0	2	0
Uttarakhand	0	0	0	0	0	0
West Bengal	11	1	1	1	2	1
Total	37	8	31	5	21	7

33. On being asked if the Government was satisfied with the established procedure being followed to recover the amount from defaulting employers and action being initiated against them, the Ministry of Labour and Employment in their written reply submitted as follows:—

"Recently Government has constituted a Working Group consisting of members of Central Board of Trustees representing the Employers and Employees to suggest comprehensive amendment to the Act and Scheme. This Working Group will review the existing provisions and suggest amendments to the Act and Schemes including the issues related to the penal provisions to make it more effective and stringent. Further, the proposal submitted by Working Group will be placed before the Central Board of Trustees for their views before forwarding to the Government for consideration."

34. As regards the concrete action taken to plug the loopholes in the Act, particularly in the provisions dealing with the arrest of employers and penal action taken against them in the case of default on their part, the Ministry in their written reply submitted as follows:—

"Efforts are made to file timely claims before Official Liquidators in winding-up cases; intimating exact dues position to BIFR for inclusion in revival package and grant of liberal instalments for liquidators of arrears. 6,289 prosecution cases and 784 FIRs under sections 406/409 IPC were filed during 2009-10. Further, 21 arrests were made by police authorities in 406/409 IPC cases. During 2009-10 seven defaulters were convicted and sentenced for punishments ranging from pecuniary fines to imprisonment of one year.

A Working Group has been constituted for proposing comprehensive amendments in the Employees Provident Funds & Miscellaneous Provisions Act, 1952. This effort has been made with a view to plug in the loopholes in the existing Act."

35. The Ministry in its subsequent written reply, submitted as follows:—

"A number of measures have been taken for early disposal of prosecution cases and realization of arrears. The names of 21 advocates have been dropped from the panel of EPFO on account of lackadaisical performance. New Panels of 335 advocates have been formed throughout the country with directions to attend to the pending cases with regularity and file applications for vacation of

stay/early hearings in pending cases. Directions have also been issued to field offices to monitor the performance of these advocates on monthly basis.”

36. The Committee again enquired about the poor rate of recovery of dues and insufficient provision and actual legal action taken against defaulting companies, the witness from the Ministry of Labour and Employment stated:—

"Sir, I would briefly tell the action taken for the recovery of blocked arrears. In the year 2007-08, the number of bank accounts attached were 15,946 and amount was Rs. 309 crore; 450 properties were attached and Rs. 9 crore were recovered; 61 cases of arrest of defaulters had taken place and an amount of Rs. 0.95 crore were recovered; in 40 cases, Public auction of property was held and Rs. 22.98 crore were recovered. In the year 2009-10, 14,865 bank accounts were attached and Rs. 119 crore was recovered; 333 properties were attached and Rs. 30 crore were recovered; in 22 cases, arrest of defaulters took place to recover Rs. 31 lakh; in 16 cases, public auction of property was done and Rs. 9.68 crore were recovered.

Sir, this is an ongoing process. Every year action is being taken."

37. As regards irregularities in Provident Fund Cases in the wake of numerous pending cases and dismal performance of the concerned authorities in terms of penalizing the culprits, the representative from the Ministry of Labour and Employment stated as under:—

" Your concerns are right. Central Provident Fund Commissioner has taken action regarding the pending cases and evolved a system to ensure that there are minimum number of court cases. I would request him to explain in detail about it."

The Central Provident Fund Commissioner submitted as follows:—

" The main issue is the stay orders of courts. As soon as a case is filed and recovery proceedings begin, people go to the courts and take stay orders and that stay continues. Out of the default amount of Rs. 2,900 crore there is court stay orders on about 70 per cent. We have found that advocates were not doing their job properly. We have de-empanelled several advocates and hired new advocates. They have been briefed properly and have been asked to get the stay orders vacated from High Courts so that we can make recoveries. We have taken these steps and these are showing results.

There are 97 cases on which we have already got the stay vacated and we were able to do recovery also by attaching some of their assets now there are many cases in which we have moved application to get the stay vacated. You can see that in 742 cases we have already moved application in the court to get the stay vacated. If need arises then in the future we can request the courts to set up special courts for EPF so that the cases can be disposed at the earliest because, recovery cases are hampered due to legal reasons. Secondly, there are Public Sector Companies which are under liquidations, some are under BIFR, proceedings and therefore their recovery is stopped because till their packages

are not approved we cannot recover from them. We are moving a mission to get all the stay orders vacated at the earliest. For this we have given an application in the court also. As soon as stay order is vacated, we will try to do the recovery."

38. The Secretary, Ministry of Labour and Employment while tendering oral evidence on 21 October, 2010 further submitted as follows:—

"Certainly, this is a most unsatisfactory situation. But as was mentioned by the CPFC, he has put in place a system where every three months, the performance of the Counsels that are appointed by the Provident Fund Organization will be monitored. They will be monitored every three months. As far as civil side is concerned, the stay orders in the High Courts will be there."

39. To this the Committee pointed out that the Department needs to have honest and effective lawyers and the legal Department. The Committee, also suggested suspension or transfers of officers for non-performance. To this the Secretary, Ministry of Labour and Employment agreed to Committee's suggestion and responded as follows:—

"I can assure the Committee that we will immediately review the performance of all the officers who are handling the case works all over the country. He further assured the Committee that wherever it is found that they have not performed, administrative action will be taken."

40. On being pointed out about filing of caveats by the Department in courts, with a request to refer to the officials of Provident Fund before granting stay order in any case, the witness from the Ministry of Labour and Employment submitted as under:—

"Sir, your suggestion is a good one, we will implement it and as soon as based on our any inconvenient action if one moves to court, we may direct our counsels to file caveat. In the second arrangement we will declare our two well briefed lawyers as standing counsels in each High Court; who received notices. You know well that as soon as notice is delivered it is treated as received and ex-parte decision is passed in the case. At present there is one lacuna in our Act because of which everyone goes to the court and it is that there is no provision of appeal within the Department. The people move to court even on trivial disputes. A working group has been constituted which is working in this direction that if we make provision for an appeal within the Department itself then he will not have to go to court because we have alternate remedy and our litigation will also be less."

41. When enquired about the terms of reference of this Working Group, the witness responded:—

"Sir, Working Group consists of only those people who have very good knowledge of provident fund, they have been in our Trust for a very long time. The terms of reference of the Working Group are very broad. They have to give comprehensive proposal for comprehensive amendment in the Act. All our loopholes, if we want to change any definition, any procedure, make penalties stringent, discourage people from making any fraud in provident fund by way of

providing information of punishment if caught, all these things are to be looked after by the Working Group. Sometimes it happens that the contributions of the employees is deducted, but it is not deposited. So all the things which they consider as proper, they may suggest amendment for that. Our Board of Trustees have well experienced people from employees as well as employers, who have worked for it for a very long time and are aware of its weaknesses."

42. The Committee pointed out that it was a criminal negligence if money was being deducted from employees but the same was not being deposited in their account, also there was a penal provision for the same under the Labour Act. In response, the representative from the Ministry of Labour and Employment submitted as under:—

"Sir, there is a flaw in it that our provident fund Act presently contains no stringent provision for it. In this regard, it is told again and again and we under the breach of trust of IPC have to file prosecution against it. Once a matter goes beyond our control, then the action in regard thereto proceeds as per the court where the matter is pending. It is not so effective. If we make provision in our Act for all these things, it will be better. Many a time it has been suggested that we should keep these things in our control, so that punishment can be given directly."

43. When asked about the immediate amendment required to be made in the present Labour Law, the Secretary, Ministry of Labour and Employment submitted as under:—

"Sir, there are two or three points. I would not be able to mention the specific clauses, but some amendments are required. One is the simplification of forms and procedures so that things become simple for all the stakeholders. Second is very stringent punishments for those who are not depositing the provident fund. Third is a provision of appeal within the Department so that we can reduce the litigation."

44. When the Committee desired to know about the options which ought to be available with the EPFO in terms of prosecuting a Company, where it has not paid Provident Fund amount of its employees to EPFO, in response the representative from the Ministry submitted:—

"The Department should have powers to recover that money from the employer and then there should be a process where as soon as the default is there— if today the default is there, then it should come to the notice of the Department so that it does not magnify...."

45. On being asked about the proposal of setting up of special courts for expeditious trial of the Provident Fund defaulters, the witness replied in affirmative and while agreeing to the suggestion given by the Committee to set up special bench/special court for expeditious trial at the District level, at the High Court Level, the representative from the Ministry of Labour and Employment stated as under:—

"Certainly, Sir, we will suggest this immediately to the Law Ministry. The Special Bench can be constituted without amending the law. We will make a good case."

46. When suggested about making default in the payment of employer's contribution to the Provident Fund as an offence under criminal law, as was done if there was a default in the contribution by the employee to the fund, the representative from the Ministry of Labour and Employment agreed to the suggestion and submitted that it should be a criminal offence and further added as under:—

"We will certainly suggest that, as far as the Labour Ministry is concerned. After the consultation process, what finally comes out, we do not know. We feel that it should be there, and we will suggest that."

47. On being asked about the issue of under coverage of contract labourers/workers under Provident Fund Organization and the steps taken to check this menace, the representative from the Ministry of Labour and Employment submitted:—

"One is to fix the responsibility of the field offices that within their jurisdiction it will be their responsibility to see that all those industries and establishments which need to be covered and within those industries, all those people who are working are covered. This is an accountability issue. The other issue is that we will have special drives periodically with the help of all the stakeholders including the trade unions and others so that we get the reliable information. Special drives will also bring out, if there is any under coverage or no coverage, then these drives will help. These are the two immediate things that we will do to improve the coverage."

48. As regards the question of involving members of trade union to take up the issue of under coverage of contract labour in Provident Fund, the representative from the Ministry of Labour and Employment agreed to involve them.

49. As regards the issue of creating awareness among contract workers in the country towards the Provident Fund, *i.e.* by giving special advertisement in the Hindi and Vernacular newspapers distribution of leaflets in remote areas through print media and by electronic media, conducting seminars at various cities of the country and carrying out survey of the industrial areas by new officers as part of an overall by campaign to extend benefits of Provident Fund to every citizen in the country, the representative from the Ministry of Labour and Employment submitted as under:—

"Sir, it is a good suggestion and we will certainly work on it."

He further submitted:—

".....We are making arrangements to amend the laws related to the construction workers in these acts so as to make them more effective. It is a fact that contract workers are exploited in many ways by his employer like giving less wages, making him do more work, by not providing him facilities, etc. We are making provision for these by amending the Act."

50. When asked about the action plan of the Ministry to check under coverage of casual labour for the benefit of Provident Fund, non-payment of Dearness Allowance which directly affects the amount of PF given to labour and payment of unclaimed PF

amount to migrant labour, the representatives from the Ministry of Labour and Employment stated:—

"We had certainly taken some steps. Those steps are not certainly comprehensive. As directed by the Committee, we will certainly take action. Today we have only submitted the answers to the questions that you have raised. We will certainly prepare an action plan and submit it to the Hon'ble Committee and then, may be the Committee's views will also be available to further modify this thing. We will come back to you with a proper action plan of whatever steps we have already taken and whatever steps we propose to take in future."

51. Updating the status about the recent circulation of the Action Plan prepared by the Ministry of Labour to all the Field Federations, the witness from the Ministry of Labour and Employment submitted before the Committee while tendering oral evidence on 21 October 2010 as follows:—

"During the last meeting in which we were called for giving evidence, we were directed to submit an Action Plan as to how we are going to handle the default position. In compliance of that, we had submitted an Action Plan. On that Action Plan, we have initiated action....."

52. Subsequently, as desired by the Committee, during the course of evidence the Ministry of Labour and Employment *vide* their O.M. No. 11025/4/2003-SS II dated 31.12.2010 forwarded the Action Plan indicating the proposed amendments and action taken on suggestions made by the Committee to streamline the functioning of EPFO as follows:—

Sl.No.	Information sought by Hon'ble Petitions Committee	Reply
1.	Copy of the amendments that are likely to be made in the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.	A Working Group constituted and suggesting comprehensive amendments in the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 has finalized by the Working Group have to be first examined by the Central Board of Trustees (EPF) and thereafter submitted to the Government for consideration. Members of the CBT (EPF) have been provided copies of proposed amendments. After finalization of the amendments, the same would be shared with the Hon'ble Committee.
2.	Steps taken with regard to Special Courts and Special Benches	All Regional Provident Fund Commissioner-in-charge have been directed to take up the matter with respective High Courts of their Region for setting up Special Courts/Special Benches for hearing cases of the Employees' Provident Fund Organization and expedite their disposal. Zonal Additional Central Provident Fund Commissioners have been instructed to monitor the progress and submit Action Taken Report.

Sl.No.	Information sought by hon'ble Petitions Committee	Reply
3.	How many lawyers have been changed, how many law officers have been transferred and against how many law officers penal action has been taken?	A total of 2 lawyers have been changed. There is no post of Law Officer in the Employees' Provident Fund Organization. The legal matters are dealt with by Assistant Provident Fund Commissioner (Legal)/Regional Provident Fund Commissioner (Legal) on behalf of the Department. No Assistant Provident Fund Commissioner (Legal)/Regional Provident Fund Commissioner (Legal) has been transferred as yet. However, they have been given time to improve their functioning and show results.
4.	Information about mass transfers of Enforcement Officers	Enforcement Officers (EOs) and Account Officers (AOs) are rotated every four years. Instructions have now been issued for rotation of jurisdiction of EOs every two years. Also, where specific complaints are received, the Head Office intervenes to ensure transfer of such EOs. The Office has also for the first time identified sensitive and non-sensitive posts within the Organization. Whenever vigilance case is received, Officers are transferred from sensitive posts (EOs) to non-sensitive ones (AOs).
5.	Information about organizing Seminars about defaults in payment of provident fund, non-payment of pension etc.	A circular in this regard is being issued to the field offices.
6.	Making the default in payment of employer's contribution a criminal offence	Provision already exists in section 14 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 under which prosecution can be launched against employer for default in payment of employer for default in payment of employer's contribution. Non-payment of contribution is a cognizable offence. We have instructed all the offices to take appropriate action to file cases under section 14 of the Act. December has been fixed as the month of coverage drive.
7.	Holding special drives of publicity and survey to benefit the contract labour	A circular in this regard is being issued to the field offices.

Observations/Recommendations

53. In his representation, the petitioner Shri H. Mahadevan, Deputy Secretary-General, All India Trade Union Congress, has submitted that the default in contribution by the employers to the Provident Fund is on a higher side in the country causing immense hardships to many workers under the Scheme. According to the petitioner, the Central Provident Fund Commissioner and Regional Officers are failing in their duty to realize the defaulted sum and as such timely payment to the workers is not ensured. The petitioner has, therefore, requested the Committee to look into the matter.

54. The Committee note from the submissions made by the Ministry of Labour and Employment that a Provident Fund Scheme, namely the Employees' Provident Fund Scheme, 1952 was formulated by the Government under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for the employees of establishments/organizations engaged in 186 scheduled industries/classes of establishments employing 20 or more employees. As per the Scheme, employees need to contribute 10-12% of their remuneration while the employers have to make equal contribution towards the Fund. The Fund is administered by the Central Board of Trustees constituted under the said Act. The Employees' Provident Fund Organization (EPFO) implements the Scheme on the advice of the Central Board of Trustees. The Central Provident Fund Commissioner exercises all the administrative, financial and statutory powers conferred upon him by the Central Board of Trustees, Employees' Provident Fund and the Government of India to run the Employees' Provident Fund Organization.

55. The Committee are, however, constrained to note that the number of defaulting establishments and the quantum of amount in default have risen over the years. While the number of defaulting establishments in the exempted/un-exempted sectors during the year 2005-06 was 76,958, the same had risen to 81,471 during the year 2007-08. Similarly, the amount in default rose from Rs. 2,530.07 crore during the year 2005-06 to Rs. 2,846.58 crore during the year 2007-08. On the other hand, the amount being realized from the defaulters has decreased during the said period from Rs. 1,958.55 crore to Rs. 1,103.99 crore. As a result thereof, the arrears of amount which remained unrealized from the defaulters was Rs. 2,846.58 crore even after recovery of Rs. 1,103.99 crore during the year 2007-08. In fact, the amount in default further rose to Rs. 3,911.28 crore during the year 2008-09, out of which only Rs. 918.16 crore were recovered from the defaulting establishments and the rest of the amount, *i.e.* Rs. 2,993.12 crore remained unrealized. These figures belie all claims of the Ministry that adequate steps have been/are being taken by them to recover the amount from the defaulting establishments. Needless to say, the Funds belong to the workers who are generally poor and belong to the lower strata of the society. The funds accrued to them are utilized by them in times of their emergent needs like construction of their houses, education of their children, marriage or illness in their families. It, therefore, becomes the sacrosanct duty of the Government to ensure realization of the contribution from the defaulters and also their timely deposit without making any allowances for any delays whatsoever.

56. The Committee were also informed that the contribution of the employer towards the Fund is monitored by a computerized mechanism namely, Computerized Compliance Tracking System (CCTS) and any default in the contribution by the establishment is detected by the CCTS which generates the list of defaulting establishment. Besides this the EPFO has also initiated computerization of all their records in a phased manner which would further help them in timely detection of the defaulters. The Committee note that out of 120 EPFO offices, 119 have been computerized in 3 phases. The Committee are, however, concerned to note that despite all efforts, the remaining Office of Keonjhar could not still be computerized due to lack of availability of space/any building. The Committee find the reasons attributed by the Ministry for non-computerization of Keonjhar Office as totally unacceptable.

They, therefore, recommend that alternate space must be found immediately so that early computerization of this office can also be done within a specified time. The Committee expect that as a result of computerization of all the EPF offices, the work of these offices will be streamlined and it would help in monitoring the provident fund defaults. The Committee would like to be apprised of the action taken in the matter.

57. The Committee further note from the Ministry's submissions that computerization of all records of EPFOs will help the Organization to know about the defaulters, if their contribution is not deposited upto a particular date on which contribution was supposed to be deposited. This will enable them to take legal action against the defaulters as per the existing provision in Section 14 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 under which prosecution can be launched against an employer for default in payment of his contribution. The Committee, note that since non-payment of contribution is a cognizable offence, the EPFOs have instructed all the offices to take appropriate action to file cases under Section 14 of the Act. The Committee note that as per the action plan of the Ministry, December has been fixed as the month of coverage drive. The Committee also note that prosecution cases are also filed before various courts under Sections 406/409 of the Indian Penal Code. The Committee, are, however, constrained to note that despite the existence of legal provisions to take action against the defaulters a total of 29,318 default cases were reported in 2009-10 who were involved in default of Rs. 2,84,086.04 lakh. Out of these, arrests were made only in 21 cases and of these only 7 could be convicted. While explaining the reasons for dismal rate of convictions of the defaulters the witnesses submitted before the Committee during oral evidence that numerous cases (about 70 %) are pending mainly because as soon as a case is filed and recovery proceedings begin, the defaulter employers generally go to the courts and take stay orders. The Committee suggested that performance of the empanelled counsels should be monitored regularly and action against non-performing counsels/advocates should be taken by de-empanelling them. In response, the Secretary, Ministry of Labour and Employment agreed to this and submitted before the Committee that, "certainly this is a most un-satisfactory situation.....as mentioned by CPFC, the performance of the counsels appointed by the Provident Fund Organization will be monitored every three months.....". He further assured the Committee that whenever it is found that they have not performed, administrative action will be taken against them. The Committee note from Ministry's subsequent written reply that as assured before the Committee, a number of measures have been taken for early disposal of prosecution cases and realization of arrears. The names of 21 advocates have been dropped from the panel of EPFO on account of their non-satisfactory performance. New panels of 335 advocates have been formed throughout the country with directions to attend to the pending cases with regularity and file applications for vacation of stay/early hearings in pending cases. Directions have also been issued to field offices to monitor the performance of these advocates on monthly basis. The Committee recommend that such measures should continue to be followed strictly.

58. The Committee would further recommend that besides supervision of the work of appointed counsels and de-empanelment/transfer of non-performing counsels, all the EPFOs across the country should also instruct their counsels to keep track of the default cases and file advance caveats in the courts so as to make them aware of the

case much before the defaulting Company approaches them for grant of stay. The Committee are of the firm belief that by doing so, Companies/Industries/Factories will be discouraged to move the courts and take stay orders. The Committee, therefore, recommend that a foolproof system may be evolved to keep track of the performance of the empanelled counsels and also to ensure that there are minimum number of court cases filed by the defaulters and maximum stay orders of the courts are got vacated so as to keep a firm check on the default cases.

59. The Committee further note that the Enforcement Officers (EOs) and Account Officers (AOs) are rotated every four years. However, after the matter was seized by the Committee, instructions have been issued for rotation of jurisdiction of EOs every two years. Also, where specific complaints are received, the Head Office intervenes to ensure transfer of such EOs. The Office has also time identified sensitive and non-sensitive posts within the organization for the first. Whenever a vigilance case is received, Officers are transferred from sensitive posts (EOs) to non-sensitive ones (AOs). The Committee, however, note that in the year 2009-10 there were certain States where the default cases were quite high while conviction rate was very low, for instance, in Andhra Pradesh out of 2,529 default cases only two were convicted, in West Bengal and Goa out of 761 and 168 default cases respectively, only one person was convicted. In the remaining States such as Karnataka, Kerala, Madhya Pradesh, Maharashtra, Gujarat, Haryana, Punjab and Uttar Pradesh, out of 2,160, 2,572, 1,322, 1,852, 1,549, 1,754, 1,117 and 1,326 default cases respectively, there were 'nil' convictions. In Tamil Nadu, where maximum number of default cases were reported, *i.e.* 7,855, only three were convicted. The Committee further note that the legal matters are dealt with by the Assistant Provident Fund Commissioner (Legal)/ Regional Provident Fund Commissioner (Legal) on behalf of the Department. The Committee are, however, dismayed to note that despite poor performance of the counsels and dismal rate of convictions of the defaulters, no Assistant Provident Fund Commissioner (Legal)/ Regional Provident Fund Commissioner (Legal) has yet been transferred and they have instead been given time to improve their functioning and show results. This shows that the whole issue is not being dealt with the seriousness it deserves despite the Committee's directions to supervise and sternly take action against the non-performers to curb the provident fund payment default and court cases. The Committee are of the firm view that merely by appointing new counsels and issuing warning alone to the concerned would not yield the desired results unless and until the Government makes some special provisions or implement result oriented action plans and resolutely implement and supervise the same to curb the default cases especially in States such as West Bengal, Tamil Nadu, Karnataka, Madhya Pradesh, Gujarat, Haryana, Punjab, Uttar Pradesh and Kerala, where maximum cases of default have been reported in recent years.

60. The Committee are also of the firm view that in a vast organization like Provident Fund, where issue of default in terms of regular payment of Provident Fund Contribution has become a rule rather than an exception, it is imperative to have an impartial and independent set up of Provident Fund courts, whose basic function should be to act as an immediate and fast arbitrator in a dispute arising between the defaulter employers and employees/Unions and *vice versa*, thereby streamlining the speedy, effective and efficient functioning of the EPFOs. To give effect to this, the Committee suggested

during the course of oral evidence that the Government should take effective steps like setting up of the special courts and special benches for the expeditious trial at the District Level; in High Courts/Regional Court to arbitrate on the issue of provident fund default and appeals from individuals/organizations. The Committee note with satisfaction that all Regional Provident Fund Commissioners-in-charge have been directed to take up the matter with High Courts of their respective States/Region regarding setting up special courts/special benches for hearing cases of the EPFO and expedite their disposal. Zonal Additional Central Provident Fund Commissioners have been instructed to monitor the progress and submit Action Taken Report. The Committee would, therefore, like to recommend that action in this regard should be expedited in consultation with the Law Ministry in a time-bound manner. The Committee, would like to be apprised of the conclusive action taken in this regard.

61. The Committee further note with concern that there lies huge amount of unclaimed provident fund of migrant labourers/contract labourers working in different industrial regions of the country which is parked with the different provident fund offices because of lack of awareness amongst these illiterate labourers. The Committee are, therefore, of the considered view that a special drive must be initiated to create awareness amongst these contract workers by giving focussed advertisements in Hindi and regional language newspapers, distribution of leaflets in remote areas, through electronic media, by organizing seminars about defaults in payment of provident fund in various cities, carrying out survey by the field officers, involving trade unions, etc. The Committee would, therefore, like to recommend that to give effect to the above suggestions action should be initiated expeditiously. The Committee also recommend that accountability of the field officers should also be fixed so that they ensure that all organizations/workers/contract workers who are working are covered under the Provident Fund Scheme by way of frequent surveys to be carried out by the field officers at different places across the country.

62. As regards the issue of under coverage of the contract workers, the Committee were informed during oral evidence that steps to amend the laws related to the exploitation of contract worker by his employer like giving less wages, making him do work, by not providing him facilities, etc. is being worked out. The Committee would like the Ministry to expedite the same and intimate them the final conclusive action taken in this regard.

63. After deliberating at length upon the rising cases of default in Provident Fund and the meagre prosecution rate of defaulters, the Committee have come to the conclusion that the existing provisions enshrined in the current Provident Fund Act to tackle the menace of default are inadequate and lack vigour to curb the defaulters. The representatives from the Ministry were also in concurrence with this observation of the Committee and informed that the Act requires amendment to plug the inherent loopholes mainly on three grounds. One is the simplification of forms and procedures for all the stake-holders. Second, very stringent punishment is necessary for those who are not depositing the provident fund and third, incorporating a provision of appeal within the Department so that litigations can be reduced. The Committee note that in order to make it more effective and to ensure that the violation of the provisions is

discouraged, the Government has constituted a Working Group consisting of the Members of the Central Board of Trustees, representing the employers and employees to suggest comprehensive amendments in the Act and Scheme. This Working Group will review the existing provisions and suggest amendments to the Act and Schemes including the issues related to the penal provisions to make it more effective and stringent. Further, the proposal submitted by Working Group will be placed before the Central Board of Trustees for their views before forwarding it to the Government for consideration. As per the action plan submitted by the Ministry, copies of the proposed amendments have been provided to the Members of the CBT (EPF). The Committee, recommend that the Act should be suitably amended at the earliest by taking into consideration all the provisions to reduce provident fund default, legal provisions pertaining to default in payment of employees and employers money, working of EPFOs, etc.

64. The Committee expect that the measures discussed during the course of oral evidences such as simplification of forms and procedure regarding Provident Fund, provisions of stringent and exemplary punishment to the defaulters, provision of appeal within the Department, separate courts for the speedy disposal of cases, provision of filing caveats to vacate stay orders, etc. would yield wanted result. The Committee desire that all necessary measures should be taken to ensure that these cases do not linger on for years together, as these cause loss to the employees covered under the Scheme besides increasing their hardship and distress for no fault on their part. The Ministry, being the nodal agency, cannot absolve itself of its responsibility of realizing the amount from the defaulters. The very fact of increase in the number of defaulting establishments and the quantum of unrealized amount over the years amply shows that the provisions of the existing laws are inadequate and the same need to be strengthened/reviewed. The Committee, therefore, recommend that the provisions of the existing law/Act which deal with the defaulting establishments may be reviewed with the view to make it mandatory for the employer to deposit due contribution to the funds of the employees timely and on regular basis and to award deterrent/exemplary punishment to establishments in case of their failure to do so. The Committee feel that the loopholes in the existing laws be plugged in order that defaulting employers are not able to evade the statutory requirement. In the opinion of the Committee, the non-payment of dues by the employer should be treated as a criminal offence and not a civil offence. It is also necessary that suitable action should be initiated for dereliction of duty, if so, against the officials responsible for non-realization of the amount from the defaulting establishment. The Committee are also of the firm opinion that merely by bringing in amendments and changing norms alone would not yield the desired results as its proper implementation throughout the length and breadth of the country is equally important. The Committee, therefore, recommend the Ministry to implement the aforesaid action plan effectively after getting the existing laws amended. The Committee would like to be apprised of the action taken by the Ministry in this regard within a period of 3 months.

NEW DELHI;
20 June, 2011
30 Jyaishta, 1933 (Saka)

ANANT GANGARAM GEETE
Chairman,
Committee on Petitions.

ANNEXURE I

(Please see Para No. 21 of the Report)

Government of India

Ministry of Labour and Employment

**STATUS OF PROVIDENT FUND ARREARS AND PENAL ACTION TAKEN BY
EMPLOYEES' PROVIDENT FUND ORGANISATION DURING
THE LAST THREE YEARS**

Provident Fund Arrears (At the end of the year):

(Amount Rs. in Crores)

	2005-06		2006-07		2007-08	
	No. of Defaulting Estts.	Amount in Default	No. of Defaulting Estts.	Amount in Default	No. of Defaulting Estts.	Amount in Default
Exempted	482	805.88	478	769.80	462	728.17
Unexempted	76476	1724.19	72554	1837.67	81009	2118.41
Total	76958	2530.07	73032	2607.47	81471	2846.58

PENAL ACTION AGAINST DEFAULTING ESTABLISHMENTS (UNEXEMPTED)

Initiation and disposal of assessment cases under section 7A of the Act:

Year	Cases due as on 1st April	Cases initiated during the year	Total workload	Cases disposed by issue of final orders	Cases pending as on 31st March
2005-06	16199	31144	47343	27229	20114
2006-07	20114	28222	48336	29540	18796
2007-08	18796	27233	46029	26979	19050

Recovery of Provident Fund & other Arrears:

(Rs. in Crores)

Year	Opening Balance as on 1st April	Addition during the year	Realised during the year	Closing Balance as on 31st March
2005-06				
Unexempted Sector	1536.82	1241.71	1054.34	1724.19
Exempted Sector	608.00	1102.90	904.21	805.88

(Rs. in Crores)

Year	Opening Balance as on 1st April	Addition during the year	Realised during the year	Closing Balance as on 31st March
2006-07				
Unexempted Sector	1724.19	1013.84	900.36	1837.67
Exempted Sector	805.88	299.94	336.02	769.80
2007-08				
Unexempted Sector	1837.67	1098.53	817.78	2118.41
Exempted Sector	769.80	244.58	286.21	728.17

Prosecution cases under Section 14 of the Act:

Year	Opening Balance	Launched	Decided	Pending
2005-06	47878	8005	1945	53938
2006-07	53951	3739	4449	53241
2007-08	53748	4854	1684	56918

Recovery Certificates under Section 8 of the EPF & MP Act, 1952 :

Year	Workload of the year		Executed		(Amount Rs. in Crores)	
					Pending	
	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount
2005-06	184930	1962.98	57533	392.68	127397	1570.31
2006-07	224102	2295.63	59321	485.73	164781	1809.90
2007-08	213195	2173.94	55742	318.88	157453	1855.06

FIR/Challans and Prosecution Cases under Section 406/409 IPC:

2005-06	FIRs/Challans under Section 406/409 IPC Cases Filed during the Year.	FIR filed with the police during the year	457
	Prosecution Cases filed before various Courts under Section 406/409 IPC during the year.	Challans filed by police before the Courts	7
		Cases pending at the end of the year	6531
		Prosecution cases filed before the Court	549
		Cases disposed by the Court	6
		Cases pending at the end of the year	543
2006-07	FIRs/Challans under Section 406/409 IPC Cases Filed during the year.	FIR filed with the police during the year	649
		Challans filed by police before the Courts	3
		Cases pending at the end of the year	6972

2007-08	Prosecution Cases filed before various Courts under Section 406/409 IPC during the year.	Prosecution cases filed before the Court	546
		Cases disposed by the Court	6
		Cases pending at the end of the year	540
	FIRs/Challans under Section 406/409 IPC Cases filed during the year.	FIR filed with the police during the year	550
		Challans filed by police before the Courts	83
		Cases pending at the end of year	6511
	Prosecution Cases filed before various Courts under Section 406/409 IPC during the year.	Prosecution cases filed before the Court	1257
		Cases disposed by the Court	4
		Cases pending at the end of the year	1253

ANNEXURE II

(Please see Para No. 24 of the Report)

**DETAILS OF CONVICTIONS RELATING TO PROSECUTION CASES FILED
U/S 14 DURING THE YEAR 2008-09**

Sl. No.	Office	No. of cases where convictions made	Details		Remarks
			Name of the Establishment	Particulars of conviction/ penalty	
1	2	3	4	5	6
1.	R.O. Ludhiana	11	M/s Ispat Structural, Khanna, Ludhiana (PB/4842)	Fine of Rs. 50,000/- imposed on employer	Litigation cost of Rs. 3,000/- also imposed on employer by court
2.	R.O. Chandigarh	28	Varun Enterprises, Derabassi	Fined Rs. 1,000/-	
3.	R.O. Mangalore	682	Shri Durga Parameshwari Tile Works, Mulky-KN/12169 Further details awaited	1 Month imprisonment and Rs. 2,10,000/- penalty	The order of punishment has been stayed by Distt. Court, Mangalore and the matter is pending there
4.	R.O. Bangalore	48	Information awaited		
5.	R.O. Ahmedabad	1	1. United Engg. Enterprises	Rs. 400/-	
		1	2. M.G. Dodiya	Rs. 400/-	
		1	3. Anuradha Diesels	Rs. 400/-	
		1	4. Prashant Industries	Rs. 400/-	
		1	5. Uttam Furniture Mart	Rs. 400/-	
		1	6. Shri P.V. Modi Chari. Trust	Rs. 400/-	

1	2	3	4	5	6
		1	7. Jai Somnath Enterprises	Rs. 400/-	
		1	8. Malthiya Construction	Rs. 400/-	
		1	9. Jethalal Veerji	Rs. 400/-	
		1	10. Jai Enterprises	Rs. 400/-	
		1	11. Bharthi Vashran	Rs. 400/-	
		1	12. Gigabhai Keshwala	Rs. 400/-	
		1	13. Alfa Sec. Services	Rs. 400/-	
		1	14. Neelam Elect. Works	Rs. 400/-	
		1	15. D.V. Hapalla	Rs. 800/-	
6.	R.O. Kerala	4	1. Eruva Cashew	Rs. 1,000/-	Remitted for each case the file
		4	2. Pathiyoor Cashew	Rs. 1,000/-	Remitted for each case the file
		8	3. Allied Hospital Ltd.	Rs. 1,000/-	Not for each case remitted
		18	4. New Star Weavers	Rs. 4,500/-	fine imposes
		17	5. Kannapuam Clay, Pot WIC Soc. Ltd.	Rs. 28,000/-	fine imposed
Total		835			

ANNEXURE III

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Tuesday, 10th November, 2009 from 1500 hrs. to 1630 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi to take oral evidence of the representatives of the Ministry of Railways (Railway Board) and the Ministry of Labour and Employment, Government of India.

PRESENT

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Rajendra Agrawal
3. Shri Khiladi Lal Bairwa
4. Shri E. T. Mohammed Basheer
5. Shri Gurudas Das Gupta
6. Shri Jagdambika Pal
7. Shri Sarvey Sathyanarayana
8. Shri Rakesh Singh
9. Shri Kabir Suman

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Shri N.K. Sapra | — | <i>Additional Secretary</i> |
| 2. Shri V.R. Ramesh | — | <i>Director</i> |
| 3. Shri U.B.S. Negi | — | <i>Additional Director</i> |
| 4. Shri Hulasi Ram | — | <i>Deputy Secretary</i> |
| 5. Smt. Jagriti Tewatia | — | <i>Under Secretary</i> |

WITNESSES

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Ministry of Labour and Employment

- | | | |
|---------------------------|---|-------------------------------------|
| 1. Shri P.C. Chaturvedi | — | Secretary |
| 2. Shri S.K. Mukhopadhyay | — | Chief Labour Commissioner (Central) |
| 3. Shri S.K. Verma | — | Director (Social Security) |
| 4. Shri Harcharan Singh | — | Deputy Director General |
| 5. Shri Abhay Kumar Singh | — | FA&CAO, EPFO |

6. Shri S. Pathak	—	Director (Security EPFO)	
7. Shri Kishori Lal	—	Deputy Director	
8. Shri S.D. Xavier	—	Under Secretary	
9. Shri Brij Mohan	—	Assistant Director	
10. Shri V.K. Balayan	—	Section Officer (Social Security)	
**	**	**	**

Ministry of Labour and Employment

5. The Chairman welcomed the representatives of the Ministry of Labour and Employment and drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

6. Thereafter, the Committee undertook the following two representations for oral evidence of the representatives of Ministry of Labour and Employment on:—

(i) Representation from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress and forwarded by Shri Gurudas Das Gupta, MP regarding default in the contribution by employers to the Provident Fund.

(ii) ** ** *

7. The following issues/points were discussed by the Committee:—

- (i) Measures undertaken by the Ministry to curb the default cases regarding failure of the employers to contribute towards Provident Fund of the employees.
- (ii) Detection of defaulters by maintaining computerized records in Employees Provident Fund Organization (EPFO).
- (iii) The details of the default cases received by the Ministry and the action taken thereon. The result of the precautionary measures taken in this regard.
- (iv) Exercise of authority by the Ministry to protect the interest of the employees.
- (v) Review of relevant provisions of the Act and necessary amendment so that cases of defaulters be brought under criminal purview.
- (vi) The details relating to default in terms of amount and the amount recovered during 2006-07 and 2007-08 and punishment given to defaulters.

8. ** ** *

India could not be discussed in the meeting and it was decided that same would be listed for discussion in next sitting.

9. The Committee asked the representatives from the Ministry of Railways and the Ministry of Labour and Employment to send their replies on points which could not be supplied or readily available with them during the evidence at the earliest.

10. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE IV

MINUTES OF THE SIXTEENTH SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Tuesday, 22nd June, 2010 from 1400 hrs. to 1530 hrs. in Committee Room 'B' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Khiladi Lal Bairwa
3. Shri E.T. Mohammed Basheer
4. Shri N.S.V. Chitthan
5. Shri Gurudas Das Gupta
6. Shri Devendra Nagpal
7. Shri Jagdambika Pal
8. Shri Sarvey Sathyanarayana
9. Shri Joseph Toppo

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Shri N.K. Sapro | — | <i>Additional Secretary</i> |
| 2. Shri V.R. Ramesh | — | <i>Joint Secretary</i> |
| 3. Shri U.B.S. Negi | — | <i>Additional Director</i> |
| 4. Shri Hulasi Ram | — | <i>Deputy Secretary</i> |
| 5. Smt. Jagriti Tewatia | — | <i>Under Secretary</i> |

WITNESSES

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Ministry of Labour and Employment

- | | | |
|------------------------------------|---|---|
| 1. Shri Prabhat Chandra Chaturvedi | — | Secretary |
| 2. Shri Samirendra Chatterjee | — | CPFC (Employee's Provident Fund Organization) |
| 3. Shri S.K. Srivastava | — | Additional Secretary |
| 4. Shri S.K. Dev Verman | — | Joint Secretary |
| 5. Shri S.K. Verma | — | Director |
| 6. Shri Sudhakar Babu | — | Addl. CPFC (Compliance) |
| 7. Shri Shankar Pathak | — | Director (Recovery) |
| 8. Shri S.D. Xavier | — | Under Secretary |

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Ministry of Labour and Employment

3. The Chairman welcomed the representatives of the Ministry of Labour and Employment and drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

4. Thereafter, the Chairman pointed out that the issues/points raised by the petitioner, Shri H. Mahadevan in his representation regarding default in the contribution to the Provident Fund by the employers are very serious and therefore, has been taken up again by the Committee for discussion. On being pointed out that the number of default cases in terms of payment of Provident Fund share by the employer, are rising in the country and therefor, the Committee sought the action plan of the Government in this regard. The Committee were informed by the Ministry that they would come back before the Committee with an Action Plan in the matter.

5. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE V

MINUTES OF TWENTY-FOURTH SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions met on Thursday, the 21st October, 2010 from 1430 hrs. to 1545 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi. In the absence of the Chairman, the Committee chose Shri Gurudas Das Gupta, MP to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

PRESENT

Shri Gurudas Das Gupta — *In the Chair*

MEMBERS

2. Shri Rajendra Agrawal
3. Shri Khiladi Lal Bairwa
4. Shri E.T. Mohammed Basheer
5. Shri Jagdambika Pal
6. Prof. Ram Shankar
7. Shri Sarvey Sathyanarayana
8. Shri Joseph Toppo

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Shri N.K. Sapra | — | <i>Additional Secretary</i> |
| 2. Shri V.R. Ramesh | — | <i>Joint Secretary</i> |
| 3. Shri Shiv Kumar | — | <i>Director</i> |
| 4. Shri Hulasi Ram | — | <i>Deputy Secretary</i> |
| 5. Smt. Jagriti Tewatia | — | <i>Under Secretary</i> |

WITNESSES

Ministry of Labour and Employment

- | | | |
|------------------------------------|---|----------------------|
| 1. Shri Prabhat Chandra Chaturvedi | — | Secretary |
| 2. Shri Ravi Mathur | — | Additional Secretary |
| 3. Shri Samirendra Chatterjee | — | CPFC |
| 4. Shri Anup C. Pandey | — | Joint Secretary |
| 5. Shri K.D.R. Achary | — | Dy. CLC (C) |
| 6. Shri S.R. Joshi | — | Addl. CPFC (Pension) |
| 7. Dr. A.K. Dubey | — | Director (Recovery) |
| 8. Shri S.D. Xavier | — | Under Secretary |

At the outset, the Chairman welcomed the representatives of the Ministry of Labour and Employment to the sitting of the Committee. The Chairman, then drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

2. The Chairman, then stated that the meeting had been called to discuss the representation received from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress and which was forwarded to the Committee to take further oral evidence of the representatives of Ministry of Labour and Employment on the issue regarding 'default in the contribution by Employers to the Provident Fund'.

3. The Members then raised points/questions, which *inter-alia* related to the issues like plugging the loopholes in the Provident Fund Act, 1952 making the failure on the part of Employers to deposit their contribution as the criminal and non-bailable offence, setting up of Special Courts/Benches in High Courts for speedy trial of Employees Provident Fund (EPF) cases strengthening Legal Department of the Ministry of Labour and Employment, punishing the non-performing Enforcement Officers, extension of coverage of Provident Fund to the unorganized sector by creating awareness amongst such employees about their right to Provident Fund, giving wide publicity to EPF Scheme, engagement of efficient lawyers by Employees Provident Fund Organisation, conduct of special surveys of all the Industrial Zones in the country with a view to increase coverage under EPF and also to hold special seminars, etc. for the purpose.

4. The Committee were of the view that the Ministry should supply within one month the information to the Committee regarding amendments proposed to be made in the Provident Fund Act, 1952 steps taken with regard to the setting up of special courts and Special Benches in all High Courts, transfer of Enforcement Officers for their non-performances and appointments of lawyers etc. so that the matter might be further examined in the light of these facts.

5. The Secretary, Ministry of Labour and Employment then responded all the points raised by the Committee and promised to furnish the information as desired by the Committee well within the stipulated time.

6. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE VI

MINUTES OF THE THIRTY-FOURTH SITTING OF THE COMMITTEE ON
PETITIONS (FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Monday, 20 June, 2011 from 1430 hrs. to 1500 hrs. in Committee Room 'G 074', Ground Floor, Parliament Library Building, New Delhi.

PRESENT

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Rajendra Agrawal
3. Shri Khiladi Lal Bairwa
4. Shri Gurudas Das Gupta
5. Shri Jagdambika Pal
6. Shri Joseph Toppo

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Shri N.K. Sapra | — | <i>Secretary</i> |
| 2. Shri P.K. Grover | — | <i>Additional Secretary</i> |
| 3. Shri Shiv Kumar | — | <i>Director</i> |
| 4. Shri Hulasi Ram | — | <i>Deputy Secretary</i> |
| 5. Smt. Jagriti Tewatia | — | <i>Under Secretary</i> |

2. At the outset, the Chairman welcomed the Members of the Committee. The Committee then considered and adopted the following draft Reports of the Committee:—

- (i) Draft Fourteenth Report on the representation from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress and forwarded by Shri Gurudas Das Gupta, MP, Lok Sabha regarding default in the contribution to the Provident Fund by the employers.
- (ii) Draft Fifteenth Report on the action taken by the Government on the recommendations of the Committee on Petitions (15th Lok Sabha) in their Thirteenth Report on the representation from Shri Jayant Prabhakar Patil and others regarding provision for employment to the Project Affected Persons of Rashtriya Chemicals and Fertilizers (RCF) Ltd.

3. The Committee also authorized the Chairman to finalize and present the Reports to the House/Hon'ble Speaker.

The Committee then adjourned.

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