

# HANDBOOK ON THE CODE ON WAGES, 2019



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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## Foreword

I am happy to learn that the Institute of Company Secretaries of India is releasing the publication Handbook on the Code on Wages, 2019 and extending its whole hearted support in spreading awareness about various initiatives of the Government of India including labour laws reforms.

The Ministry with a view to facilitate ease of doing business, generate employment and safeguard interest of workers and employers, has taken various legislative, administrative and e-governance initiatives relating to labour laws in India.

The Ministry has been working towards simplifying, amalgamating and rationalizing the relevant provisions of the Central Labour Laws and consolidating the same into four labour codes for bringing out reforms in the provisions relating to minimum wages, bonus, industrial relations, social security and safe working environment, etc. The Code on Wages, 2019 is first law under the initiatives for which the Ministry has put draft rules in public domain for feedback and suggestions and is under the process of finalization of the rules. Also the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 have been passed by the Parliament and assented to by the President on September 28, 2020.

The enactment of the Code on Wages, 2019 represents a significant overhaul of India's labour laws in relation to provisions governing payment of wages and bonus. The provisions on payment of minimum wages, timely payment of wages, payment of bonus, and the prohibition of discrimination in matters of remuneration, recruitment, and conditions of service etc. are provided in the Code on Wages, 2019. Among other changes uniform definition of wages has been prescribed, concept of floor wages has been introduced and the methodology to fix the minimum wages has been simplified and rationalized. Changes have also been introduced in the inspection regime including web based randomised computerised inspection. To protect the interest of the workers, the limitation period has been raised to 3 years uniformly for filing claims. All these changes will be conducive for enforcement of labour laws with transparency and accountability.

The Company Secretaries being the Governance Professionals have an important role to play in the new regime of labour laws in relation to compliance and implementation of the provisions of the Code in true letter and spirit. I am hopeful that the Company Secretaries will continue to play major role in new labour laws.

I am sure this publication would be of immense use for the employers, employees, practitioners, students and other stakeholders in understanding the compliances under the Code on Wage, 2019 and supplementing the government's initiative of implementing labour law reforms in a timely manner.

I congratulate the Institute, its President CS Ashish Garg, and his team for this initiative.

New Delhi

  
(APURVA CHANDRA)

Dated: 21st October, 2020



## **Preface**

***“Capital is a result of labour, and is used by labour to assist it in further production. Labour is the active and initial force, and labour is therefore the employer of capital.”***

**– Henry George**

The word ‘labour’ takes us back to those initial pages of Macroeconomics when it had for the first time been explained in black and white as to how significant a role was played by the labour in driving the economy. It was further reiterated this role was not limited to a single economy, rather the same was observed, perceived and acknowledged globally.

That said, the calculation of National Income thrives on the incomes of various segments, one of them being wages. While the labour market in India is known for excess availability of workers, the same comes across as the *raison d’être* for the fairness in wage entitlement. The need of the hour is to have an effective minimum wage policy targeting the vulnerable ground level wage earners which can not only drive up aggregate demand but also spur a phase of sustainable and inclusive growth.

The Ministry of Labour & Employment introduced the Code on Wages (bill) in Parliament after many multi-stakeholders consultations. The enactment of Code on Wages, 2019 (Code) seems to have engulfed the said issues and put across itself as the perfect response and solution to the issues facing the Indian Labour Market. While having removed multiplicity of definitions, the Code seeks to bring about uniformity in the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling.

I take this opportunity to express my sincere gratitude to the Hon'ble Minister of State for Labour and Employment (Independent Charge) and the Secretary, Ministry of Labour & Employment, Government of India for bringing out reforms in the Labour Laws by the enactment of the Labour Codes. This will surely prove to be an important milestone for the welfare of the workers in the country.

Given the various new aspects introduced through the Code, the need was felt to develop a comprehensive publication wherein the provisions of the Code were explained in a simple and easy to understand manner so as to accord better understanding to the professionals looking forward to practice in the field of labour laws. Furthermore, efforts have been made to give clarity by citing appropriate examples, comparative explanation with existing laws and the diagrams.

I would like to place on record my sincere appreciation to CS Devendra V. Deshpande, Chairman, Management Committee, ICSI-CCGRT and Council member, ICSI for this initiative and offering valuable suggestions and guidance in preparation of the publication.

I also express my sincere gratitude to Ms. Sudha Pillai, Chairperson and other members of the Task Force on Labour Laws for providing valuable inputs for improvement of this publication.

I appreciate the contribution made by CS Sandeep M. Nagarkar in preparing initial draft of this publication. I sincerely commend the efforts of the team at the ICSI under the able leadership of CS Asish Mohan, Secretary, ICSI in preparing this publication.

I hope that this publication shall prove to be of great help in understanding the Code on Wages, 2019 in narration mode. However, since there is always scope for further improvement in any publication, I would be grateful to the users and readers for offering their suggestions/comments/inputs for its further refinement.

Place: New Delhi

Date: November 25, 2020

**CS Ashish Garg**

*President*

The Institute of Company Secretaries of India

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# BACKGROUND

## Wages in Ancient India

During pre-Vedic and Vedic age, especially during *Rigveda* and till the days of *Mahabharata* and *Ramayana*, wages were paid to the artisans and craftsmen in kind by the local kings or the village guilds. Money wages in the form of the present-day practice was quite unknown until money was invented as a medium of exchange. A sort of barter system prevailed during the period of *Mahabharata*.

Probably, the first authoritative reference to wages one might get in ancient India is from Kautilya's '*Arthashastra*' and '*Nitisara*' by Shukracharya. During the tenth century AD, '*Nitisara*' gave a description of Indian polity, especially organisation of the Central Government, town and village life, particularly the village *panchayat*.

The *panchayat* members were elected and had executive-judicial powers who collected taxes, distributed land, paid wages to the workers and also paid the governments' share on behalf of the village. In larger towns there were varieties of artisans, merchants; craft guilds, merchantile associations and Banking Corporation, and each of them had its own wage payment systems.

The information relating to wages was, however, fragmentary in '*Nitisara*'. But it was evident from other sources like inscriptions, that the system of self-government in towns and villages was very strong and effective; and the kings and their council of ministers of the top seldom interfered with economic and social activities of the elected bodies.

During the 4th century BC Kautilya's *Arthashastra* gave us more details about the statecraft and polity of ancient India which was principally an agricultural civilisation based on village self-government.

According to the Jatakas, ancient India, even before 4th century BC appeared to be a highly civilized society where trade associations, craft guilds and trade unions were formed to safeguard the interest of all types of workers of different skills.

## **Labour Law Reforms**

India inherited its labour laws and practices from British Rule. However, the speed of making changes in the labour laws was very slow till liberalization touched Indian boundaries in 1991. After the liberalization efforts, India scaled high and now it is set to become USD 5 trillion economy. Labour reforms were always on the key agenda of every Government. Now in line with overall vision of making India a hub of manufacturing base, existing Government has embarked upon the rephrasing and replacing almost the entire set of Central labour legislations by 2022.

The Labour Laws in India before the 1970s were framed mainly to cater to the Manufacturing Sector and do not address the problems of the fast growing Service Sector of the Millennium which today accounts for about 55 per cent of our GDP. The current labour laws relating to wages protect about 40% of the organised workforce by many outdated and inflexible provisions which seriously hamper the employment generating capacity of the organised sector. Most of the 10-12 million youth joining labour force each year are forced to join the informal unorganised sector where both the working conditions and wages are poor.

The 2<sup>nd</sup> National Commission on Labour (NCL) set-up in 1999 suggested rationalization of existing laws relating to Labour in organized sector and an umbrella legislation for ensuring a minimum level of protection to workers in unorganized sector. The NCL which submitted its report in June 2002 had recommended that the existing Labour laws should be broadly amalgamated into the following groups:

1. Industrial relations
2. Wages
3. Social Security
4. Occupational Safety, Health and Working Conditions

## **Expert Committee on National Minimum Wage**

**In January 2019, the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage in its Report recommended the following:**

- The existing norms for fixing minimum wages should be updated in the light of the latest available evidence relating to per household

consumption units, food and nutritional requirements, changing consumption pattern and non-food expenditure requirements.

- Recognizing the changes in the population composition over time, the Committee recommended increasing the previously established three consumption units per worker's family to 3.6 consumption units in order to calculate the minimum wage.
- Considering the overall framework and guiding principles of the Indian Labour Conference (ILC) of 1957 and the Supreme Court (SC) judgment of 1992 in the case of *Workmen v. Reptakos Brett & Co.*, the Committee recommended that the national minimum wage (NMW) should be able to meet a working family's minimum required expenditure on food and non-food, which should be adequate to preserve the efficiency of workers at their job and the health of their families.
- The minimum required food expenditure should be sufficient to ensure that workers and their families are able to meet their minimum nutritional requirements. The Committee recommended elaborating a nationally representative and culturally palatable food basket, by adopting an approach that would focus on a balanced diet rather than merely its calorie intake. This approach should not only concentrate on the minimum requirement of calories but also on the minimum requirement of protein and fats.
- Recognizing that there have been changes in the population's level of activity, implying a reduction in the proportion of workers engaged in heavy work and an increase in the number of workers in moderate and sedentary occupations, the Committee recommended setting the minimum wage at a level that would allow for a minimum recommended intake (per adult person per day) of 2,400 calories, 50 grams of protein and 30 grams of fats.
- The Committee recommended using the unit values (implicit prices) of food items available through the Consumer Expenditure Surveys (CES) of the National Sample Survey Office (NSSO) for calculating the total food expenditure of households and setting the base level minimum wage. However, in between the NSSO surveys, there should be an intermediate adjustment to accommodate changes in prices at least in every six months, on the basis of the CPI made available by the CSO.

- For estimating the required expenditure on non-food items, the Committee complies with the ILC of 1957 and SC judgment of 1992 norms and identifies two groups of commodities: i) essential non-food items, namely clothing, fuel and light, house rent, education, medical, footwear, and transport (or conveyance); and ii) other non-food items, (such as entertainment, durable goods, toilet articles, other household consumables, consumer services excluding conveyance, and consumer taxes. The Committee recommended that the required expenditure of essential non-food items be equal to the median class of the expenditure distribution, and that of the other non-food items be equal to the expenditure for the sixth fractile (25-30 per cent) of the distribution in the NSSO-CES 2011/12 survey data.
- On the basis of this approach, the Committee is of the considered view that the single value of the NMW for India should be set at Rs. 375 per day as of July 2018. This would be equivalent to Rs. 9,750 per month, irrespective of sectors, skills, occupations and rural-urban locations.
- Alternatively, the Committee recommended the NMW for five different regions with diverse socio-economic and labour market situations. Four of these five regions may be constituted by using varied socioeconomic and labour market factors, while the fifth group may include all north-eastern States except Assam. A regional NMW calculated in this matter would have the potential to address varying economic situations in different States.
- For estimating the NMW at the regional level, the Committee recommended using the nationally representative food basket for all regions instead of estimating and using regional representative food baskets for each of the five regions. This will help dissociate the consumption pattern from the level of poverty and ability to pay in a region, while maintaining the palatability of the food basket. However, the Committee recommends using the regional average unit price of each food item to arrive at the total minimum consumption expenditure required for households. The required expenditure for non-food items – both essential and other – will be estimated separately for each region. Following the above approach, the Committee recommends that NMW per day (per month) for Region I, Region II, Region III, Region IV and Region

V should be set at Rs. 342 (Rs.8,892); Rs.380 (Rs.9,880); Rs. 414 (Rs.10,764), Rs.447 (Rs.11,622) and Rs.386 (Rs.10,036), respectively, as of July 2018, irrespective of sectors, skills, occupations and rural-urban locations.

- As house rent accounts for a significant proportion of the overall non-food component, the Committee recommends an additional house rent allowance, averaging up to Rs.55 per day i.e., Rs.1,430 per month for urban workers over and above the NMW. However, this - city compensatory rent allowance may be allowed to vary in accordance with the type of city and town. The Committee recommended that a separate study should be undertaken to determine the city compensatory rent allowance by type of city and town.
- The Committee recommended that minimum wages be fixed at round numbers, which are much easier to disseminate. This will also facilitate the minimum wage enforcement process.
- The estimated single value of the NMW, or its different value at the regional levels proposed by this Committee, only accounts for the expenditure required to meet the basic level of needs (food and non-food expenditure) of workers and their families. In no way does it reflect any link with the paying capacity of employers, labour productivity and other similar economic criteria. As recommended by the ILC in 1957 and the SC 1992 judgment, the NMW just meets the criteria for maintaining the work efficiency of workers and the healthy living of their families.
- The Committee recommended that the period during which the minimum proposed wages are implemented, and the terms under which they are applied, should be defined through a full consultation process with the stakeholders.
- Since the level of minimum wages is inextricably tied to the consumption basket, and consumption patterns may change over time, the Committee recommended that an expert committee review the consumption basket every five years, subject to the availability of NSSO-CES data. However, as stated earlier, the Committee recommended that, during the interval period, the basic minimum wage should be revised and at least updated in line with the CPI every six months, to reflect changes in the cost of living.

- The Committee acknowledges that referring to the CPI to ascertain the changes in the cost of living will ensure that the purchasing power of the minimum wage will not deteriorate. The Committee suggests that if the country's economic realities are factored into the minimum wage, any adjustments should take into account inflation and productivity. The Committee recommended that further research is required to arrive at any productivity-linked revisions.
- The Committee recommended the creation of a research unit in the Ministry of Labour and Employment to support the Central Advisory Board and State Advisory Boards at the time of formulating recommendations to set and adjust minimum wages. This research unit should provide information, evidence based studies and minimum wage impact analyses to pave the way for the discussion on the revision and adjustment of the minimum wage level.
- The Committee recommended adhering to the provisions of the ILO Minimum Wage Fixing Convention, 1970 (No.131) to address the design and operation of the Indian minimum wage system.
- The Committee recognizes the need for measures to be put in place to ensure the effective application of all provisions relating to minimum wages. Once the national or regional minimum wages have been fixed, the Committee recommended that a minimum wage campaign be launched with awareness-raising activities and information dissemination strategies at the national and subnational levels. Other measures might include capacity-building activities and the use of technology, inter alia, to better enforce compliance with minimum wage payments.

In a market driven economy like India with rising inflation and competition especially from online marketing platforms, employers are under constant pressure to cut costs and resort to most competitive pricing and delivery systems to suit the consumers. This is only possible by periodic restructuring, adoption of technology for mass production so that India can avoid losing investments to its neighboring countries.

India is currently ranked 63rd on 'Ease of Doing Business Rankings, 2020' issued by the World Bank. Further, India's ranking, on labour index, stands at 128th as per the Global Competitiveness Report 2019 issued by World Economic Forum. Therefore, in order to improve its ranking further, attract

more foreign investment, augment domestic capital in order to make India a truly manufacturing hub as envisaged in 'Make in India' scheme, there is an urgent need to create a conducive environment that can facilitate and nurture industrial and manufacturing set-up(s). To achieve this, it is necessary to reform and replace, on top priority basis, old and archaic labour laws, which are often considered to be one of the key bottlenecks in making India a manufacturing power house in the global map. India is witnessing the much awaited reforms in the Labour Law regime.

In India, the law relating to employees/workmen has always been a complex subject due to various factors whether due to its archaic laws, multiplicity of laws/regulatory authorities, Central vs. States legislation and so on. One of the key factors to remember is that labour laws are part of the concurrent list and accordingly both the Central and the State governments can legislate wherever they feel need for the same. However, instead of bringing clarity, this has created confusion due to overlapping and multiplication. Central Government has passed more than fifty laws till date pertaining to labour and related aspects while various State governments have also passed more than one hundred and fifty laws on similar or the same subject. Secondly, not only the State and Central laws clash on the same subject and create confusion but even in Central laws also, a single subject has been placed under multiple laws. For instance, the maternity benefits aspect has been provided in more than four legislations. Wages definitions also have been provided in various Acts leading to varying interpretations. Lastly, some of these laws are too old, archaic and not in line with current economic and industrial requirement. Therefore, consolidation and codification of the entire set of labour laws is the urgent need of India and its manufacturing industry in order to scale up further and put its footprint in global manufacturing base.

The Central Government with a view to facilitate ease of doing business, generate employment and safeguarding interest of workers and employers, has taken various legislative, administrative and e-governance initiatives relating to Labour Laws in India. One of such major initiative is to enact four (4) Labour Codes by simplifying, amalgamating and rationalising the relevant provisions of the existing Central Labour Laws. The four Labour Codes are as under:

1. The Code on Wages, 2019
2. The Occupational Safety, Health and Working Conditions Code, 2020

3. The Industrial Relations Code, 2020

4. The Code on Social Security, 2020

The legislative developments related to these Codes and existing labour laws to be repealed are mentioned below:

<b>The Code on Wages, 2019</b>	<b>The Occupational Safety, Health and Working Conditions Code, 2020</b>	<b>The Industrial Relations Code, 2020</b>	<b>The Code on Social Security, 2020</b>
<p>The Code on Wages Bill was first introduced in the Lok Sabha on 10th August, 2017 and referred to the Parliamentary Standing Committee on Labour.</p> <p>However, the bill lapsed on dissolution of the 16th Lok Sabha. The Code on Wages, 2019 was introduced in Lok Sabha on 23rd July, 2019. Code on Wages, 2019 was passed by Lok Sabha on 30th July, 2019, Rajya Sabha on 2nd August, 2019 and received the assent of the President on 8th August, 2019.</p>	<p>The Occupational Safety, Health and Working Conditions Code, 2019 was introduced in the Lok Sabha on July 23, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on February 11, 2020.</p> <p>The Bill was reintroduced as The Occupational Safety, Health and Working Conditions Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on</p>	<p>The Industrial Relations Code, 2019 was introduced in the Lok Sabha on November 28, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020.</p> <p>The Bill was reintroduced as The Industrial Relations Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020.</p>	<p>The Code on Social Security, 2019 was introduced in the Lok Sabha on December 11, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020.</p> <p>The Bill was reintroduced as The Code on Social Security, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020</p>



The Code on Wages, 2019	The Occupational Safety, Health and Working Conditions Code, 2020	The Industrial Relations Code, 2020	The Code on Social Security, 2020
	23rd September, 2020 and received the assent of the President on 28th September, 2020.		and received the assent of the President on 28th September, 2020.
<b>Existing labour laws to be repealed by these Codes*</b>			
<ol style="list-style-type: none"> <li>1. The Payment of Wages Act, 1936</li> <li>2. The Minimum Wages Act, 1948</li> <li>3. The Payment of Bonus Act, 1965</li> <li>4. The Equal Remuneration Act, 1976</li> </ol>	<ol style="list-style-type: none"> <li>1. The Factories Act, 1948</li> <li>2. The Mines Act, 1952</li> <li>3. The Dock Workers (Safety, Health and Welfare) Act, 1986</li> <li>4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996</li> <li>5. The Plantations Labour Act, 1951</li> <li>6. The Contract Labour (Regulation and Abolition) Act, 1970</li> <li>7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</li> </ol>	<ol style="list-style-type: none"> <li>1. The Industrial Disputes Act, 1947</li> <li>2. The Trade Unions Act, 1926</li> <li>3. The Industrial Employment (Standing Orders) Act, 1946</li> </ol>	<ol style="list-style-type: none"> <li>1. The Employees' Compensation Act, 1923</li> <li>2. The Employees' State Insurance Act, 1948</li> <li>3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952</li> <li>4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959</li> <li>5. The Maternity Benefit Act, 1961</li> <li>6. The Payment of Gratuity Act, 1972</li> </ol>

The Code on Wages, 2019	The Occupational Safety, Health and Working Conditions Code, 2020	The Industrial Relations Code, 2020	The Code on Social Security, 2020
	<p>8. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955</p> <p>9. The Working Journalists (Fixation of Rates of Wages) Act, 1958</p> <p>10. The Motor Transport Workers Act, 1961</p> <p>11. The Sales Promotion Employees (Conditions of Service) Act, 1976</p> <p>12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966</p> <p>13. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981</p>		<p>7. The Cine-Workers Welfare Fund Act, 1981</p> <p>8. The Building and Other Construction Workers Welfare Cess Act, 1996</p> <p>9. The Unorganised Workers Social Security Act, 2008.</p>

*\* These Acts will be repealed on the date of notification of commencement of the respective Labour Code in the Official Gazette .*

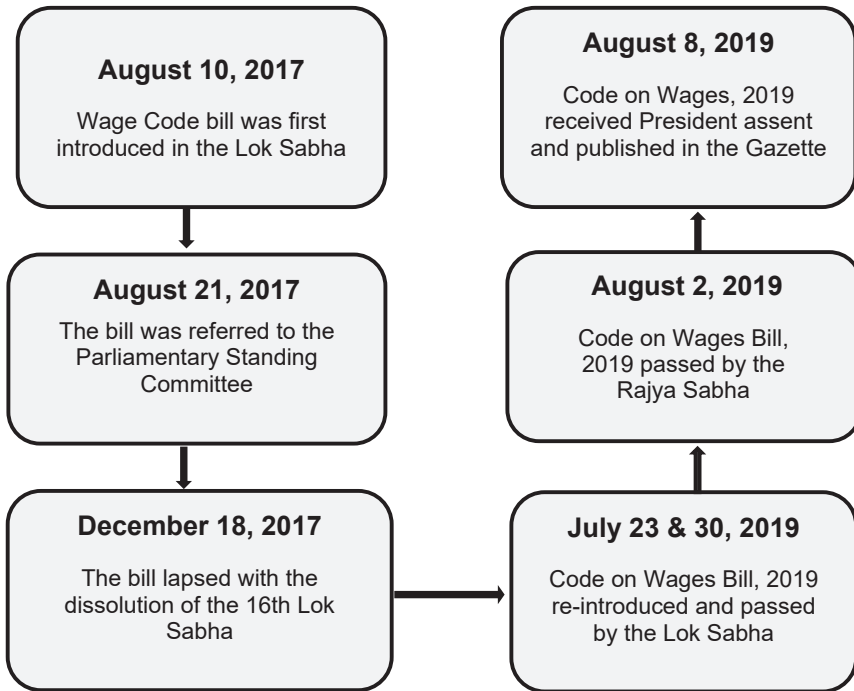
The Labour Codes aims to transform the old and obsolete labour laws into more accountable and transparent ones which is need of the hour. It will also make the existing labour laws in sync with the emerging economic scenario; reduce the complexity by providing uniform definitions and reduction in multiple authorities under various Acts and bring transparency and accountability in enforcement of labour laws. This in turn would lead to ease of compliance, catalyzing the setting-up of manufacturing units including boosting labour intensive industries such as agriculture and manufacturing exports. This would lead to enhancement in employment opportunities as well as its formalization along with ensuring safety, social security and welfare of workers.

### **The Code on Wages, 2019**

Pursuant to the recommendations of 2nd NCL and with a view to rationalize the Central labour enactment relating to wages, the Ministry of Labour and Employment (Ministry) held consultations with trade unions, employers and State governments. A draft of Code on Wages, 2019 (hereinafter also referred to as 'the Code') was made available in public domain through Ministry's website. The Bill was introduced in last Lok Sabha on 10<sup>th</sup> August, 2017 and was referred to Parliamentary Standing Committee which submitted its Report on 18<sup>th</sup> December 2018. Out of 24 recommendations made by Standing Committee, 17 were accepted by the Government. However, the said Code lapsed upon dissolution of the Sixteenth Lok Sabha. On July 23, 2019, the Ministry re-introduced the Code on Wages, 2019 in the Lok Sabha. The Code was passed by both the Houses of Parliament. The Code on Wages, 2019 was approved by the Lok Sabha on 30<sup>th</sup> July 2019, by the Rajya Sabha on 2<sup>nd</sup> August, 2019 and finally received Presidential assent on 8<sup>th</sup> August, 2019, though the Central Government has yet to notify its applicability and enforceability in accordance with section 1(3) of the Code which mentions that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The enactment of the Code is a long-awaited first step in rationalizing Labour Laws.

The preamble of the Code states that it is "an Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto". The enactment of the Code represents a significant overhaul of India's labour laws in relation to wages and bonus. The Code emphasizes on compliance as it increases the cost of non-compliance. Gone are the days when employers could take it easy on non-payment

of overtime wages as Shops & Establishments laws hardly provided a deterrent with a paltry fine. At the same time, diligent employers who are willing to comply with the Code get an opportunity to compound the offence. Prior to the Code, only some States had introduced provisions for compounding of offences in their respective States. The Code makes this opportunity to compound uniformly available and is a step forward in the direction of ease of doing business.



*Evolution of the Code on Wages, 2019*

### **Significance of the Code**

The Code ensures minimum wages along with timely payment of wages to all the employees and workers. Many unorganized sector workers like agricultural workers, painters, persons working in restaurants and *dhabas*, *chowkidars*, etc. who were out of the ambit of minimum wages will get legislative protection of minimum wages. It has been ensured that employees getting monthly salary shall get the salary by 7<sup>th</sup> of next month, those working on weekly basis shall get the salary on last day of the week and daily wagers should get it on the same day.

The Code will prove to be a milestone and give respectable life to 50 crore unorganized sector workers. Salient features of the Code are as under:

- The Code universalizes the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling. The provisions of both the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 were applicable to workers below a particular wage ceiling working in Scheduled Employments only. This would ensure 'Right to Sustenance' for every worker and intends to increase the legislative protection of minimum wage from existing about 40% to 100% workforce. This would ensure that every worker gets minimum wage which will also be accompanied by increase in the purchasing power of the worker thereby giving fillip to growth in the economy. Introduction of statutory Floor Wage to be computed based on minimum living conditions, will extend qualitative living conditions across the country to about 50 crore workers. It is envisaged that the States shall notify payment of wages to the workers through digital mode.
- There were 12 definitions of wages in the different Labour Laws leading to litigation besides difficulty in its implementation. The definition has been simplified and is expected to reduce litigation and will entail at lesser cost of compliance for an employer. An establishment will also be benefited as the number of registers, returns, forms, etc., not only can be electronically filed and maintained, but it is envisaged that through rules, not more than one template will be prescribed.
- Through the Code, the methodology to fix the minimum wages has been simplified and rationalised by doing away with type of employment as one of the criteria for fixation of minimum wage. The minimum wage fixation would be primarily based on geography and skills. It will substantially reduce the number of minimum wages in the country from existing more than 2000 rates of minimum wages.
- Many changes have been introduced in the inspection regime including web based randomised computerised inspection scheme,

jurisdiction-free inspections, calling of information electronically for inspection, composition of fines, etc. All these changes will be conducive for enforcement of labour laws with transparency and accountability.

- There were instances that due to smaller limitation period, the claims of the workers could not be raised. To protect the interest of the workers, the limitation period has been raised to 3 years and made uniform for filing claims for minimum wages, bonus, equal remuneration, etc. as against the existing varying period between 6 months to 2 years.

### **Repeal and Savings**

The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 shall get subsumed in the Code on Wages, 2019 as mentioned in Section 69 of the Code, from the effective date of the Code.

The brief of these Acts are given below for better understanding:

1. *The Payment of Wages Act, 1936*: This Act was enacted to ensure that the employers make the payment of wages of workers within the time-limit prescribed under the Act. The Act also ensures that unnecessary deductions are not made from the wages of workers other than those mentioned in Law.
2. *The Minimum Wages Act, 1948*: This Act provides for fixing minimum rates of wages in certain employments. The object is to prevent exploitation of labour/workers and for that purpose it aims at fixation of minimum wages which the employer has to pay.
3. *The Payment of Bonus Act, 1965*: This Act is applicable to every factory and to any other establishment in which twenty or more persons are employed on any day during an accounting year. The Act is to provide for the payment of bonus to employees on the basis of profits and loss or on the basis of production or productivity. As per the Act, minimum amount of bonus is obligatory on the establishment even if it is incurring losses.
4. *The Equal Remuneration Act, 1976*: This Act provides for the payment of equal remuneration to men and women workers and

for the prevention of discrimination, on the ground of gender, against women in the matter of employment and other related aspects.

**COMPARISON OF EXISTING LAWS WITH THE CODE ON WAGES, 2019**

S. No.	Provision of the law	Existing Laws	The Code on Wages, 2019
1.	<b>Coverage and applicability</b>	<p><b>The Minimum Wages Act, 1948:</b> Minimum wages are fixed by the appropriate State Governments for scheduled employments with more than 1,000 employees in the State.</p> <p><b>The Payment of Wages Act, 1936:</b> Applies to employees whose wages do not exceed Rs.24,000 per month.</p> <p><b>The Payment of Bonus Act, 1965:</b> Applies to every establishment which has 20 or more employees, on any given day, in an accounting year, but is applicable only on those employees whose wages do not exceed Rs.21,000 per month.</p>	<p>Minimum wages will be paid to all employees.</p> <p>Provisions regarding payment of wages will apply to all employees in both organized as well as unorganized sectors, irrespective of any such wage limit.</p> <p>Payment of Bonus will apply to employees whose wages do not exceed a monthly amount notified by Central or State governments.</p>

S. No.	Provision of the law	Existing Laws	The Code on Wages, 2019
2.	<b>Revision of minimum wages</b>	<b>The Minimum Wages Act, 1948</b> : Minimum wages must be revised by the Central or State governments at least once in every five years.	Mandates that minimum wages be revised in five-year intervals.
3.	<b>National minimum wage/Floor wage</b>	No provision.	Central Government will fix national minimum wage /floor wage after taking into account minimum standard of living of workers. The State Government shall not fix minimum wage below the floor wage.
4.	<b>Overtime payment</b>	Different States have different provisions for overtime payment mostly provided in the Shops and Establishments Act of each respective State.	Overtime payment shall be at two times the normal wages/ ordinary wages.
5.	<b>Gender discrimination</b>	<b>The Equal Remuneration Act, 1976</b> : Prohibits gender discrimination in wage payment.  Prohibits gender discrimination in recruitment, transfers, and promotions.	Prohibits gender discrimination in wage payment.  Prohibits any form of gender discrimination in any of the ' <i>conditions of employment</i> '.



S. No.	Provision of the law	Existing Laws	The Code on Wages, 2019
6.	<b>Inspection</b>	<p>The Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976:</p> <p>Inspectors are appointed to carry out (i) surprise checks, and (ii) examine persons and require them to give information, among other powers.</p>	<p>The office of 'inspector' under the previous regime has been replaced with an 'Inspector-cum-Facilitator', who has additional duties of guiding and advising employers and employees on effective implementation of the Code. Employer can seek help of Inspector-cum-Facilitator to ensure compliance under the Code.</p>
7.	<b>Claims</b>	<p>Claims for wages and bonus can be filed within period varying from 6 months to 2 years.</p>	<p>The period of limitation for filing claims relating to wages and bonus has been enhanced to 3 years as against existing periods varying from 6 months to 2 years.</p>
8.	<b>Penalties</b>	<p><b>The Minimum Wages Act, 1948:</b> Offences include (i) paying employees less than minimum wages, and (ii) not providing for a day of rest in the week. Penalties include fines up to Rs.500 and imprisonment up to six months.</p>	<p>Employers who pay less than what is due under the Code shall be liable to pay a fine of up to Rs.50,000. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs.1 lakh or both.</p>

S. No.	Provision of the law	Existing Laws	The Code on Wages, 2019
		<p><b>The Payment of Wages Act, 1936:</b> Offences include (i) non-payment of wages at specified time period (ii) unauthorised deductions from wages. Penalties include fines up to Rs.7,500.</p> <p><b>The Payment of Bonus Act, 1965:</b> In case a person or company does not comply with the Act, they can be punished with imprisonment up to six months or fine up to Rs.1,000.</p> <p><b>The Equal Remuneration Act, 1976:</b> Offences include: (i) non-maintenance of documents in relation to employees, and (ii) discrimination against women in recruitment. Penalties include fines up to Rs.20,000 or imprisonment up to one year or both.</p>	<p>Employers who do not comply with any other provision of the Code or any rule made or order made or issued thereunder shall be liable to pay a fine of up to Rs.20,000. If an employer is guilty of the same offence again within five years, penalties include imprisonment up to one month or a fine of up to Rs.40,000 or both.</p>

## Coverage and applicability of the Code

The Code extends to the whole of India.

The Code universalizes right to minimum wages and timely payment of wages to all the employees regardless of wage ceiling, employment sector. At present, the provisions of the Payment of Wages Act, 1936 is applicable to workers and employees below a particular wage ceiling (earning up to Rs. 24,000 per month) and the Minimum Wages Act, 1948 extended only to certain type of employment included in the Schedule of the said Act.

The Code prohibits gender discrimination on wage and employment conditions related matters by same employer.

The Code does not have any specific section to explain the application of the Code. It applies to all establishments, employees, and employers unless exempted specifically in the provisions of the Code.

The Code extends:

1. To all establishments where any trade, industry or manufacturing process is carried on.
2. To all type of employees (irrespective of their wage limit), skilled, semi-skilled, unskilled, supervisory, managerial across all sectors.
3. To all type of employers who engage employees for their trade, industry or manufacturing activities.

## Coverage of the Code

S. No.	Chapter	Coverage
1	Chapter I	Preliminary
2	Chapter II	Minimum Wages
3	Chapter III	Payment of Wages
4	Chapter IV	Payment of Bonus
5	Chapter V	Advisory Board
6	Chapter VI	Payment of Dues, Claims and Audit
7	Chapter VII	Inspector-cum-Facilitator
8	Chapter VIII	Offences and Penalties
9	Chapter IX	Miscellaneous

## KEY DEFINITIONS

**Employee (Section 2k):** Employee definition includes all employees engaged on wages to do skilled, semi-skilled, unskilled, operational or manual work including managers, supervisors and administrative staff. The term includes a person declared to be an employee by the appropriate government. However, it does not include apprentice engaged under the Apprentices Act, 1961 and members of the Armed Forces of the Union.

**Worker (Section 2z):** Worker definition includes any person employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward.

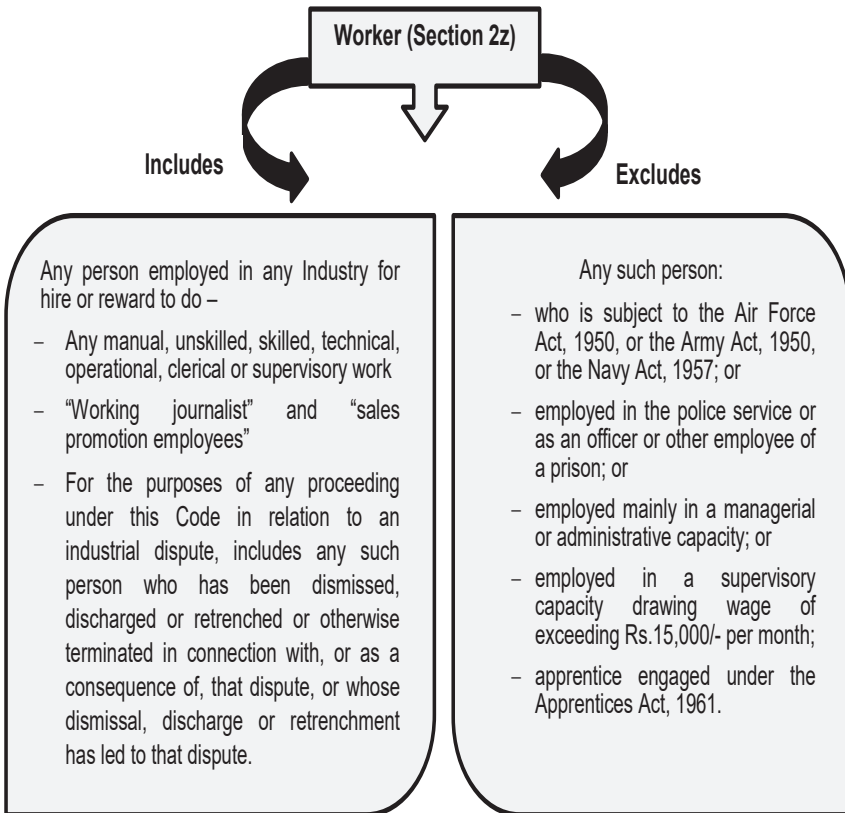
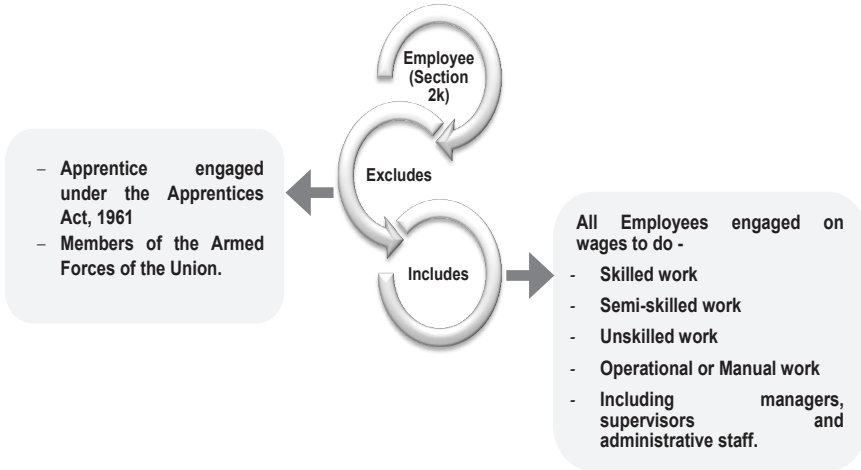
It also includes 'working journalist' and 'sales promotion employees' and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

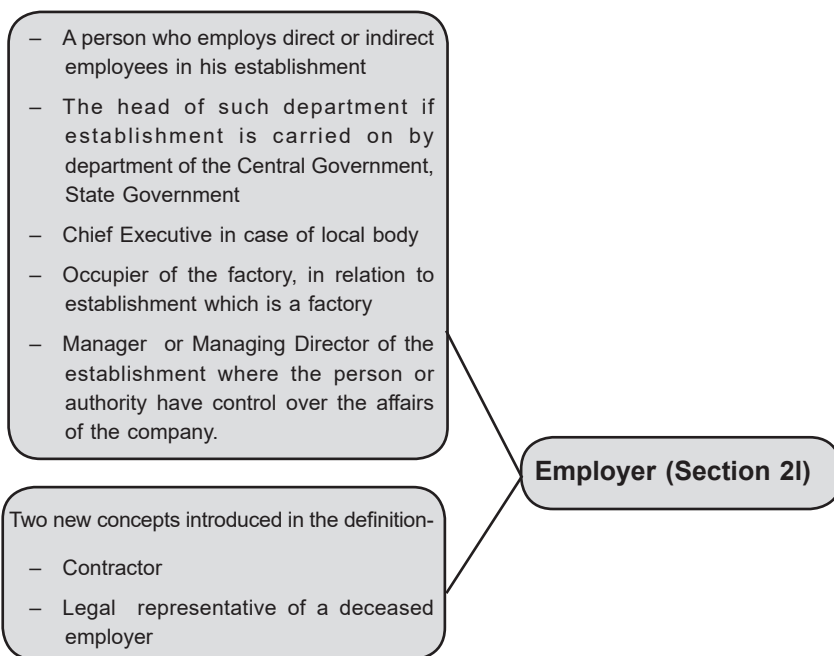
It does not include any such person:

- a. who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- b. who is employed in the police service or as an officer or other employee of a prison; or
- c. who is employed mainly in a managerial or administrative capacity; or
- d. who is employed in a supervisory capacity drawing wage of exceeding Rs.15,000 per month or an amount as may be notified by the Central Government from time to time; or
- e. who is apprentice engaged under the Apprentices Act, 1961.

**Note:** There is a distinction made between 'employee' and 'worker'. The employee definition includes all employees including managers, supervisors and administrative staff whereas the worker definition does not include administrative and managerial staff. The supervisors are also excluded from the definition of the worker if their monthly wage is more than Rs.15,000 or the sum notified by the Central Government.

The term ‘worker’ excludes managerial and supervisory employees and includes sales promotion employees and working journalists.





**Employer (Section 2I):** Employer means a person who employs direct or indirect employees (through contractor) in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director;
- (iii) Contractor; and
- (iv) legal representative of a deceased employer;

**Note:** There are two new concepts introduced in the definition of employer

one is 'contractor' as an employer and the 'legal representative of a deceased employer' will be treated as an employer. As per this new definition the 'Contractor' is equally given importance as an employer, and would also be held accountable as an 'employer; in respect of employees provided by it to the principal employer. Contractor shall issue standard employment letter to his employees and pay social security benefits to his employees. Further, legal representative of a deceased employer are also responsible for payment of dues like minimum wages and bonus to the employees.

**Establishment (Section 2m):** Means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;

**Note:** This definition of establishment is broad enough to cover most establishments. Therefore, any person employed in such 'establishment' and falling within the definition of 'employee' will be governed by the applicable provisions of the Code. Presently, there is no blanket exemption given to any specific establishment from the applicability of the Code. However, the Code exempts certain establishments from the applicability of the specific provisions thereunder, for example, establishments in public sector, Universities, Non-profit institutions, etc. are exempt from the Chapter on payment of bonus under the Code.

**Inspector-cum-Facilitator (Section 2r):** Means a person appointed by the appropriate Government under sub-section (1) of section 51.

**Note:** His role includes to advise employer and workers relating to compliance with the provisions of this Code and to inspect the establishments as assigned to him by the appropriate Government. The Code intends to combine the roles of facilitation and inspection rather than only inspection. The appropriate Government may confer jurisdiction of a randomized selection of inspection for the purpose of this Code to the Inspector-cum-Facilitator. Inspection will be web-based which will have a facility for electronic summoning of information to help compliance.

**Contractor (Section 2f)** in relation to an establishment, means a person, who—

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

**Note:** The contractor is equally given importance as an employer. The

contractor will also be liable for the implementation of the Code. The Employer definition includes ‘Contractor’ as an employer.

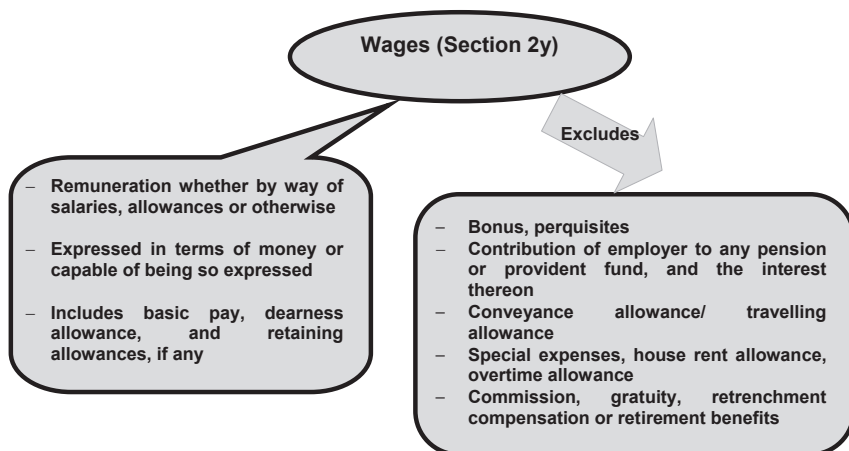
**Contract Labour (Section 2g)** means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker.

It does not include a worker (other than part-time employee) who –

- (i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and
- (ii) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;

**Note:** As per this new definition, contract labour mentioned in (i) and (ii) cannot claim permanency with Principle employer. Further, the ‘employee’ definition does not make any difference between regular and contract employees.

**Same work or work of a similar nature (Section 2v)** means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;



**Wages (Section 2y)** means all remuneration whether by way of salaries,



allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

- (i) basic pay;
- (ii) dearness allowance; and
- (iii) retaining allowance, if any,

but does not include—

- a. any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- b. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- c. any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- d. any conveyance allowance or the value of any travelling concession;
- e. any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- f. house rent allowance;
- g. remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- h. any overtime allowance;
- i. any commission payable to the employee;
- j. any gratuity payable on the termination of employment;
- k. any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

**Explanation**– Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent of the total wages payable to him, shall be deemed to form part of the wages of such employee;

The Code proposes a common definition of the term ‘wages’ as opposed to the separate definitions of ‘wages’ provided under each of the Payment of Wages Act, 1936, the Minimum Wages Act, 1948 and the Payment of Bonus Act, 1965. This will enable employers to take a consistent and uniform approach and avoid multiple interpretations.

The Code introduces a special methodology for computation of ‘wages’ and in certain circumstances, various components of wages that are ordinarily understood to be excluded from the definition of ‘wages’ will be considered as forming part thereof.

For instance, components like employer’s contribution towards pension or provident fund, house rent allowance, overtime allowance, conveyance allowance, commission payable to employee etc. are not conventionally considered as ‘wages’. However, the Code provides that in the event payments made to employees under these identified components exceed 50% of all remuneration payable as ‘wages’ under the Code, such excess amount shall be deemed as remuneration and will be considered as ‘wages’.

This is a unique provision and is seemingly aimed at compensation structures where wages are less than 50% of the total remuneration of the employee. This provision could result in situations where the ‘wage’ of an employee has to be recalculated. E.g. if the aggregate of commission / sales incentive, house rent allowance and overtime exceeds 50% of the monthly salary for that particular month, there could be a possibility of re-computation of ‘wages’.

In these situations where the 'wage' could fluctuate, computation of bonus under the Code or payment of 'wages' for overtime work, would also fluctuate and get impacted.

**Example** – Salary payable per month to Mr. A is as under:

S. No.	Particulars	Amount (in Rupees)
1.	Basic	10,000
2.	Dearness Allowance	5,000
3.	Bonus	1,000
4.	Employers' contribution to PF	1,800
5.	Conveyance Allowance	6,500
6.	House Rent Allowance (HRA)	4,500
7.	Overtime Allowance	5,000
	<b>Total</b>	<b>33,800</b>

- Total Remuneration to Mr. A – Rs.33,800
- 50 % of total remuneration – Rs.16,900
- Excluded portion of remuneration (from the definition of wages) exceeds 50% of total remuneration: Rs.18,800
- Rs.1900 will be added back to wages. [Rs.18,800 – Rs.16,900]

Due to this revised definition of wages:

- Minimum wage would increase (earlier it was only basic plus DA, now it includes other allowances as well).
- Employer may have to pay leave encashment, bonus, and gratuity at a higher rate and thus burden on employer will increase.
- It is anticipated that the said move from 'basic wages' to 'wages' will substantially reduce disputes owing to the interpretation of the 'any other allowance' under the present regime.

# PROHIBITION OF DISCRIMINATION ON THE GROUND OF GENDER

The concept of gender equality is embedded in our Constitution. The Constitution not only states all persons to be treated equally before the law but also mandates that no citizen shall be discriminated on the grounds only of religion, caste, gender etc.

The Equal Remuneration Act, 1976 prohibits employers from discriminating in wage payments as well as recruitment of workers on the basis of gender. The Code subsumes the Equal Remuneration Act, 1976, and contains specific provisions which prohibit gender discrimination in matters related to wages.

While the Equal Remuneration Act, 1976 was containing protective provisions in favor of women, the Code has taken a gender-neutral approach by prohibiting discrimination on the ground of gender in matters relating to wages.

Section 3 and 4 of the Code deals with the prohibition of discrimination on the ground of gender.

## **Prohibition of Discrimination on Ground of Gender (Section 3)**

There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee

No employer shall in order to pay equal remuneration:

- (i) reduce the rate of wages of any employee; and
- (ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Equal remuneration under the Code prescribe that no discrimination is permitted on the basis of the gender of said employees. This is slightly

wider than the earlier provision under the Equal remuneration Act, 1976 which specified no discrimination on the basis of ‘Men’ and ‘Women’.

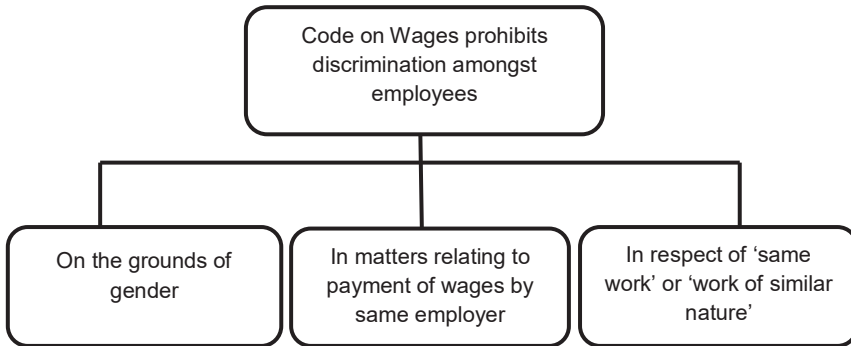
Further, it is relevant to note that under the Equal Remuneration Act, 1976 the definition of remuneration was as under:

‘Remuneration’ means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

However, as per the Code, the components that will constitute wages for the purpose of payment of equal remuneration irrespective of gender, is quite exhaustive and hence there will be less disputes related to the concept of wage.

**Decision as to disputes with regard to same or similar nature of work (Section 4)**

Where there is any dispute as to whether a work is of same or similar nature, the dispute shall be decided by such authority as may be notified by the appropriate Government.



*Prohibition of Gender Discrimination*

**HIGHLIGHTS**

- The definition of ‘Employee’ has been amended to include all category of employees including Managers, Supervisors, Administrative, Operational persons.
- The uniform definition of ‘wages’ has been prescribed.
- No discrimination among employees on the ground of gender in the matter of wages for similar work or work of similar nature.

# MINIMUM WAGES

## Payment of Minimum Wages

The Minimum Wages Act, 1948 lists the employments where employers are required to pay minimum wages to workers. The Act applies to the organised sector as well as certain workers in the unorganised sector such as agricultural workers. The Center and States may add more employments to this list and mandate that minimum wages be paid for those jobs as well. At present, there are more than 1700 employments notified by the Central and State governments.

As per the Report of the National Commission on Labour, Ministry of Labour and Employment, the unorganised sector comprises 92% of the total workforce in the country. A large proportion of these workers are currently not covered by the Minimum Wages Act, 1948.

The Code proposes to do away with the concept of bringing specific jobs under the Act, and mandates that minimum wages be paid for all types of employment – irrespective of whether they are in the organised or the unorganised sector. The Code links minimum wage across the country to the skills of the employee and the place of employment.

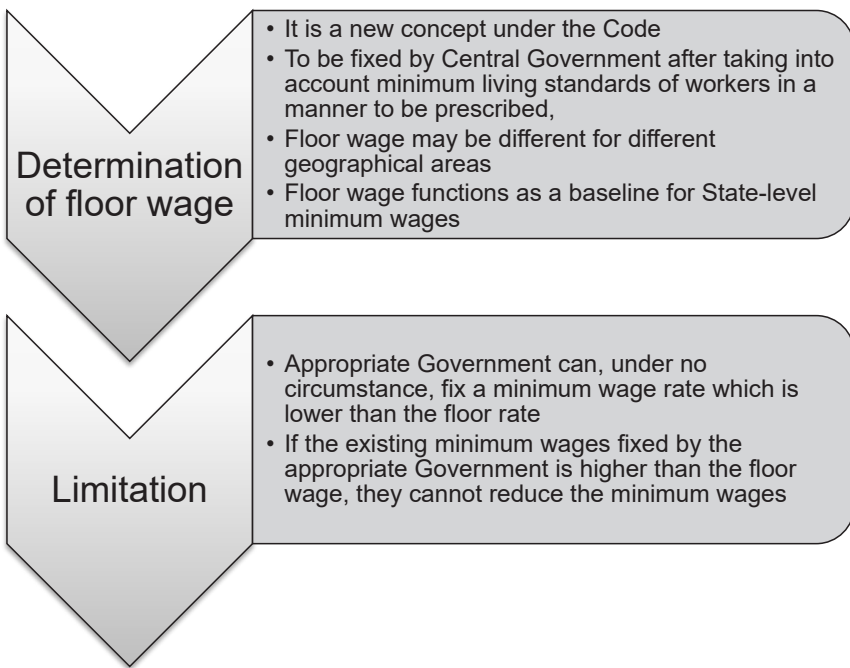
Under the Code, the minimum wage has been universalised for all employees and consequently those who were earlier out of the ambit of minimum wages will be covered under the protection of minimum wages as granted under the Code.

The procedure for determination of minimum wages by the appropriate Government is in line with the provisions of the Minimum Wages Act, 1948.

However, the Code introduces the concept of **Floor Wage**, which is to be determined by the Central Government after taking into account the minimum living standards of workers in a manner to be prescribed, which may be different for different geographical areas. The appropriate Government can, under no circumstance, fix a minimum wage rate which is lower than the floor rate determined by the Central Government.

However, if the existing minimum wages fixed by the appropriate Government is higher than the floor wage, they cannot reduce the minimum wages. Further, the Code prescribes that the minimum rate of wages is to be reviewed and revised by the appropriate Government in intervals not exceeding five years.

Payment of minimum wages is basis of the Code on Wages, 2019. No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.



*Floor Wage*

Section 5 to 14 of the Code deals with provisions related to Minimum Wages.

**Payment of minimum rate of wages (Section 5)**

The Code envisages that no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

### **Fixation of Minimum Wages (Section 6)**

The appropriate Government shall fix a minimum rate of wages – (a) for time work; or (b) for piece work.

Where the employees are employed on piece work basis, the appropriate Government, shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.

In case of time work the rates may be fixed in accordance with the any one or more of the following wage period:

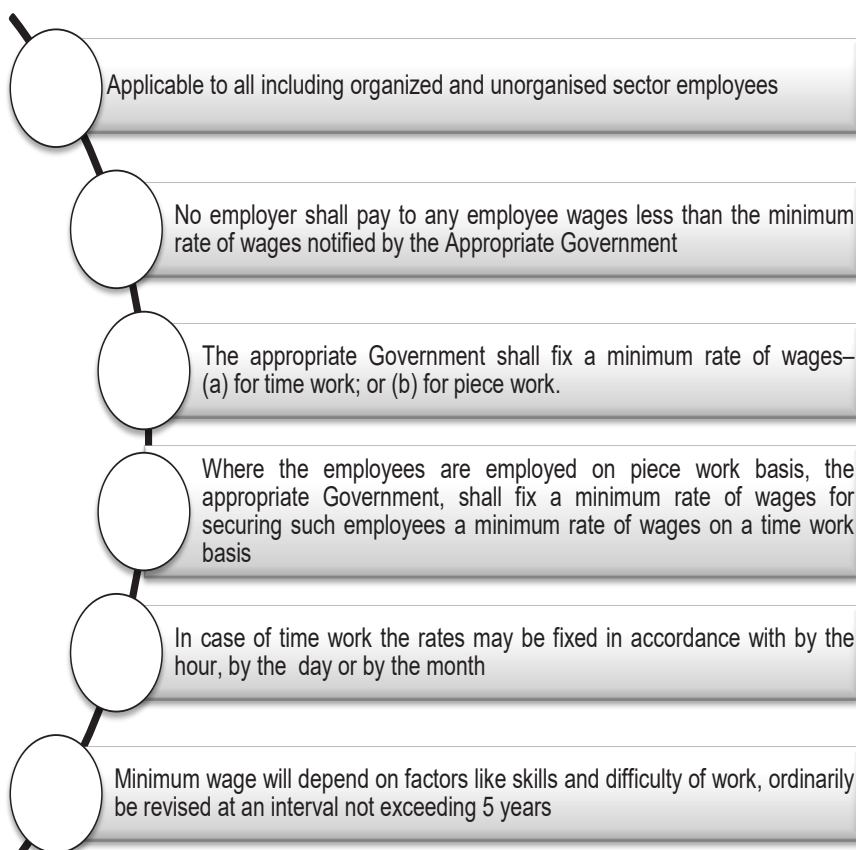
- By the hour, or
- By the day, or
- By the month

For the purpose of fixation of minimum rate of wages under this section, the appropriate Government –

- (a) shall primarily take into account the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and
- (b) may, in addition to such minimum rate of wages for certain category of workers, take into account their arduousness of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and
- (c) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.

The minimum wages will vary from place to place depending upon skill required, arduousness of the work assigned and the geographical location.





### *Provisions of Minimum Wages*

#### **Components of Minimum Wages (Section 7)**

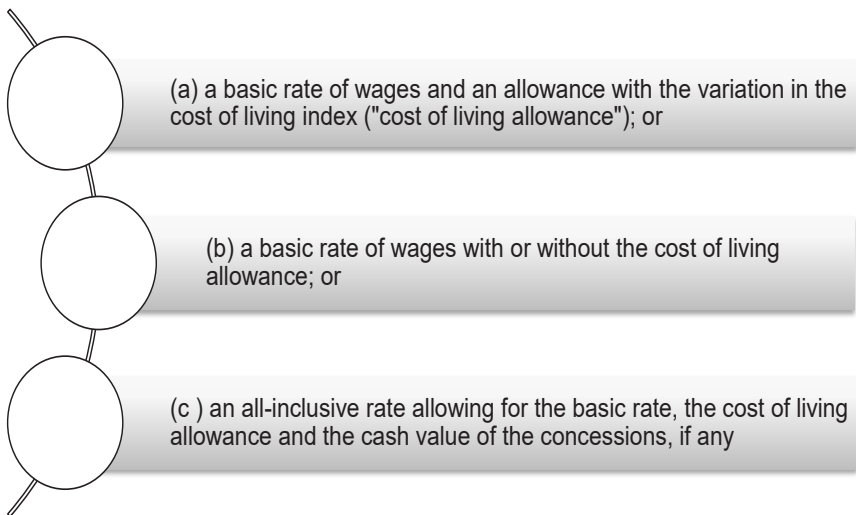
Any minimum rate of wages fixed or revised by the appropriate Government may consist of–

- (a) a basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as ‘cost of living allowance’);  
or
- (b) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

- (c) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

Endeavour shall be made so that the cost of living allowance and the cash value of the concession in respect of essential commodities at concession rate shall be computed once before 1<sup>st</sup> April and 1<sup>st</sup> October every year to revise the dearness allowance payable to the employees on the minimum wages. Under the Minimum Wages Act, 1948 the dearness allowance is declared on 1<sup>st</sup> January and 1<sup>st</sup> July of every year.



### *Components of Minimum Wages*

### **Procedure for fixing and revising minimum wages (Section 8)**

The code has prescribed two methods for fixing or revising minimum wages:

1. Committee Method
2. Notification Method

**Committee Method:** The appropriate Government may appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision of minimum wages.

These committees shall comprise of:

1. Representatives of Employer.
2. Representatives of Employee which shall be equal in number of the members as of employer.
3. Independent persons, not exceeding 1/3<sup>rd</sup> of the total members of the Committee.

After considering the recommendation of the committee, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

**Notification Method:** In this method, appropriate Government shall publish its proposal for the information of the persons likely to be affected. The proposal shall have a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

After considering, all representations received by it before the date specified in the notification, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

Provided that where the appropriate Government proposes to revise the minimum rates of wages as per notification method, it shall also consult concerned Advisory Board constituted under section 42 of the Code.

### **Timeline for review or revision in minimum wages**

The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

<p>Committee Method</p>	<ul style="list-style-type: none"> <li>• Government appoint Committees to hold enquires</li> <li>• Recommend in respect of such fixation or revision of minimum wages</li> </ul>
<p>Notification Method</p>	<ul style="list-style-type: none"> <li>• Government shall publish its proposal for the information of the persons likely to be affected</li> <li>• The proposal shall have a date not less than two months from the date of the notification on which the proposals shall be taken into consideration</li> </ul>
<p>Government Approval</p>	<ul style="list-style-type: none"> <li>• After considering, the appropriate government shall by notification fix, or as the case may be, revise the minimum rates of wages; and</li> <li>• Unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue</li> </ul>

*Procedure for fixing and revising minimum wage*

**Power of Central Government to fix floor wage (Section 9)**

One standout reform relating to introducing the concept of a ‘floor wage’, notified by the Central Government, varying across geographical areas. This floor wage functions as a baseline for State-level minimum wages. The Code provides for review/revision of minimum wages at intervals not exceeding five years.

The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed.

Provided that different floor wage may be fixed for different geographical areas.

The minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage.

However, if the minimum rates of wages fixed by the appropriate Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

The Central Government may, before fixing the floor wage obtain the advice of the Central Advisory Board constituted under sub-section (1)

of section 42 and consult State Governments in such manner as may be prescribed.

### **Wages of an employee who works for less than normal working day (Section 10)**

If an employee whose minimum rate of wages has been fixed under this Code by the day, works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day (normally 9 hours per day), he shall, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day.

Provided that he shall not be entitled to receive wages for a full normal working day,—

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and
- (ii) in such other cases and circumstances, as may be prescribed.

### **Wages for two or more classes of work (Section 11)**

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

### **Minimum time rate wages for piece work (Section 12)**

Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

### **Fixing hours of work for normal working day (Section 13)**

Where the minimum rates of wages have been fixed under this Code, the appropriate Government may —

- (a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals

- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; [in many establishment 'Sunday' is day of rest, but employer may fix any other rest day for any employee or class of employee]
- (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

The aforesaid provisions shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:—

- (a) employees engaged in any emergency which could not have been foreseen or prevented;
- (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) employees whose employment is essentially intermittent; [employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention]
- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

### **Wages for overtime work (Section 14)**

Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

### **HIGHLIGHTS**

- Applicable to all including organized and unorganised sector employees.
- No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government. The minimum rate of wages on time work basis may be fixed on hourly, daily or monthly basis.
- The Central Government will fix 'floor wages' for different geographical area considering the minimum living standards of a worker. Minimum wage rates fixed by the Central/State Government shall not be less than the floor wage and if the existing minimum wage rates fixed by the Central/State Government are more than the floor wage, they cannot reduce such minimum wage rates.
- For fixing the floor wage, the Central Government may obtain the advice of the Central Advisory Board and consult with the State Government.
- The minimum wages will be revised and reviewed by the Central / State Government considering factors like skills and difficulty of work, ordinarily at an interval not exceeding 5 years.

# PAYMENT OF WAGES

Previously, the Payment of Wages Act, 1936 read with Notification No. S.O. 2806 (E) dated August 29, 2017 issued by the Ministry of Labour and Employment, was applicable only to employees drawing wages below Rs.24,000 per month. However, the Code makes no mention of any such threshold and the payment of wages provisions in the Code are applicable to all employees across the board.

Accordingly, the Code has raised the responsibility of an employer to ensure proper wage structuring and timely payment of such wages to all its employees.

Settlement period for monthly wages has been specified as on the 7th day of the succeeding month, as against 10th day of the succeeding month. Where the employees are employed in the establishment through Contractor, then the Company/Firm shall pay to the Contractor before the date of payment of wages (before 7<sup>th</sup> day) so that the payment of wages to the employees of contractor shall be made positively as per section 17.

In case the employee is removed, dismissed, retrenched, resigns or becomes unemployed due to closure of an establishment, the wages are required to be paid within two working days. The Payment of Wages Act, 1936 did not provide for any specific timelines for resignation cases.

Section 15 to 25 of the Code deals with the provisions for Payment of Wages.

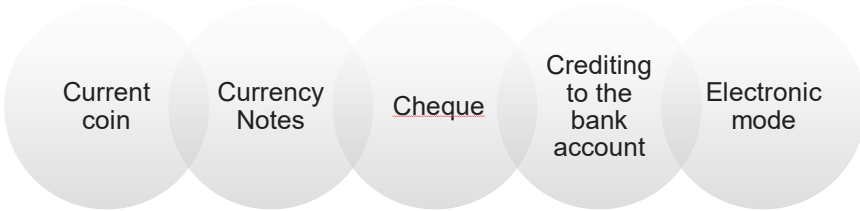
## **Mode of payment of Wages (Section 15)**

Wages shall be paid in (i) current coin, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account of the employee, or (v) through electronic mode.

The appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person



employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

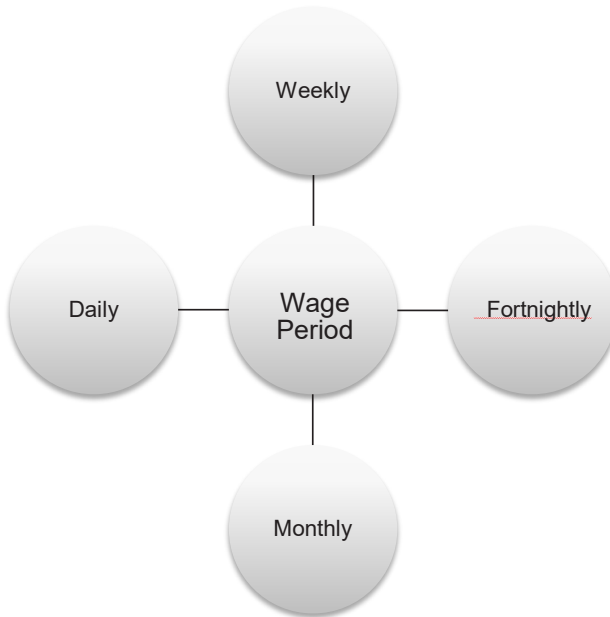


*Mode of payment of Wages*

**Fixation of wage period (Section 16)**

The wage period shall be fixed by the employer as either: (i) daily, or (ii) weekly, or (iii) fortnightly, or (iv) monthly.

No wage period in respect of any employee shall be more than a month.



*Fixation of wage period*

**Time limit for payment of wages (Section 17)**

S. No.	Wage period	Payment timelines
1	Daily basis	At the end of the shift
2	Weekly basis	On the last working day of the week that is to say before the weekly holiday.
3	Fortnightly basis	Before the end of the second day after the end of fortnight
4	Monthly basis	Before the expiry of the seventh day of the succeeding month

Where an employee has been –

- (i) removed or dismissed from service; or
- (ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

This would imply that employers would have to expedite the process of Full and Final settlements of their existing employees. Presently, the employers ordinarily pays separation dues within 30 days to 45 days from resignation/separation of the employee as per their internal HR policies. The earlier Act did not provide for any specific timelines for resignation cases.

The appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

Time limit shall not affect any time limit for payment of wages provided in any other law for the time being in force.

**Deductions which may be made from wages (Section 18)**

Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code. Any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages.

Further, any loss of wages to an employee, for a good and sufficient cause, resulting from—

- (i) the withholding of increment or promotion, including the stoppage of an increment; or
- (ii) the reduction to a lower post or time-scale; or
- (iii) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

List of authorized deductions from wages of an employee is as under:

S. No.	Particulars of deductions
1.	Fines imposed on him
2.	Deductions for his absence from duty
3.	Deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
4.	Deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;

S. No.	Particulars of deductions
5.	Deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services;
6.	Deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payment of wages;
7.	Deductions for recovery of loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
8.	Deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof
9.	Deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
10.	Deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name
11.	Deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose
12.	Deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;
13.	Deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes

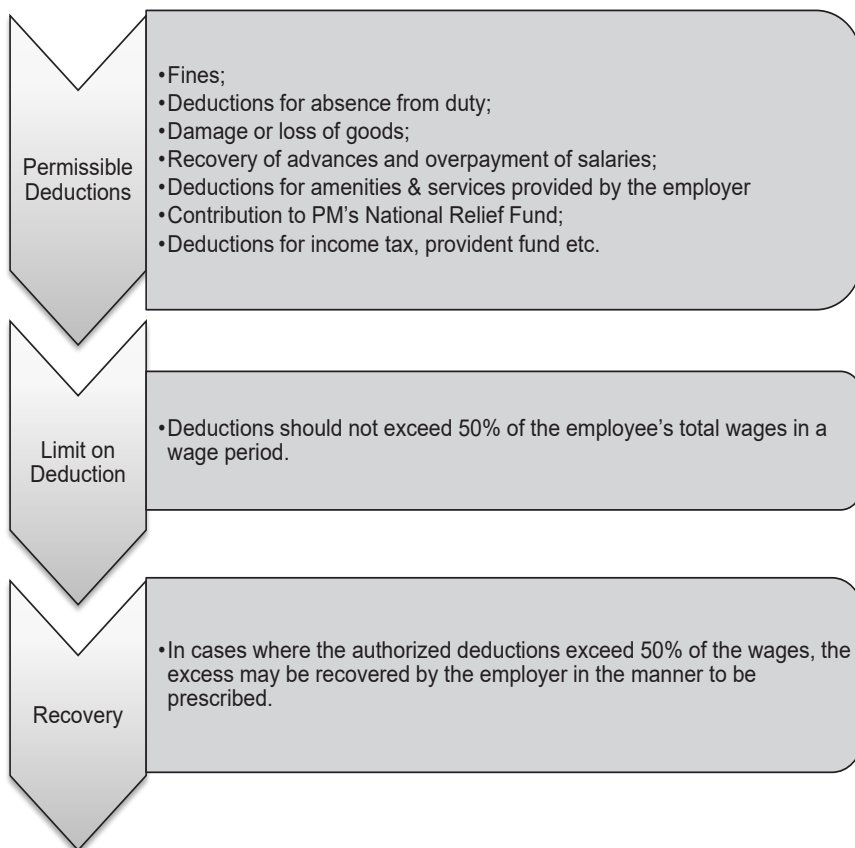
S. No.	Particulars of deductions
14.	Deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and crantage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise
15.	Deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default
16.	Deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify

Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions as mentioned in the above table in any wage period from the wages of an employee shall not exceed fifty per cent of such wages.

Where the total deductions exceed fifty per cent of the wages, the excess may be recovered in such manner, as may be prescribed.

Where any deduction is made by the employer from the wages of an employee but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

In short, the Code also permits deduction of employees' wages on certain grounds including fines, absence from duty etc. provided the total deductions authorised cannot exceed 50 percent of the employees' wages.



*Deduction permissible from Wages*

**Fines (Section 19)**

Section 19 deals with the provisions relating to fines.

1. No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice.
2. A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on. Such notice shall be displayed at the conspicuous place in the premises of the work place in which the employment is carried on, so that every concerned employee would be able easily to read the contents of the notice and a copy

of the notice shall be sent to the Inspector-cum-Facilitator having jurisdiction.

3. No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
4. The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employee who is under the age of fifteen years.
6. No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
8. All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

### **Deductions for absence from duty (Section 20)**

Section 20 deals with the provisions for deductions for absence from duty.

1. Deductions may be made only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.
2. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work:

Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

*Explanation:* An employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

### **Deductions for damage or loss (Section 21)**

Section 21 deals with the provisions for deductions for damage or loss.

1. A deduction for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.
2. A deduction shall not be made until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.
3. All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

### **Deductions for services rendered (Section 22)**

Section 22 deals with deductions for services rendered.

A deduction shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

### **Deductions for recovery of advances (Section 23)**

Section 23 deals with the deductions for recovery of advances.

Deductions for recovery of advances given to an employee shall be subject to the following conditions, namely:—



- (a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling expenses;
- (b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;
- (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

### **Deductions for recovery of loans (Section 24)**

Section 24 deals with the provisions for recovery of loans.

Deductions for recovery of loans granted to an employee, regulating the extent to which such loans may be granted and the rate of interest payable thereon, shall be such as may be prescribed.

### **Chapter not to apply to Government establishments (Section 25)**

Section 25 deals with the provisions applicable to Government establishments.

The provisions of this Chapter shall not apply to the Government establishments unless the appropriate Government, by notification, applies such provisions to the Government establishments specified in the said notification.

#### **HIGHLIGHTS**

- Applicable to all class of establishments and employees (defined establishments and ceiling of earning of Rs.24,000 under the Payment of Wages Act, 1936 is done away with).
- In case of removal, dismissal, retrenchment and resignation of an employee, the wages has to be paid within two working days.
- Settlement period for monthly wages has been specified as on the 7th day of the succeeding month, as against 10th day of the succeeding month.
- Wages to be deposited in the bank account of employees, electronically or by cheque. Wages can be paid in cash, only up to an amount notified by the Central Government.

## PAYMENT OF BONUS

The Payment of Bonus Act, 1965 was applicable only to employees earning less than Rs.21,000 per month. The Code stipulates that employees earning below the salary threshold to be notified by the State government, will be eligible for payment of bonus.

Similar to the provisions of the Payment of Bonus Act, 1965, the chapter relating to bonus payments under the Code shall apply to only those establishments employing at least 20 employees on any day in that accounting year.

All employees whose wages do not exceed a specific monthly amount (to be notified by the Central or State government) will be entitled to an annual bonus. Bonus is payable on higher of minimum wage or the wage ceiling fixed by the appropriate government for payment of bonus.

While the threshold to determine the payment of bonus to employees is required to be notified by the appropriate government, it is to be noted that the provisions relating to the computation of bonus are consistent with the terms of the Payment of Bonus Act, 1965.

Section 26 to 41 deals with the provisions relating to payment of bonus.

### **Eligibility for bonus, etc. (Section 26)**

Every employee drawing wages not exceeding such amount per mensem, as determined by notification, by the appropriate Government is entitled to annual minimum bonus. Further, employee has to put at least thirty days work in an accounting year to become eligible for bonus.

### **Rates of bonus**

An annual minimum bonus calculated at the rate of 8.33% of the wages earned by the employee or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus during the previous accounting year.

Where in respect of any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer

shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent of such wages.

For the purpose of calculation of the bonus where the wages of the employee exceeds such amount per month, as determined by notification by the appropriate Government, the bonus payable to such employee shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.

### **Set-on and set-off**

In computing the allocable surplus, the amount set on or the amount set-off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

### **Production or Productivity bonus**

Any demand for bonus in excess of the bonus, either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus shall not exceed twenty per cent of the wages earned by the employee in the accounting year.

### **Cooling off period for payment of bonus**

In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36 related to set on and set off.

For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:—

- (i) for the sixth accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
- (ii) for the seventh accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

*Explanation 1:* An employer shall not be deemed to have derived profit in any accounting year, unless—

- (a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and
- (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

*Explanation 2:* Sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

The provisions relating to set on and set off shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

### **Proportionate reduction in bonus in certain cases (Section 27)**

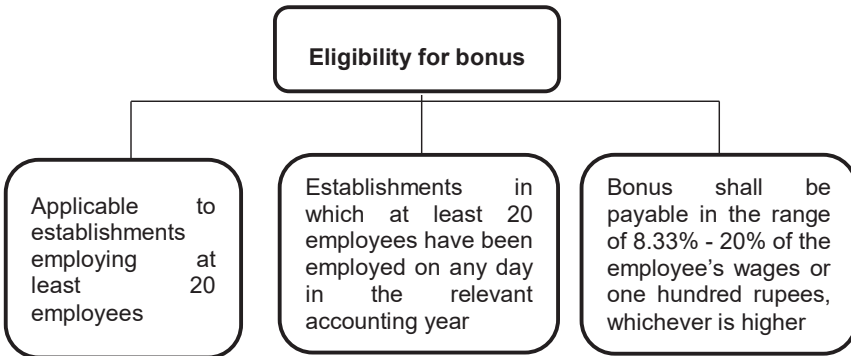
Where an employee has not worked for all the working days in an accounting year, the minimum bonus, if such bonus is higher than 8.33%

of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

**Computation of number of working days (Section 28)**

While calculating proportionate bonus, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,—

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wages;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wages, during the accounting year.



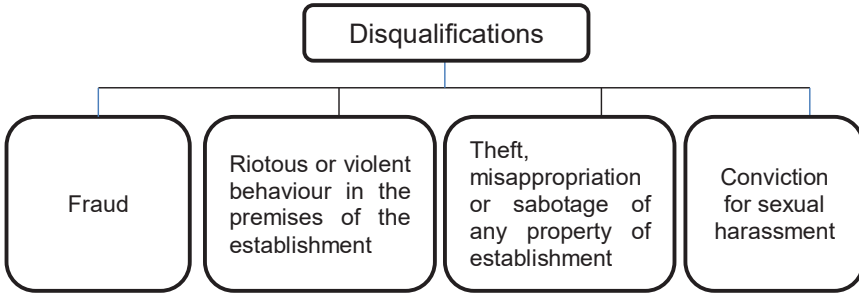
*Eligibility for Bonus*

**Disqualification for bonus (Section 29)**

An employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for-

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or

- (c) theft, misappropriation or sabotage of any property of the establishment; or
- (d) conviction for sexual harassment. (This was not provided in the earlier Act.)



*Disqualifications for Bonus*

**Establishments to include departments, undertakings and branches (Section 30)**

Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code.

Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

**Payment of bonus out of allocable surplus (Section 31)**

1. The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% in case of a banking company and 67% in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.

2. Audited accounts of companies shall not normally be questioned.
3. Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

### **Computation of gross profits (Section 32)**

The gross profits derived by an employer from an establishment in respect of the accounting year shall,

- (a) in the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;
- (b) in any other case, be calculated in the manner as may be prescribed by the Central Government.

### **Computation of available surplus (Section 33)**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34.

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and
- (b) an amount equal to the difference between—
  - (i) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
  - (ii) the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after

deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

### **Sums deductible from gross profits (Section 34)**

The following sums shall be deducted from the gross profits as prior charges, namely:—

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, 1961 or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;
- (b) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (c) such further sums in respect of the employer as may be prescribed by the Central Government.

### **Calculation of direct tax payable by employer (Section 35)**

For the purposes of this Code, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

- (a) in calculating such tax no account shall be taken of (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes; (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act, 1961;
- (b) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, 1961, then, with respect to the income so exempted, such



institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

- (c) where the employer is an individual or a Hindu Undivided Family, the tax payable by such employer under the Income-tax Act, 1961 shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
- (e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

### **Set on and set off of allocable surplus (Section 36)**

1. Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.
2. Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount carried forward and set on which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward

for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in such manner as may be prescribed by the Central Government.

3. The principle of set on and set off as may be provided in rules by the Central Government under this Code shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Code.
4. Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

**Adjustment of customary or interim bonus against bonus payable under this Code (Section 37)**

Where in any accounting year,—

- (a) an employer has paid any puja bonus or other customary bonus to employee; or
- (b) an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

**Deduction of certain amounts from bonus payable (Section 38)**

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**Time limit for payment of bonus (Section 39)**

1. All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of eight months from the close of the accounting year.

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

2. Where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

Provided that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

**Application of this Chapter to establishments in public sector in certain cases (Section 40)**

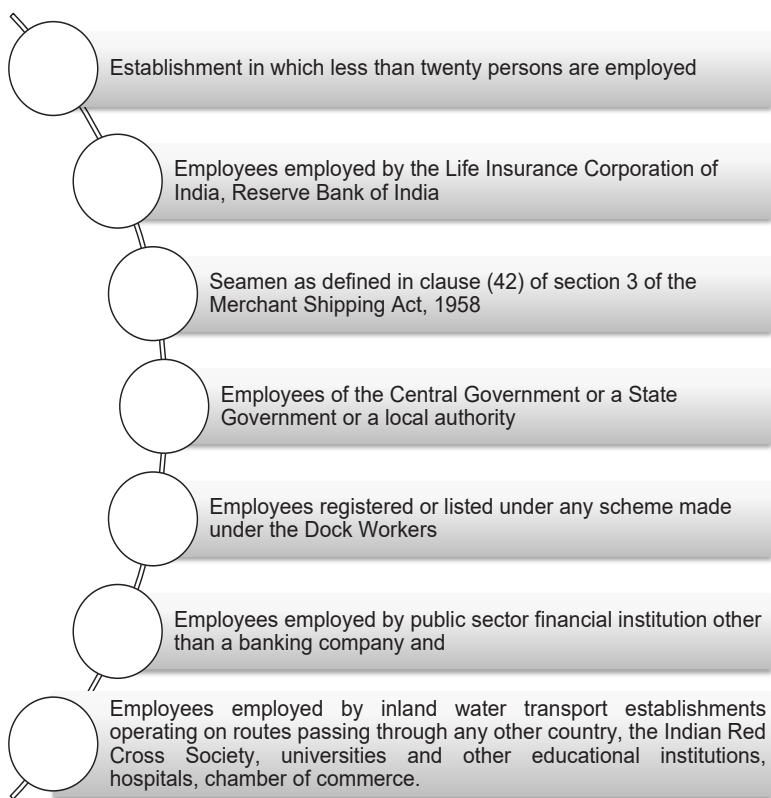
1. If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.
2. Save as otherwise provided in sub-section (1) of Section 40, nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

### **Non-applicability of bonus provisions (Section 41)**

The provisions of bonus payment shall not apply to establishment in which less than twenty persons are employed.

Further the bonus provisions are not applicable to:

- (a) employees employed by the Life Insurance Corporation of India;
- (b) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;
- (c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;
- (d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
- (e) employees employed by (i) the Indian Red Cross Society or any other institution of a like nature including its branches; (ii) universities and other educational institutions; (iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;
- (f) employees employed by the Reserve Bank of India;
- (g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- (h) employees employed by inland water transport establishments operating on routes passing through any other country; and
- (i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.



*Non-applicability of bonus provisions*

**HIGHLIGHTS**

- Applicable on establishments employing 20 or more persons.
- Bonus will be paid to every employee earning wages below the amount notified by the appropriate Government.
- All amounts payable to an employee by way of bonus will be credited in the bank account of the employee within 8 months from the close of the accounting year.
- The period of 8 months can be extended to two years by the appropriate government on application of the employer with sufficient reason.
- The employee will be disqualified from receiving bonus, if he is dismissed from service on conviction for sexual harassment.

# CENTRAL ADVISORY BOARD AND STATE ADVISORY BOARDS

Section 42 of the Code deals with provisions relating to functions of Central and State Advisory Board.

## **Central Advisory Board**

The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government consisting of (a) representing employers; (b) representing employees which shall be equal in number of the members specified in clause (a); (c) independent persons, not exceeding one-third of the total members of the Board; and (d) five representatives of such State Governments as may be nominated by the Central Government.

One-third of the members shall be women and a member specified in clause (c) above shall be appointed by the Central Government as the Chairperson of the Board.

The Central Advisory Board shall advise the Central Government on reference of issues relating to –

- (a) fixation or revision of minimum wages and other connected matters;
- (b) providing increasing employment opportunities for women;
- (c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and
- (d) any other matter relating to this Code,

and on such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

## **State Advisory Board**

Every State Government shall constitute a State Advisory Board for advising the State Government -

- (a) in fixation or revision of minimum wages and other connected matters;
- (b) for the purpose of providing increasing employment opportunities for women;
- (c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and
- (d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

The State Advisory Board may constitute one or more committees or sub-committees to look into issues like fixation or revision of minimum wages and increasing employment opportunities for women, etc.

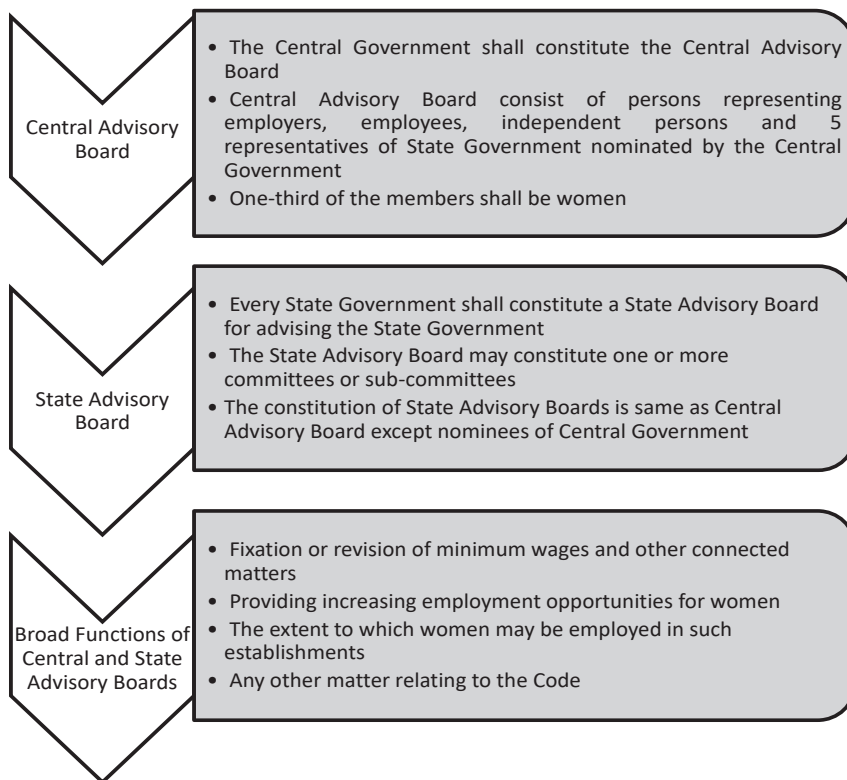
The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons –

- (a) representing employers;
- (b) representing employees which shall be equal in number of the members specified in clause (a); and
- (c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.

One-third of the members shall be women and one among the members specified in clause (c) above shall be–

- (a) appointed by the State Government as the Chairperson of the Board;
- (b) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.

While discharging duties, the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.



*Central Advisory Board and State Advisory Boards*

**HIGHLIGHTS**

- The Central Government will constitute the Central Advisory Board consisting of persons representing employers, employees, independent persons and 5 representatives of State Government, and one-third of the members will be women.
- Similarly, every State Government will constitute a State Advisory Board.
- The Central Advisory Board will advise the Central Government on:
  - (i) fixation or revision of minimum wages and other connected matters;
  - (ii) providing increasing employment opportunities for women;
  - (iii) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and
  - (iv) any other matter relating to this Code



# PAYMENT OF DUES, CLAIMS AND AUDIT

Section 43 to 50 of the Code deals with the provisions for payment of dues, claims and audit.

## **Responsibility for payment of various dues (Section 43)**

Every employer shall pay all amounts (like unpaid salary, leave encashment, bonus etc.) required to be paid under this Code to every employee employed by him.

Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm/ partnership firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

## **Payment of various undisbursed dues in case of death of employee (Section 44)**

All amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,

- (a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or
- (b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

All amounts payable to an employee under this Code—

- (a) are paid by the employer to the person nominated by the employee; or
- (b) are deposited by the employer with the authority referred to above,

then, the employer shall be discharged of his liability to pay those amounts.

### **Claims under Code and procedure thereof (Section 45)**

Section 45 of the Code deals with claims under the Code and procedure thereof.

1. The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arises under the provisions of this Code.
2. The appointed authority while deciding the claim, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.
3. If an employer fails to pay the claim determined and compensation ordered to be paid, the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.
4. Any application before the authority for claim may be filed by,
  - (a) the employee concerned; or
  - (b) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or
  - (c) the Inspector-cum-Facilitator.
5. Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.
6. The application as mentioned above may be filed within a period of three years from the date on which claims arises.

Provided that the concerned authority may, entertain the application even after three years on sufficient cause being shown by the applicant for such delay.

7. The authority appointed under section 45 and the appellate authority

appointed under sub-section (1) of section 49, shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

### **Reference of disputes under this Code (Section 46)**

Section 46 of the Code deals with reference of disputes under this Code.

Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to -

- (a) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or
- (b) the application of this Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947.

### **Presumption about accuracy of balance sheet and profit and loss account of corporations and companies (Section 47)**

1. Section 47 of the Code deals with the provisions relating to presumption about accuracy of balance sheet and profit and loss account of corporations and companies.

Where, during the course of proceedings before—

- (a) the authority under section 45; or
- (b) the appellate authority under section 49; or
- (c) a Tribunal; or
- (d) an arbitrator referred to in clause (aa) of section 2 of the Industrial Disputes Act, 1947,

in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by

the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode.

Provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

2. When an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to above, by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

### **Audit of account of employers not being coporations or companies (Section 48)**

Section 48 of the Code deals with the provisions relating to Audit of account of employers not being coporations or companies.

1. Where any claim, dispute or appeal with respect to bonus payable under this Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate authority, Tribunal or arbitrator, as the case may be, as referred to in sub-section (1) of section 47 and the accounts of such

employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

2. When the authority, appellate authority, Tribunal or arbitrator, referred to above, as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.
3. Where an employer fails to get the accounts audited the authority, appellate authority, Tribunal or arbitrator, referred to above as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.
4. When the accounts are audited as mentioned above, the provisions of section 47 shall, so far as may be, apply to the accounts so audited.
5. The expenses of, and incidental to, any audit including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

### **Appeal (Section 49)**

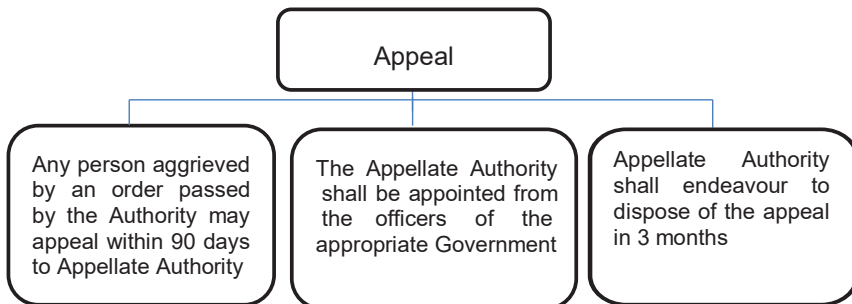
Section 49 of the Code deals with the provisions relating to appeal.

1. Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days

from the date of such order, in such form and manner as may be prescribed.

Provided that the appellate authority may entertain the appeal after ninety days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

2. The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.
3. The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of three months.
4. The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.



*Appeal*

**Records, returns and notices (Section 50)**

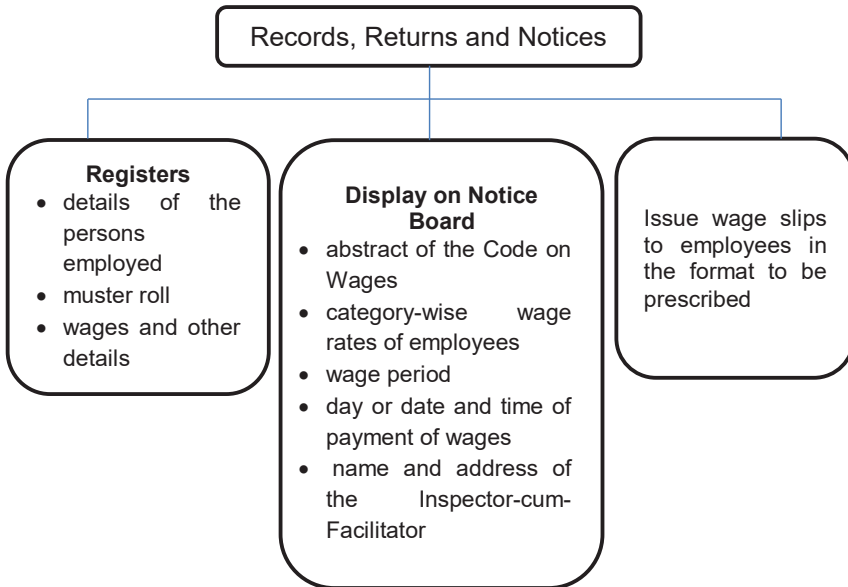
Section 50 of the Code deals with the provisions relating to records, returns and notices.

1. Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.
2. Every employer shall display a notice on the notice board at a prominent place of the establishment containing:

- the abstract of this Code,
  - category-wise wage rates of employees,
  - wage period,
  - day or date and time of payment of wages, and
  - the name and address of the Inspector-cum-Facilitator having jurisdiction.
3. Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
  4. The aforesaid provisions shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose:

Provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

*Explanation*— For the purposes of this sub-section, the expression ‘domestic purpose’ means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.



*Records, Returns and Notices*

**HIGHLIGHTS**

- The appropriate government will appoint one or more authorities to hear and determine the claims arising under the provisions of this Code.
- The application before authority may be filed within a period of three years from the date on which claims arises.
- The concerned authority may entertain the application even after three years on sufficient cause being shown by the applicant for such delay.



# APPOINTMENT OF INSPECTOR-CUM-FACILITATORS AND THEIR POWERS

The Code provides for appointment of Inspectors-cum-Facilitators and their powers. These authorities would have a dual function – providing compliance advisory to employers and workers and conducting inspections, which is a step in the right direction, as the Inspector would now also be looked into by the employer/industry, as a Facilitator for ensuring appropriate compliances under the Code. Further, as per the Code, the appropriate Government may lay down an inspection scheme, which may also contain web-based inspection processes. This has been done with the objective of removing the arbitrariness and malpractices in inspection. It is expected that this will reduce the potential for corruption and harassment that a physical inspection entail.

The ‘inspector’ under the previous regime has been replaced with an ‘Inspector-cum-Facilitator’, who has additional duties of guiding and advising employers and employees on effective implementation. Inspections are now possible through a web-based inspection scheme and electronic summoning of information, which may ease compliance burdens, and be in sync with current trends towards digitalization.

## **Appointment of Inspector-cum-Facilitators and their powers (Section 51)**

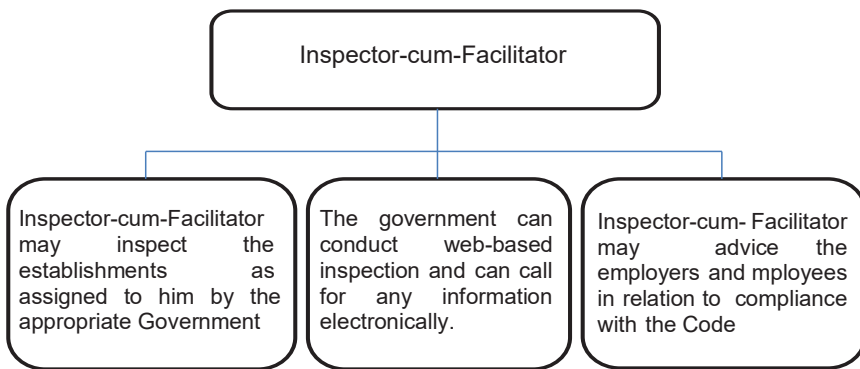
Section 51 of the Code deals with the provisions relating to appointment of Inspector-cum-Facilitators and their powers.

1. The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.
2. The appropriate Government may, by notification, lay down an

inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.

3. Without prejudice to the provisions of sub-section (2), the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
4. Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860.
5. The Inspector-cum-Facilitator may—
  - (a) advice to employers and workers relating to compliance with the provisions of this Code;
  - (b) inspect the establishments as assigned to him by the appropriate Government,subject to the instructions or guidelines issued by the appropriate Government from time to time.
6. Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may,—
  - (a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;
  - (b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
  - (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
  - (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
  - (e) exercise such other powers as may be prescribed.

7. Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code, 1860.
8. The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.



*Inspector-cum-Facilitator*

**HIGHLIGHTS**

- The appropriate government will appoint Inspector-cum-Facilitators for the purpose of this Code who will exercise the powers throughout the State or such geographical limits assigned in relation to one or more establishments.
- Assigning Inspector-cum-Facilitators outside their jurisdiction through a random computerized system will de-link inspectors from dedicated geographical regions and thus will lead to transparency, accountability & better enforcement of laws.
- The government through notification can conduct web-based inspection and can call for any information electronically.
- The appointed Inspector-cum-Facilitator may advise employers and workers relating to compliance & inspect the establishments as assigned by the appropriate Government.

# OFFENCES AND PENALTIES

The Code provides for a graded penalty system for contraventions under the provisions of the Code.

Unlike the provisions under the Minimum Wages Act, 1948 and the Payment of Bonus Act, 1965 which provide for punishment of imprisonment up to six months, the penal consequences under the Code are relatively lenient and only entail punishment with fine.

However, the Code penalises a second conviction within a span of five years from the first conviction with imprisonment. The quantum of fines for contraventions under the Code has seen a significant increase. Additionally, it is to be noted that the offences of non-maintenance or improper maintenance of records and registers in the establishment are punishable only with a fine.

Under the Code, the Inspector-cum-Facilitator is required to afford an opportunity to the employer before initiating prosecution proceedings in cases of first contraventions. This facility will benefit contraventions which are non-intentional or due to genuine lack of information on the part of the employer. Exhaustive procedures in relation to compounding of offences have been provided under the Code.

Penalties for non-compliances have now been substantially enhanced, which may foster a compliance culture by acting as a deterrent. Additionally, providing for compounding of offences may lead to greater enforcement. Finally, the Code clearly prescribes the burden of proof in case of claims of non-payment or deficient payment of wages or bonus to be on the employer.

Section 52 to 56 of the Code deals with the provisions relating to offences and penalties.

## **Cognizance of offences (Section 52)**

1. No court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf,

or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or an Inspector-cum-Facilitator.

2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under this Code.

**Power of officers of appropriate Government to impose penalty in certain cases (Section 53)**

1. Notwithstanding anything contained in section 52, for the purpose of imposing penalty under clauses (a) and (c) of sub-section (1) and sub-section (2) of section 54 and sub-section (7) of section 56, the appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.
2. While holding the enquiry, the officer referred to in sub-section (1) shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence under the provisions referred to in sub-section (1), he may impose such penalty as he thinks fit in accordance with such provisions.

**Penalties for offences (Section 54)**

1. Any employer who—
  - (a) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to fifty thousand rupees;
  - (b) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within five years from the date of the commission of the

first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;

- (c) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;
  - (d) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.
2. Notwithstanding anything contained in sub-section (1), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.
  3. Notwithstanding anything contained in clause (c) of sub-section (1) or sub-section (2), the Inspector-cum-Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub-section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance.

If the employer complies with the direction within such period, the Inspector-cum-Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

### **Offences by companies (Section 55)**

1. If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,

- (a) 'company' means anybody corporate and includes— (i) a firm; or (ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or (iii) other association of individuals; and
- (b) 'director' in relation to a firm means a partner in the firm.

### **Composition of offences (Section 56)**

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent of the maximum fine provided for such offence, in the manner as may be prescribed.

2. Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—
  - (i) of commission of a similar offence which was earlier compounded;
  - (ii) of commission of similar offence for which such person was earlier convicted.
3. Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.
4. Every application for the compounding of an offence shall be made in such manner as may be prescribed.
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
6. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
7. Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty per cent of the maximum fine provided for the offence, in addition to such fine.
8. No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.



<b>Offences</b>	<ul style="list-style-type: none"><li>• Paying less than the due wages; or</li><li>• Contravening any provision of the Code</li></ul>
<b>Penalties and Limitation Period</b>	<ul style="list-style-type: none"><li>• If any employer pays less than the due amount to any employee, fine upto Rs.50,000 can be imposed</li><li>• If similar offence is committed within 5 years, imprisonment for a term upto 3 months or fine upto 1 lakh rupees or both can be imposed</li><li>• If any employer contravenes any other provision of this Code, fine up to Rs.20,000 can be imposed</li><li>• If similar offence is committed within 5 years, imprisonment for a term upto 1 month or fine upto Rs.40,000 or both can be imposed</li><li>• In case of non-maintenance or improper maintenance of records, the employer will be fined up to Rs.10,000</li><li>• The period of limitation for filing of claims by a worker has been enhanced to three years (from 6 months to 2 years)</li></ul>

*Offences, Penalties and Limitation Period*

**HIGHLIGHTS**

- If any employer pays less than the due amount to any employee, fine upto Rs.50,000 can be imposed. If similar offence is committed within 5 years, imprisonment for a term upto 3 months or fine upto 1 lakh rupees or both can be imposed.
- If any employer contravenes any other provision of this Code, fine up to Rs.20,000 can be imposed. If similar offence is committed within 5 years, imprisonment for a term upto 1 month or fine upto Rs.40,000 or both can be imposed.
- In case of non-maintenance or improper maintenance of records, the employer will be fined up to Rs.10,000.

# MISCELLANEOUS PROVISIONS

## **Bar of suits (Section 57)**

Section 57 deals with the provisions relating to bar of suits.

No court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed—

- (a) forms the subject of claims under section 45;
- (b) has formed the subject of a direction under this Code;
- (c) has been adjudged in any proceeding under this Code;
- (d) could have been recovered under this Code.

## **Protection of action taken in good faith (Section 58)**

Section 58 deals with the provision relating to protection of action taken in good faith.

No suit, prosecution or any other legal proceeding shall lie against the appropriate Government or any officer of that Government for anything which is in good faith done or intended to be done under this Code.

## **Burden of proof (Section 59)**

Section 59 deals with provisions relating to burden of proof.

Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.

## **Contracting out (Section 60)**

Section 60 deals with the provisions relating to contracting out.

Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be

null and *void* in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code.

### **Effect of laws agreements, etc., inconsistent with this Code (Section 61)**

Section 61 deals with the provisions relating to effect of laws agreements, etc., inconsistent with this Code.

The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

### **Delegation of powers (Section 62)**

Section 62 deals with the provisions relating to delegation of power.

The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be also exercisable—

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
- (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

### **Exemption of employer from liability in certain cases (Section 63)**

Section 63 deals with the provisions relating to exemption of employer from liability in certain cases.

Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

- (a) that he has used due diligence to enforce the execution of this Code; and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence.

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

### **Protection against attachments of assets of employer with Government (Section 64)**

Section 64 deals with the provisions relating to protection against attachments of assets of employer with Government.

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

### **Power of Central Government to give directions (Section 65)**

Section 65 deals with the provisions relating to power of Central Government to give directions.

The Central Government may, for carrying into execution of the provisions of this Code in the State give directions to the State Government, and the State Government shall abide by such directions.

### **Saving (Section 66)**

Section 66 deals with the provisions relating to saving.

Nothing contained in this Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005

and the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or of any scheme made thereunder.

### **Power of appropriate Government to make rules (Section 67)**

Section 67 deals with the provisions relating to power of appropriate Government to make rules.

The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Code. This includes without limitation providing for manner of calculating the minimum rate of wages, the procedure for making deductions from wages, formats for registers and records to be maintained, inspection scheme etc. The State Government(s) soon will make rules for effective implementation of the code.

### **Power to remove difficulties (Section 68)**

Section 68 deals with the provisions relating to power to remove difficulties.

1. If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as may appear to be necessary for removing the difficulty.

Provided that no such order shall be made under this section after the expiry of a period of three years from the commencement of this Code.

2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### **Repeal and savings (Section 69)**

Section 69 deals with the provisions relating to repeal and savings.

1. The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are hereby repealed.
2. Notwithstanding such repeal, anything done or any action taken under the enactments so repealed including any notification, nomination, appointment, order or direction made thereunder or

any amount of wages provided in any provision of such enactments for any purpose shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of this Code and shall be in force to the extent they are not contrary to the provisions of this Code till they are repealed under the corresponding provisions of this Code or by the notification to that effect by the Central Government.

3. Without prejudice to the provisions of sub-section (2), the provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

#### **HIGHLIGHTS**

- Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.
- The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

# Draft Code on Wages (Central) Rules, 2020

In exercise of the powers conferred under section 67 of the Code on Wages, 2019 read with section 24 of the General Clauses Act, 1897 Central Government has notified the draft Code on Wages (Central) Rules, 2020 for seeking public suggestions on 7<sup>th</sup> July, 2020. They shall come into force after the date of their final publication in the Official Gazette, on the date of the commencement of the Code on Wages, 2019.

## ***Coverage of the Code on Wages (Central) Rules, 2020***

Code on Wages (Central) Rules, 2020 contains Fifty Eight Rules and divided into Nine Chapters.

Chapter I deals with Preliminary

Chapter II deals with Minimum Wages

Chapter III deals with Floor Wages

Chapter IV deals with Payment of Wages

Chapter V deals with Payment of Bonus

Chapter VI deals with Central Advisory Board

Chapter VII deals with Payment of Dues, Claims, etc.

Chapter VIII deals with Forms, Registers and Wage Slip

Chapter IX deals with Miscellaneous

## ***Some Important Provisions of the Code on Wages (Central) Rules, 2020***

### **Manner of Calculating the Minimum Rate of Wages (Rule 3)**

The minimum rate of wages shall be fixed on the day basis keeping in view the following criteria, namely:-

- (i) the standard working class family which includes a spouse and

- two children apart from the earning worker; an equivalent of three adult consumption units;
- (ii) a net intake of 2700 calories per day per consumption unit;
  - (iii) 66 meters cloth per year per standard working class family;
  - (iv) housing rent expenditure to constitute 10 per cent. of food and clothing expenditure;
  - (v) fuel, electricity and other miscellaneous items of expenditure to constitute 20 percent of minimum wage; and
  - (vi) expenditure for children education, medical requirement, recreation and expenditure on contingencies to constitute 25 per cent of minimum wages;

When the rate of wages for a day is fixed, then, such amount shall be divided by eight for fixing the rate of wages for an hour and multiplied by twenty six for fixing the rate of wages for a month and in such division and multiplication the factors of one-half and more than one-half shall be rounded as next figure and the factors less than one-half shall be ignored.

#### **Norms for fixation of minimum rate of wages (Rule 4)**

While fixing the minimum rate of wages, the Central Government shall divide the concerned geographical area into three categories, that is to say the metropolitan area, non-metropolitan area and the rural area.

The Central Government shall constitute a technical committee for the purpose of advising the Central Government in respect of skill categorization.

#### **Time Interval for revision of dearness allowance (Rule 5)**

Endeavour shall be made so that the cost of living allowance and the cash value of the concession in respect of essential commodities at concession rate shall be computed once before 1st April and 1st October in every year to revise the dearness allowance payable to the employees on the minimum wages.

#### **Manner of fixing floor wage (Rule 11)**

- (1) The Board (Central Advisory Board) shall be consulted by the Central Government for the purposes of fixation of basic rate of



floor wage under sub-section (1) of section 9 taking into account minimum living standards taking into account an equivalent of three adult consumption units including worker of the family comprising of food, clothing, housing and any other factors considered appropriate by the Central Government from time to time.

- (2) The advice of the Board obtained in consultation shall be circulated by the Central Government to all State Governments for consultation with them.
- (3) The advice of the Board referred above and the views of the State Governments received in consultation referred to in that sub-rule shall be considered before fixing the floor wage under sub-rule (1).
- (4) The Central Government may revise the basic rate of floor wage fixed under sub-rule (1) ordinarily at an interval not exceeding five years and undertake adjustment for variations in the cost of living periodically in consultation with the Board.

### **Constitution of Central Advisory Board (Rule 28)**

- (1) The Board shall consist of the persons to be nominated by the Central Government representing employers and employees as specified in clauses (a) and (b) of sub-section (1) of section 42 and the independent persons and representatives of the State Governments as specified in clauses (c) and (d) of that sub-section.
- (2) The persons representing employers as referred to in clause (a) of sub-section (1) of section 42 shall be twelve and the persons representing employees referred to in clause (b) of that sub-section shall also be twelve.
- (3) The independent persons specified in clause (c) of sub-section (1) of section 42 to be nominated by the Central Government shall consist of the following, namely:
  - (i) the Chairperson;
  - (ii) two Members of Parliament;
  - (iii) four members each of whom, shall be a professional in the field of wages and labour related issues;
  - (iv) one member who is or has been a presiding officer of an

Industrial Tribunal constituted by the Central Government under section 7A of the Industrial Disputes Act, 1947; and

- (v) two members, each of whom shall be the Chairperson of such State Advisory Board referred to in sub-section (4) of section 42, to the extent possible, has been taken in rotation from the States.

### **The Forms, Registers and Wage Slip**

- All fines and all realization thereof referred to in sub-section (8) of section 19 shall be recorded in a register to be kept by the employer in **Form-I**.
- A single application may be filed under sub-section (5) of section 45 in **Form-II** along with documents specified in such Form in respect of claims which arise under the provisions of this Code.
- Any person aggrieved by an order passed by the authority under sub-section 2 of section 45 may prefer an appeal under sub-section 1 of section 49 in **Form-III**, along with documents specified in such Form, to the appellate authority having jurisdiction.
- Every employer of an establishment to which the Code applies shall maintain registers under sub-section (1) of section 50 in **Form-I** and **Form-IV**, electronically or otherwise.
- Every employer shall issue wage slips, electronically or otherwise to the employees in **Form-V** under sub-section 3 of section 50 on or before payment of wages.

## IMPACT OF THE CODE AND WAY FORWARD

The Code is a well-intentioned piece of legislation which aims to balance the interests of the employer and the employee. Though the Code contains substantial portions of the repealed legislations, it makes a decent attempt to replace their obsolete provisions. The codification of labour laws shall remove the multiplicity of definitions and authorities. Compliance in the forms of maintenance of records, registers, returns and display of notices will be substantially reduced. Thus, Cost of compliance will reduce and hopefully eliminate any litigation surrounding a complex definition of wage, employee, etc. Government shall have strong process to resolve complaints by the employee as Code will be applicable to almost all employees. Suppose 5% of the total employees (approximately 50 crores are employees) make claims/complaints for their dues, then the Government shall have robust system in place to resolve these claims/complaints expeditiously.

The provisions of the Code inspire confidence in the business community, and further clarity can be realized once the subordinate legislations and rules under the Code are in place. There would be a challenge of compliance for corporate having offices in different States and hence it should be ensured that there is uniformity in the Form Nos. across the States as well. Further, States should be given an option to completely adopt the Central Rules (including the prescribed forms) under the Code. The ease of compliance is also expected to promote setting-up of more enterprises catalyzing the creation of more employment opportunities.

The Code consolidates the provisions of four Acts namely, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. As we all are aware, no statute or law can be complete in all respects and cannot provide solution to each and every issue and hence, there will be some challenges in the effective implementation of provisions of the Code. We assume that the rules will be accordingly drafted by respective State government to address issues and challenges that might crop up during the implementation of the Code across India.

It would also be interesting to note how the other Codes relating to social security; occupational safety, health and working conditions; and industrial relations will interact with the Code on Wages.

The Code is being hailed as a historic step towards labour reforms and ease of doing business in India without diluting any basic rights of employees. The Code aims for enforcement of Labour laws with transparency and accountability, and it is expected to reduce the cost of compliance for employers significantly.

## HANDY TIPS FOR EMPLOYERS

1. The Code is applicable to all establishments where any trade, industry or manufacturing process is carried on and to all type of employees (irrespective of their wage limit), skilled, semi-skilled, unskilled, supervisory, managerial across all sectors.
2. Many unorganized sector employees will now get minimum wages under the Code.
3. The new definition of wage is expected to reduce litigation and cost of compliance.
4. Employer shall not discriminate employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.
5. Central Government will fix floor wage after taking into account minimum standard of living of workers. The State Government shall not fix minimum wage below the floor wage. This would provide a basic standard of living for all employees across India. Employer shall fix wages equal to or more than the floor wage declared by the Central Government.
6. Employer shall pay wages by way of cheque, or through digital or electronic mode of payment or by crediting into account of the employees before 7th day of the succeeding month, where they are engaged on monthly basis.
7. Employer can make deductions from wages on certain grounds like fine, absence from duty, recovery of advances, etc. The deductions shall not exceed 50% the employee's wage.
8. Employer shall make overtime payment which shall not be less than the double the rate of ordinary wages.
9. Employer shall pay bonus as per the provisions of the Code if he engages 20 or more employees.
10. Employer shall extend cooperation to Inspector-cum-Facilitator as a part of compliance.
11. Every employer of an establishment to which this Code applies

shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.

12. Every employer shall display a notice on the notice board at a prominent place of the establishment containing:
  - the abstract of this Code,
  - category-wise wage rates of employees,
  - wage period,
  - day or date and time of payment of wages, and
  - the name and address of the Inspector-cum-Facilitator having jurisdiction.
13. Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
14. With the consolidation of the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, the Minimum Wages Act, 1948 and the Equal Remuneration Act, 1976 into the Code, multiple filings, and maintaining multiple records and registers under each of the four legislations is reduced.
15. Employer shall take a note that the period of limitation for filing claims relating to wages and bonus has been enhanced to 3 years as against existing period varying from 6 months to 2 years.
16. The penalty for non-compliance has substantially been enhanced. The Code provides for a graded penalty system for contraventions under the provisions of the Code.
17. The 'Inspector' under the previous regime has been replaced with an 'Inspector-cum-Facilitator', who has additional duties of guiding and advising employers and employees on effective implementation of the Code. Employer can seek help of Inspector-cum-Facilitator' to ensure compliance under the Code.

**Note:** It is important for employers, to familiarise themselves with the Code and understand the impact on their operations. The employers should also analyse the requirement of revision of the salary structure as per the new definition of the term 'wage'. Further, HR policies of the organisations shall be revised as per the provisions of the Code to ensure that their policies are HR friendly and legally compliant.

## ROLE AND SCOPE FOR COMPANY SECRETARY

The Company Secretary in employment has to play an important role in the new regime of labour law. Company Secretary has to guide the Board of Directors on the new labour codes and devise practical systems and procedures for introducing the social security measures in his organization for registering the unorganised workers in cooperation with the District Administration in his or her State, especially migrant workers. Company Secretary has to ensure the observance of health, safety, welfare and conditions of service by the professional managers in his organization especially the payment of national minimum wages.

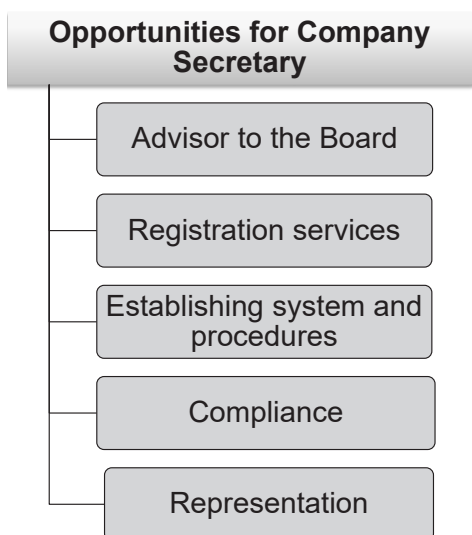
Company Secretaries shall acquaint themselves with the latest changes taking place in the labour laws, since it will have significant bearing on the setting-up of new establishments in India and functioning of the existing ones. Since Company Secretaries have a major role to play in terms of providing advisory, incorporation and compliances services to the corporate, it is appropriate time to grab this opportunity while contributing in the endeavour of the government of rationalising of labour laws in India.

Now, since Companies Act, 2013 require Director to give declaration about compliance with all the applicable laws to the organization and as Good Governance practice, it will widen the scope of the CS in other areas of law including labour laws.

A Company Secretary has to play an important role in the new regime of Labour law. Company Secretary has to guide top management on the new Labour Codes and impact thereof on the industries. As the Code on Wages, 2019 is new, there is need to update various compliances more specifically related to payment of minimum wage and other social security benefits to all employees in organized and unorganized sector.

The compliance of Labour Laws is as important for good corporate governance like other corporate, economic and securities laws. A Company Secretary in Practice by virtue of his knowledge and expertise in corporate laws is equally competent enough to render value added services in

ensuring the compliance of these new laws to protect and further the interests of labour, industry and all stakeholders and at same time prevent unwanted litigation and penalty for non-compliance.



#### *Role and Scope for Company Secretary*

Role and scope for Company Secretaries under new regime of Labour law is as under:

1. To obtain registrations of the establishment under various applicable Labour Codes.
2. Submission of returns on a regular basis to the authorities under the various Codes.
3. Maintenance of appropriate records with regard to employees of the establishment under various Labour Codes like employee register, register of attendance, wage, overtime, fine, deduction for damage and loss, wage slip, etc.
4. Display of various notices in the establishment like abstract of the code, minimum rate of wage, day-or date and time of wage payment, name and address of the Inspector-cum-Facilitator, etc.
5. Intimation to Labour department of important corporate actions like lay-off, strike, accident of an employee, change in the service conditions of an employee, etc.



6. Ensure adequate facilities related to health, safety and welfare of the employees have been provided for the employees on behalf of the establishment under various Codes.
7. Drafting of various deeds and documents relating to employment like HR manual, offer /appointment letter, non-disclosure agreement, transfer letter, warning letters, termination letter, etc.
8. Advisory services relating to salary structure and pay roll related compliances.
9. Representation services before authorities under the various Codes.

By undertaking the above mentioned activities, a Company Secretary can achieve the following:

1. Play an important role in assuring compliance with the provisions of the various Labour Codes.
2. Set-up adequate internal control systems (vis-a-vis compliance of Labour Codes) to minimize risks.
3. Identify gaps in compliance and ensure adequate measures are adopted to rectify the same.
4. Implement an adequate system of compliance to ensure regular and timely compliance of the provisions of the various Labour Codes.
5. Prevent litigation and penalties for non-compliance of the Labour Codes.

Currently, inspectors visit various establishments to check if they are complying with Labour laws, like minimum wages and working hours, etc. The Company Secretaries are competent professionals to verify compliance level of the establishments under the Code. They can point out gaps in company's compliance and help them increase their compliance levels. If Company Secretaries are authorized for checking the compliances with the Code and other three Codes relating to Occupational Safety, Health and Working Conditions; Social Security; and Industrial Relations, it will be a win-win situation for all stakeholders — industry, employees and the government.



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