

INTRODUCTION

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of “establishment”, “worker”, number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provision relating to penalty create fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

Definitions

Section 2 of the Act defines various terms used in the Act; Some of the definitions are given here under:

Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.{ Section 2(aa)}

Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.{ Section 2 (aaa)}

Appropriate Government means –

(1) in relation to –

- (a) the Central Apprenticeship Council, or
- (aa) the Regional Boards, or
- (aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;
- (b) any establishment of any railway, major port, mine or oilfield, or
- (bb) any establishment which is operating business or trade from different locations situated in four or more States, or
- (c) any establishment owned, controlled or managed by –
 - (i) the Central Government or a department of Central Government,
 - (ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government on partly by that Government and partly by one or more State Governments,
 - (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government;

the Central Government;

(2) in relation to –

- (a) a State Apprenticeship Council, or
- (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; {Section 2(d)}.

Designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act {Section 2(e)}.

Employer means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment.{Section 2 (f)}

Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment.{ Section 2 (g)}

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade{Section 2(j)}.

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both{Section 2(k)}.

Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act{Section 2(II)}.

Portal-site means a website of the Central Government for exchange of information under this Act {Section 2(III)}.

Technician (vocational) apprentice means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade {Section 2(pp)}.

Trade Apprentice means an apprentice who undergoes apprenticeship training in any designated trade {Section 2(q)}.

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa) {Section 2(r)}.

Qualifications for being engaged as an apprentice

Section 3 of the Act provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he –

- (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

Contract of apprenticeship

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.
- (4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.
- (4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Novation of contracts of apprenticeship

Section 5 of the Act provides that where an employer with whom a contract of apprenticeship has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.

Regulation of optional trade

Section 5A of the Act provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

Engagement of apprentices from other States

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

Period of apprenticeship training

As per section 6 of the Act the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows –

- (a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.
- (aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;
- (b) in the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed;
- (c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

Number of apprentices for a designated trade and optional trade

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

Practical and basic training of apprentices

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf] shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.
- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational)

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apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne –
 - (i) If such employer employs two hundred and fifty workers or more, by the employer;
 - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

Obligations of employers

Every employer shall have the following obligations in relation to an apprentice, namely: –

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

Obligations of apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely :-

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
- to attend practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment; and
- to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational

course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

Hours of work, overtime, leave and holidays

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

- (1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.
- (2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- (3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

Apprentices are trainees and not workers

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

Records and returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

Settlement of disputes

As per section 20 of the Act any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, within thirty days from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose. The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

Holding of test and grant of certificate and conclusion of training

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who

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completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and acceptance of employment

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

Authorities under the Act

In addition to the Government, there are the following authorities under the Act, namely : –

- (a) The National Council,
- (b) The Central Apprenticeship Council,
- (c) The State Council,
- (d) The State Apprenticeship Council,
- (e) The All India Council,
- (f) The Regional Boards,
- (g) The Boards or State Councils of Technical Education
- (h) The Central Apprenticeship Adviser,
- (i) The State Apprenticeship Adviser.

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall be affiliated to the Central Apprenticeship Council. Every Board or State Council of Technical Education and every Regional Board shall be affiliated to the Central Apprenticeship Council.

Each of the authorities specified above shall, in relation to apprenticeship training under the Act, perform such functions as are assigned to it by or under the Act or by the Government. However, a State Council shall also perform such functions as are assigned to it by the National Council and the State Apprenticeship Council and the Board or State Council of Technical Education shall also perform such functions as are assigned to it by the Central Apprenticeship Council.

Offences and penalties

Section 30 deals with offences and penalties. Section 30 provides that-

(1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the

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employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

(2) If any employer or any other person –

- (a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or
- (b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or
- (c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or
- (d) employs an apprentice on any work which is not connected with his training, or
- (e) makes payment to an apprentice on the basis of piece-work, or
- (f) requires an apprentice to take part in any output bonus or incentive scheme.
- (g) engages as an apprentice a person who is not qualified for being so engaged, or
- (h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.

(2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.

LESSON ROUND UP

- The Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices and for matters connected therewith.
- The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.
- The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
- Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
- The Act makes it obligatory on part of the employers both in public and private sector establishments having requisite training infrastructure as laid down in the Act, to engage apprenticeship training.
- No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such a person or, if he/ she is a minor, his/ her guardian has entered into a contract of apprenticeship with the employer.
- Every employer shall have the obligations in relation to an apprentice to provide the apprentice with

Section VII

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

LESSON OUTLINE

- Learning Objective
- Object and scope of the Act
- Employee
- Employer
- Establishment
- Establishment in Public Sectors
- Establishment in Private Sector
- Employment Exchange
- Notification of vacancies to employment exchanges
- Employers to furnish information and returns in prescribed form
- Right of access to records or documents
- Penalties
- LESSON ROUND UP
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for compulsory notification of vacancies and submission of employment returns by the employers to the employment exchanges. Thus, the main activities of the employment exchanges are registration, placement of job seekers, career counseling, and vocational guidance and collection of employment market information.

The Act applies to all establishments in the public sector and such establishments in the private sector as are engaged in non-agricultural activities and employing 25 or more workers. The employer in every establishment in public sector in any State or area shall furnish such prescribed information or return in relation to vacancies that have occurred or are about to occur in that establishment, to such prescribed employment exchanges.

In this lesson, students will explore the implementation of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for the compulsory notification of vacancies to employment exchanges. It extends to the whole of India.

DEFINITION

Employee means any person who is employed in an establishment to do any work for remuneration. {Section 2(b)}

Employer means any person who employs one or more other person to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. {Section 2(c)}

Employment Exchange means any office or place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting – (i) persons who seek to engage employees. (ii) persons who seek employment, and (iii) vacancies to which persons seeking employment, may be appointed. {Section 2(d)}

Establishment means – (a) any office, or (b) any place where any industry, trade, business or occupation is carried on. {Section 2(e)}

Establishment in Public Sector means an establishment owned, controlled or managed by — (1) the Government or a department of the Government; (2) a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) ; (3) a corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government; (4) a local authority. {Section 2(f)}

Establishment in Private Sector means an establishment which is not an establishment in public sector and where ordinarily twenty-five or more persons are employed to work for remuneration. {Section 2(g)}

Act not to apply in relation to certain vacancies

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 does not apply in relation to vacancies in any employment –

- (i) in agriculture and horticulture in any establishment in private sector;
- (ii) in domestic service;
- (iii) where the period of employment is less than three months;
- (iv) to do unskilled office work;
- (v) connected with the staff of Parliament;
- (vi) proposed to fill through promotion or by absorption of surplus staff;
- (vii) which carries a remuneration of less than sixty rupees a month.

Notification of vacancies to employment exchanges

Section 4 of the Act provides that the employer in every establishment in public sector in that State and the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall notify the vacancy to such employment exchanges as may be prescribed. However, there is no obligation upon any employer to recruit any person through the employment exchange to fill any vacancy.

Employers to furnish information and returns in prescribed form

Section 5 stipulates that the employer in every establishment in public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.

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The appropriate Government may, by notification in the Official Gazette, require that from such date, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed.

Right of access to records or documents

Section 6 empowers such officer of Government as may be prescribed in this behalf, or any person authorised by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under section 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any required information.

Penalties

If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

If any refuses or neglects to furnish such information or return, or furnishes or causes to be furnished any information or return which he knows to be false, or refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished or impedes the right of access to relevant records or documents or the right of entry, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

LESSON ROUND UP

- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for compulsory notification of vacancies and submission of employment returns by the employers to the employment exchanges.
- According to the Act, the term employment exchange means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, respecting:- (i) persons who seek to engage employees; (ii) persons who seek employment; and (iii) vacancies to which persons seeking employment may be appointed”.
- The main activities of the employment exchanges are registration, placement of job seekers, career counselling, and vocational guidance and collection of employment market information.
- The Act empowers such officer of Government as may be prescribed in this behalf, or any person authorised by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any required information.
- If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

Lesson 7

Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

LESSON OUTLINE

- Introduction
- Employer
- Form
- Schedule Act
- Small Establishment
- Very Small Establishment
- Exemption from maintenance of Register and Return
- Penalty
- Lesson round up
- Self Test Questions

LEARNING OBJECTIVES

Parliament enacted from time to time a number of labour laws for regulating employment and conditions of service of workers. Whenever a new law was enacted, it prescribed certain registers to be maintained by the employers. Simultaneously, the laws also prescribed for furnishing of returns of various details by the employers to the concerned enforcing authorities. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988 was enacted to provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. Small establishments were exempted from furnishing returns and maintaining registers under certain enactments mentioned in the first Schedule to the Act and instead they were required to furnish returns and maintain registers in the forms set out in the Second Schedule to the Act. Further the Act amended by the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014.

The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India

INTRODUCTION

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

Definitions

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes – (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936 ; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

Form

Form means a Form specified in the Second Schedule {Section 2 (c)}.

Following forms are specified in the second schedule. They are as under:

- Form I -Annual Return(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)
- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register

Scheduled Act

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder{Section 2 (d)}.

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936

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2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965 (
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

Small Establishment

Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months{Section 2 (e)}.

Very Small Establishment

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.{Section 2 (f)}.

Exemption from furnishing or maintaining of returns and registers required under certain labour laws

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

- (a) furnishes, in lieu of such returns, annual return in Form I; and
- (b) maintains at the work spot, in lieu of such registers, –
 - (i) registers in Form II and Form III, in the case of small establishments, and
 - (ii) a register in Form III, in the case of very small establishments,;

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages

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(Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

Penalty

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

LESSON ROUND UP

- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.
- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.
- Small establishment means an establishment in which not less than ten and not more forty persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.
- Any employer who fails to comply with the provisions of the Act, shall, on conviction, be punishable in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

Lesson 8

Labour Codes*

LESSON OUTLINE

- Introduction
- Code on Wages 2019
- The salient features of the Code on Wages, 2019
- The Occupational Safety, Health And Working Conditions Code, 2019
- The salient features of the Occupational Safety, Health And Working Conditions Code 2019
- Labour Code on Social Security
- Labour Code on Industrial Relations
- Lesson round up
- Self-Test Questions

LEARNING OBJECTIVES

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:- (a) industrial relations; (b) wages;(c) social security; (d) safety; and (e) welfare and working conditions.

With the objective of strengthening the safety, security, health, social security for every worker and bringing ease of compliance for running an establishment to catalyse creation of employment opportunities/generation and as per the recommendations of the 2nd National Commission on labour, Ministry of Labour and Employment has taken steps for codification of existing Central labour laws into 4 Codes by simplifying, amalgamating and rationalizing the relevant provisions of the

- The Code on Wages, 2019
- The Occupational Safety, Health And Working Conditions Code, 2019
- Labour Code on Social Security
- Labour Code on Industrial Relations

*Labour Code on Wages 2019, The Occupational Safety, Health And Working Conditions Code, 2019, Labour Code on Social Security and Labour Code on Industrial Relations are proposed Codes.

INTRODUCTION

Labour as a subject is included in the concurrent list in India, which means that both the Central Government and State Governments are competent to make laws on the topic.

In line with recommendations of Second National Commission on Labour, the Ministry has taken steps for formulating of four Labour Codes on (i) Wages; (ii) Industrial Relations; (iii) Social Security & Welfare; and (iv) Occupational Safety, Health and Working Conditions by amalgamating, simplifying, and rationalizing the relevant provisions of the existing Central Labour Laws.

The Labour Code is a means to consolidate various statutes into a pruned and uncomplicated form. The amalgamated form of multiple statutes thus obtained is called a labour code. This operation is done with a view to have a unified law which can be understood and implemented with ease.

CODE ON WAGES, 2019

The Code on Wages, 2017 was introduced in the Lok Sabha on 10.08.2017 and referred to the Department-related Parliamentary Standing Committee on Labour, which submitted its forty-third Report on 18th December, 2018. However, before the said Bill could be passed in the said House, it lapsed on dissolution of the Sixteenth Lok Sabha. Hence, the Code on Wages, 2019 has been further introduced in the 17th Lok Sabha and also examined by Parliamentary Standing Committee on Labour.

According to the Statement of objects and reasons of the Code on Wages 2019, the Second National Commission on Labour, which submitted its report in June, 2002, had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:–

- (a) Industrial relations;
- (b) Wages;
- (c) Social security;
- (d) Safety; and
- (e) Welfare and working conditions.

In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and industry representatives, it has been decided to bring the proposed legislation. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely:–

- (a) The Payment of Wages Act, 1936;
- (b) The Minimum Wages Act, 1948;
- (c) The Payment of Bonus Act, 1965; and
- (d) The Equal Remuneration Act, 1976.

The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The proposed legislation would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalyzing the creation of employment opportunities.

The salient features of the Code on Wages, 2019, inter alia, are as follows:–

- (a) It provides for all essential elements relating to wages, equal remuneration, its payment and bonus;

- (b) The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors;
- (c) The power to fix minimum wages continues to be vested in the Central Government as well the State Government in their respective sphere;
- (d) It enables the appropriate Government to determine the factors by which the minimum wages shall be fixed for different category of employees. The factors shall be determined taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other aspects which the appropriate Government considers necessary;
- (e) The provisions relating to timely payment of wages and authorised deductions from wages, which are presently applicable only in respect of employees drawing wages of twenty-four thousand rupees per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of such provisions to the Government establishments also;
- (f) It provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. However, the appropriate Government may specify the industrial or other establishment, where the wages are to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee;
- (g) It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage notified for that area by the Central Government;
- (h) In order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors, who would supply information and advice the employers and workers;
- (i) It empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus;
- (j) In the place of number of authorities at multiple levels, it empowers the appropriate Government to appoint one or more authorities to hear and decide the claims under the proposed legislation;
- (k) It enables the appropriate Government to establish an appellate authority to hear appeals for speedy, cheaper and efficient redressal of grievances and settlement of claims;
- (l) It provides for graded penalty for different types of contraventions of the provisions of the proposed legislation;
- (m) It provides that the Inspector-cum-Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention, so as to comply with the provisions of the proposed legislation. However, in case of repetition of the contravention within a period of five years such opportunity shall not be provided;
- (n) It provides for the appointment of officers not below the rank of Under Secretary to the Government of India or an officer of equivalent level in the State Government to dispose of cases punishable only with fine up to fifty thousand rupees, so as to reduce the burden on subordinate judiciary;
- (o) It provides for compounding of those offences which are not punishable with imprisonment;
- (p) It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;
- (q) It enables the appropriate Government to constitute Advisory Boards at Central and State level to advice the Central Government and the State Governments, respectively, on matters relating to wages,

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women employment, etc.;

- (r) The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.

COVERAGE OF THE CODE ON WAGES, 2019

The Code on Wages, 2019 contains Sixty Nine Clauses and divided into Nine Chapters.

Chapter I deals with Preliminary

Chapter II deals with Minimum Wages

Chapter III deals with Payment of Wages

Chapter IV deals with Payment of Bonus

Chapter V deals with Advisory Board

Chapter VI deals with Payment of Dues, Claims and Audit

Chapter VII deals with Inspector-Cum-Facilitator

Chapter VIII deals with Offences and Penalties

Chapter IX deals with Miscellaneous

Chapter I - Preliminary

Clause 1 of the Bill seeks to provide the short title, extent and commencement

Clause 2 of the Bill seeks to define certain expressions used in the Code, which, inter alia, include “accounting year”, “Advisory Board”, “appropriate Government”, “employee”, “employer”, “Tribunal”, “wages” and “worker”.

Clause 3 of the Bill seeks to provide for the prohibition of discrimination on ground of gender. It provides that no employer shall, for the purpose of prohibiting the discrimination among employees on ground of sex in matters relating to wages, shall reduce the rates of wages of any employee.

Clause 4 of the Bill provides for determination of disputes with regard to same or similar nature of work. The dispute shall be decided by such authority as may be notified by the appropriate Government.

Chapter II - Minimum Wages

Clause 5 of the Bill seeks to provide for payment of minimum rates of wages. The wages less than the minimum rates of wages notified by the appropriate Government for a State or any part thereof shall not be paid to any employee.

Clause 6 of the Bill seeks to provide for fixation of minimum wages. Such fixation of minimum wages by the appropriate Government shall be subject to the powers of the Central Government to fix floor wage. The minimum wages shall be for time work, piece work, and for the period by hours or day or month. It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage, notified for that area by the Central Government.

Clause 7 of the Bill seeks to provide components of the minimum wages. Any minimum rate of wages fixed or revised by the appropriate Government may, inter alia, consist of basic rate, cost of living allowance and value of the concessions, if any.

Clause 8 of the Bill seeks to provide the procedure for fixing and revising minimum wages.

Clause 9 of the Bill seeks to provide the power of Central Government to fix floor wage. Different floor wages

may be fixed for different geographical areas. The Central Government before fixing the floor wage may obtain the advice of the Central Advisory Board.

Clause 10 of the Bill seeks to provide, inter alia, for wages of employee who works for less than normal working day. An employee, where his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, shall not be entitled to receive wages for a full normal working day.

Clause 11 of the Bill seeks to provide wages for two or more classes of work. It provides that an employee who does two or more classes of work, to each of which different rate of minimum wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in such class of work, wages at not less than the minimum rate in force in respect of each such class.

Clause 12 of the Bill seeks to provide minimum time rate wages for piece work.

Clause 13 of the Bill seeks to provide for fixing hours of work for normal working day, day of rest and payment for work on day of rest by the appropriate Government.

Clause 14 of the Bill seeks to provide for payment of wages for overtime work which is in excess of the number of hours constituting a normal working and the overtime rate shall not be less than twice the normal rate of wages.

Chapter III - Payment of Wages

Clause 15 of the Bill seeks to provide for payment of all wages in current coin or currency notes or by cheque or by crediting the wages through digital or electronic mode in the bank account of the employee except as may be notified by the appropriate Government in specified industrial or other establishment in which wages to be paid only by cheque or by crediting in bank account.

Clause 16 of the Bill seeks to provide for fixation of wage period for employees which shall not be more than a month either as daily or weekly or fortnightly or monthly and the said wage periods may be fixed different for different establishments.

Clause 17 of the Bill seeks to provide time limit for payment of wages on monthly basis, daily basis, weekly basis and fortnightly basis. In case of removal, dismissal, retrenchment, resignation from service or in the case of un-employment due to closure of the establishment, the wages payable to an employee shall be paid within two weeks. The appropriate Government may provide time limit apart from the time limit provided in this clause.

Clause 18 of the Bill provides for deductions which may be made from the wages of an employee. No deduction from the wages shall be made except those as are authorised under the proposed legislation. The upper ceiling of deduction is fifty per cent. Of the wage in any wage period. It further provides that if an employer commits default in depositing the deduction made from the employees' wages in the account of the trust or Government fund or any other account, as required, the employee shall not be held responsible for such default.

Clause 19 of the Bill seeks to provide the imposition of fines by the employer on any employee. The fine shall be imposed on any employee only in accordance with the approval and procedure as specified in the clause.

Clause 20 of the Bill seeks to provide for the deductions for absence from duty. The amount of such deductions shall in no case bear to the wages payable to the employee in respect of the wage period for which the deductions 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. An employee shall be deemed to be absent from the place where he is required to work if, although presence in such place, he refuses in pursuance of a stay-in strike for any other cause which is not reasonable in the circumstances, to carry out his work.

Clause 21 of the Bill seeks to provide deductions for damage or loss. The deductions 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.

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The deductions shall not be met until the employee has been provided an opportunity of showing cause against the deductions or otherwise than in accordance with the procedure prescribed by rules.

Clause 22 of the Bill provides for deductions for services rendered. Such deductions shall not be made from the wages of employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or as otherwise. Such deductions shall also not exceed an amount equivalent to the value of such amenity or service supplied. The appropriate Government may impose conditions for such purpose.

Clause 23 of the Bill seeks to provide for deductions for recovery of advances. Certain conditions have been provided in the said clause subject to which the deductions shall be made for the recovery of advance of money given to an employee before and after the employment began.

Clause 24 of the Bill seeks to provide deductions for recovery of loans and the manner for such recovery shall be provided in the rules.

Clause 25 of the Bill seeks to provide that the provisions relating to payment of wages provided in Chapter III in the proposed Code shall not be applicable to Government establishments unless the appropriate Government applies such provisions to any Government establishment as may be specified by it by notification.

Chapter IV - Payment of Bonus

Clause 26 of the Bill seeks to make provisions for eligibility for bonus. The threshold limit for payment of the bonus is the wages not exceeding such amount per mensem as determined by notification, by the appropriate Government. Where the wages of the employee exceeds such amount per mensem, as determined by notification, by the appropriate Government, the bonus payable to such employee shall be calculated as if the wages of such employee were such amount, so determined by the appropriate Government or the minimum wages fixed by the appropriate Government, whichever is higher. The other details regarding the payment of bonus have also been provided in this clause.

Clause 27 of the Bill seeks to provide for proportionate reduction in bonus in case where an employee has not worked for all the working days in an accounting year, etc.

Clause 28 of the Bill seeks to provide for computation of the number of working days for the purposes where an employee has not worked for all the working days in an accounting year. Provisions have been made in this clause to cover certain days as working days as specified therein.

Clause 29 of the Bill seeks to specify certain disqualifications, on the basis of dismissal from service for fraud, etc., for receiving bonus.

Clause 30 of the Bill seeks to provide for the purposes of computation of bonus that the establishment shall include its departments, undertakings and branches, 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 for the accounting year, such department, 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.

Clause 31 of the Bill seeks to provide for payment of bonus out of allocable surplus. It also empowers the appropriate Government to notify the authority having jurisdiction for calling upon the employer to produce the balance sheet before it.

Clause 32 of the Bill seeks to provide for the computation of gross profit in the case of a banking company and in any other case in such manner as may be provided by rules by the Central Government.

Clause 33 of the Bill seeks to provide for the computation of available surplus in respect of any accounting year.

Clause 34 of the Bill seeks to specify the sums which shall be deducted from the gross profits as prior charges which includes the sums as may be provided by rules to be made by the Central Government.

Clause 35 of the Bill seeks to provide for the calculation of direct tax payable by the employer. Such direct tax for any accounting year shall be calculated at the rate applicable to the income of the employer for that year subject to the provisions specified in that clause.

Clause 36 of the Bill seeks to provide for set on and set off of allocable surplus. It provides as to how the allocable surplus exceeding the amount of maximum bonus payable to the employee shall subject to the limit of 20 per cent. Of the total salary or wages of the employee in that accounting year be carried forward for being set on in the succeeding accounting years up to and inclusive of fourth accounting year for the purpose of payment of bonus in such manner as may be provided by rules by the Central Government. It further provides that 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 the minimum bonus payable to the employees and there is no amount or sufficient amount carried forward and set on which could be utilised for the purpose of the minimum bonus, then, such minimum amount or the deficiency shall be carried forward for being set off in the succeeding accounting years and so on up to and inclusive of the fourth accounting year in such manner as may be provided by rules by the Central Government. It also provides that the applicability of such rules in other cases and for the taking into account at first instance the amount of set on or set off carried forward from the earliest accounting year.

Clause 37 of the Bill seeks to provide for the adjustment of customary or interim bonus payable under the proposed legislation.

Clause 38 of the Bill seeks to provide for deduction of the amount of loss caused by the employee on account of misconduct from the amount of bonus payable by the employer to the employee in respect of the concerned accounting year only and the employee shall be entitled to receive the balance, if any.

Clause 39 of the Bill seeks to provide the time limit for payment of bonus. The bonus payable to an employee shall be paid by crediting in the bank account of the employee by his employer. It also specifies regarding the extension of period for payment of bonus in certain cases and the upper limit of the extension which shall not exceed two years and in case of a dispute for payment at higher rate, the employer shall pay eight and one third per cent. Of the wages earned by the employee as per the provisions of the proposed legislation within the time limit.

Clause 40 of the Bill seeks to provide for the application of the provisions of Chapter IV regarding payment of bonus to establishments in public sector in certain cases as specified in the said clause.

Clause 41 of the Bill seeks to provide for the non-applicability of the provisions of Chapter IV regarding the payment of bonus in certain cases which, inter alia, include employees employed in Life Insurance Corporation of India, Indian Red Cross Society or any other institution of a like nature including its branches, Reserve Bank of India, etc. It also provides that the provisions regarding the payment of bonus shall apply to such establishments in which twenty or more persons employed or were employed on any day during an accounting year.

Chapter V - Advisory Board

Clause 42 of the Bill seeks to provide for Central Advisory Board to be constituted by the Central Government which shall be tripartite in nature having representatives from employees, employers and independent persons as well as there will be one third representation of women in this Board and the said Board shall advise the Central Government on issues referred to it. It also provides that every State Government shall also constitute a State Advisory Board for advising the State Government, inter alia, on fixation or revision of minimum wages, increasing employment opportunities, etc. The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in the clause. One third members of the State Advisory Board shall be women.

Chapter VI - Payment of Dues, Claims and Audit

Clause 43 of the Bill seeks to provide the responsibility for payment of various dues of the employees. In case of failure to pay the dues, the concerned company or firm or association or any other person who is the proprietor of the establishment shall be responsible for the payment of dues.

Clause 44 of the Bill seeks to provide for payment of various undisbursed dues of the employee in case of his death. Such dues will be paid to the persons nominated by the employee and where there is no such nomination or for any reasons such amount cannot be paid to the person nominated, then, the dues shall be deposited with the Authority specified in the rules, who shall deal with the amount in the manner provided in such rules. Where the dues are paid by the employer in accordance with this clause by the employer, then, he shall be discharged of his liability to pay the dues.

Clause 45 of the Bill seeks to provide for appointment of Authority by the appropriate Government to decide the claim of employees which arises under the provisions of the proposed legislation. The said authority shall have powers to award payment of claim amount along with compensation which may extend up to ten times of the claim amount. Further, if an employer fails to pay the amount of claim and compensation awarded by the Authority, then, the said Authority shall issue a recovery certificate 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. Any application before the authority for claim referred above may be filed by the employee concerned or Inspector-cum-Facilitator or by any Trade Union of which the employee is a member.

Clause 46 of the Bill seeks to provide that if a dispute arises between an employer and his employees with respect to the bonus payable under the proposed legislation or 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 under the Industrial Disputes Act, 1947.

Clause 47 of the Bill seeks to provide that if in any dispute referred to the authority, appellate authority, a Tribunal or an arbitrator, any corporation or a company (other than a banking company) submits to the said authority, appellate authority, a Tribunal or an arbitrator, the documents like balance sheet and profit and loss account duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under Companies Act, 2013, then, such documents shall be presumed to be accurate and it shall not be necessary for the corporation or company to prove the accuracy of such statements. However, when an application is made to the said authority, appellate authority, Tribunal or arbitrator by any employee or a Trade Union being a party to the dispute requiring any clarification to the said statements, then, on order of the authority, appellate authority, Tribunal or arbitrator the concerned corporation or company, as the case may be, shall clarify the same.

Clause 48 of the Bill seeks to provide for audit of accounts of employers not being corporations or companies. Where an employer fails to get the accounts audited then there is provision for getting the accounts audited by such auditor or auditors as the authority thinks fit and the expenses of and incidental to such audit including the remuneration of auditor or auditors shall be determined by the authority and be paid by the employer. In case of failure of payment, this clause contains the provision for the recovery of such expenses.

Clause 49 of the Bill makes provisions for appeal against the order of the authority.

Clause 50 of the Bill seeks to provide for records, returns and notices. The said clause makes provisions for the maintenance of register by the employer containing the details with regard to persons employed, muster roll, wages and such other details in the manner to be specified in the rules by the appropriate Government. It also provides for the display of a notice on the notice board at a prominent place at the establishment containing the abstract of the proposed legislation, 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. There

is provision for issue of wage slip. The employer who employs not more than five persons for agriculture or domestic purpose is exempted from the provision but when demanded, he shall produce before the Inspector-cum-Facilitator the reasonable proof of the payment of wages to the persons employed.

Chapter VII deals with Inspector-Cum-Facilitator

Clause 51 of the Bill seeks to provide for appointment of Inspector-cum-Facilitator and their powers. The Inspector-cum-Facilitator may supply information and advice to employer and workers concerning the most effective means of complying with the provisions of the proposed legislation. The said clause also empowers the Inspector-cum-Facilitator to inspect the establishment based on inspection scheme.

Chapter VIII - Offences and Penalties

Clause 52 of the Bill seeks to provide for cognizance of offences under the provisions of the proposed legislation. The cognizance of the offences shall be taken by the court on a complaint. No court inferior to the Metropolitan Magistrate or Magistrate of the first class shall try the offences.

Clause 53 of the Bill seeks to provide for the appointment of officers not below the rank of Under Secretary to the Government of India or equivalent level officer in the State Government to dispose of cases punishable only with fine up to fifty thousand rupees, and procedure therefor, so as to reduce the burden on subordinate judiciary.

Clause 54 of the Bill seeks to provide penalties for offences. Enhanced penalties shall be imposed on the offender who is again found guilty of similar offence already committed by him, for which he has been convicted. The Inspector-cum-Facilitator shall, before initiation of prosecution proceedings, give an opportunity to the employer to comply with the provisions of the proposed legislation. The prosecution proceedings shall not be initiated against the employer who complies with the said provisions within the period specified. Such opportunity shall not be accorded to an employer, if the violation of the same nature of the provisions of proposed legislation is repeated within a period of five years from the date on which the first violation was committed.

Clause 55 of the Bill seeks to provide for offences by companies. If the offence is committed by 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 offence and shall be liable to be proceeded against and punished accordingly. Protection has been provided where offence has been committed without the knowledge or where all due diligence to prevent the commission of the offence has been exercised. The director, manager, secretary or other officer of the company with the consent or connivance of whom the offence has been committed shall also be deemed to be guilty.

Clause 56 of the Bill seeks to provide for composition of offences. Only the offences for which there is no punishment with imprisonment shall be compounded. The compounding money shall be a sum of fifty per cent. Of maximum fine. There is no compounding for a similar offence compounded earlier or for commission of which conviction was made committed for the second time or thereafter within a period of five years.

Chapter IX deals with Miscellaneous

Clause 57 of the Bill seeks to provide bar of suits. The matters in which the court shall not entertain the suit, inter alia, relate to the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus.

Clause 58 of the Bill seeks to provide for protection of action taken in good faith by the appropriate Government or any officer of that Government under the provisions of the proposed legislation.

Clause 59 of the Bill seeks to provide regarding burden of proof. The burden of proving that the dues on account of remuneration or bonus, etc., have been paid shall be on the employer.

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Clause 60 of the Bill seeks to provide that any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under the provisions of the proposed legislation shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount.

Clause 61 of the Bill seeks to provide for overriding effect in respect of laws, agreements, etc., which are inconsistent with the provisions of the proposed legislation. Such laws, agreements, etc., shall not affect the provisions of the proposed legislation.

Clause 62 of the Bill seeks to provide for delegation of powers. The appropriate Government may, by notification, delegate the powers exercisable by it in the proposed Code with or without any condition to the officer or authority subordinate to that Government, etc., as may be specified in the notification.

Clause 63 of the Bill seeks to provide for exemption of employer from liability in certain Cases. The employer who is charged with an offence under the provisions of the proposed legislation shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before of the court at the time appointed for hearing the charge and if used he proves that he has, after the commission of the offence has been proved, due diligence to enforce the execution of the provisions of the proposed legislation and the other person committed the offence without his knowledge, consent or connivance, then, that other person shall be convicted of the offence and the employer shall be discharged.

Clause 64 of the Bill seeks to provide for protection against attachment of assets of employer with Government.

Clause 65 of the Bill seeks to provide for the powers of the Central Government to give directions to the State Government for carrying into execution of the provisions of the proposed legislation and such directions shall be binding.

Clause 66 of the Bill seeks to provide that the provisions of the proposed legislation shall not effect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Bonus Schemes Act, 1948, or of any scheme made thereunder.

Clause 67 of the Bill seeks to confer power upon the appropriate Government to make rules. Such powers are of general nature for carrying out the provisions of the proposed legislation and also the matters on which such rules may be made have been specified. There is provision for laying the rules, as the case may be, before the Parliament or the State Legislature.

Clause 68 of the Bill seeks to confer power upon the Central Government to make provisions published in the Official Gazette and not inconsistent with the provisions of the proposed legislation for removing the difficulty. Such powers shall not be exercised after expiry of a period of two years from the commencement of the proposed legislation and every order published under this clause shall be laid before the each House of Parliament.

Clause 69 of the Bill seeks to provide for repeal of certain enactments, namely, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976, and saving of things done and action taken there under.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE 2019

The Occupational Safety, Health and Working Conditions Code 2019 has been introduced in the Parliament.

According to the Statement of Objects and Reasons of the Occupational Safety, Health and Working Conditions Code 2019, the Second National Commission on Labour (the Commission) had submitted its Report on "Occupational Safety, Health and Working Conditions of the Workers" in June, 2002. In pursuance of the recommendations of the said Commission, it has become necessary to enact a Central Legislation in the form of a Code, namely the Occupational Safety, Health and Working Conditions Code, 2019 which incorporates the essential features of the thirteen enactments relating to factories, mines, dock workers, building and other

construction workers, plantations labour, contract labour, Inter-State migrant workmen, working Journalist and other newspaper employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers and to repeal the respective enactments. It provides broader legislative framework to secure just and humane conditions of work with flexibility and to provide enabling provisions for making rules and regulations in tune with the emerging technologies.

The Occupational Safety, Health and Working Conditions Code, 2019 simplifies, amalgamates and rationalises the provisions of thirteen enactments in the aforesaid areas and to comprise them in a concise volume with certain important changes. The thirteen enactments are as follows:

- The Factories Act, 1948;
- The Mines Act, 1952; The Dock Workers (Safety, Health and Welfare) Act, 1986;
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- The Plantations Labour Act, 1951;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Working Journalist and other Newspaper Employees (Conditions of Service and Misc. Provision) Act, 1955;
- The Working Journalist (Fixation of rates of wages) Act, 1958;
- The Motor Transport Workers Act, 1961;
- Sales Promotion Employees (Condition of Service) Act, 1976;
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
- The Cine Workers and Cinema Theatre Workers Act, 1981. After the enactment of the Code, all these Acts being subsumed in the Code will be repealed.

Safety, Health, welfare and improved Working Conditions are pre-requisite for well-being of the worker and also for economic growth of the country as healthy workforce of the country would be more productive and occurrence of less accidents and unforeseen incidents would be economically beneficial to the employers also. With the ultimate aim of extending the safety and healthy working conditions to all workforce of the country, the Code enhances the ambit of provisions of safety, health, welfare and working conditions from existing about 9 major sectors to all establishments having 10 or more employees.

The salient features of the Occupational Safety, Health and Working Conditions Code, 2019, inter alia, provides for the following, namely:–

- (i) To impart flexibility in adapting dynamic factors and technological changes, in the matters relating to health, safety, welfare and working conditions of workers;
- (ii) To apply the provisions of the proposed Code for all establishments having ten or more workers, other than the establishments relating to mines and docks;
- (iii) To expand –
 - (a) the ambit of the provisions relating to working conditions of cine and theatre workers to include them in the digital audio-visual workers encompassing all forms of electronic media;
 - (b) the scope of journalists to include them in electronic media such as in e-paper establishment or in radio or in other media;

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- (c) the scope of Inter-State migrant workers to include therein the workers recruited or engaged by an employer directly, from one State to another State for employment in his establishment;
- (d) the definition of “family” to include therein the dependent grandparents in order to take care of them in old age;
- (iv) To provide the concept of “one registration” for all establishments having ten or more employees;
- (v) To constitute “the National Occupational Safety and Health Advisory Board” to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;
- (vi) To constitute “the State Occupational Safety and Health Advisory Board” at the State level to advise the State Government on such matters arising out of the administration of the proposed Code;
- (vii) To make a provision for the constitution of “Safety Committee” by the appropriate Government in any establishment or class of establishments;
- (viii) To allow the women employees to work at night, that is, beyond 7 PM and before 6AM subject to the conditions relating to safety, holiday, working hours and their consent;
- (ix) To make a provision of “common license” for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for five years for engaging the contract labour;
- (x) To enable the courts to give a portion of monetary penalties upto fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death; and
- (xi) To make a provision for adjudging the penalties imposed under the Code.

COVERAGE OF THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019

The Occupational Safety, Health and Working Conditions Code, 2019 contains one hundred thirty four Clauses and divided into Thirteen Chapters.

Chapter I deals with Preliminary

Chapter II deals with Registration

Chapter III deals with Duties of Employer and Employees

Chapter IV deals with Occupational Safety and Health

Chapter V deals with health and working conditions

Chapter VI deals with Welfare Provisions

Chapter VII deals with Hours of Work and Annual Leave with Wages

Chapter VIII deals with Maintenance of registers and records and returns

Chapter IX deals with Inspector-Cum-Facilitators and Other Authority

Chapter X deals with Special Provision Relating to Employment of Women

Chapter XI deals with Special Provisions for Contract Labour and Inter-State Migrant Worker

Chapter XII deals with Offences and Penalties

Chapter XIII deals with Miscellaneous

Chapter I - Preliminary

Clause 1 of the Code relates to short title, extent, commencement and application of the Occupational Safety, Health and Working Conditions Code.

Clause 2 of the Code relates to the definition of certain expressions used in the proposed Code.

Chapter II - Registration

Clause 3 of the Code relates to the procedure for the registration of certain establishments.

Clause 4 of the Code relates to the provision of appeal against the order of the registering officer under clause 3.

Clause 5 of the Code relates to the notice by employer for the commencement and cessation of the operation of any industry, trade, business, manufacture or occupation in the concern establishment.

Chapter III - Duties of Employer and Employees

Clause 6 of the Code relates to the duties of employer.

Clause 7 of the Code relates to the duties and responsibilities of owner, agent and manager in relation to mine.

Clause 8 of the Code relates to the duties of manufacturers, designer, importers or suppliers.

Clause 9 of the Code relates to the duties of architects, project engineers and designers in respect of building or other construction work, project or part thereof.

Clause 10 of the Code relates to the notice of certain accidents at any place in an establishment by the employer or owner or agent or manager.

Clause 11 of the Code relates to the notice of certain dangerous occurrences by the employer to the authorities determined by the appropriate Government by rules.

Clause 12 of the Code relates to the notice of certain diseases specified in the third schedule to the Code.

Clause 13 of the Code relates to the duties of the employees at workplace.

Clause 14 of the Code relates to the rights of employee to obtain the information from the employer.

Clause 15 of the Code relates to the duty not to interfere with or misuse things which is provided in the interest of health, safety or welfare.

Chapter IV - Occupational Safety and Health

Clause 16 of the Code relates to the constitution of National Occupational Safety and Health Advisory Board and the constitution of technical committees or advisory committees to assist the National Board.

Clause 17 of the Code relates to the constitution of State Occupational Safety and Health Advisory Board and the committee to assist the Board.

Clause 18 of the Code empowers the Central Government to declare standards on occupational safety and health for work places. Clause 19 of the Code relates to the research related activities in the area of occupational safety and health so as to conduct research, experiments and demonstrations.

Clause 20 of the Code relates to the safety and occupational health surveys by the Director General of Factory Advice Service, Director General of Mines Safety, Director General of Health Service and other officers authorised by the appropriate Government.

Clause 21 of the Code relates to the statistics.

Clause 22 of the Code relates to the constitution of Safety Committee and appointment of safety officers.

Chapter V - health and working conditions

Clause 23 of the Code relates to the responsibility of employer for maintaining health and working conditions.

Chapter VI - Welfare Provisions

Clause 24 of the Code relates to impose responsibility on the employer to provide and maintain the welfare facilities.

Chapter VII - Hours of Work and Annual Leave with Wages

Clause 25 of the Code relates to the weekly and daily working hours, leave, etc.

Clause 26 of the Code relates to the weekly and compensatory holidays to the workers.

Clause 27 of the Code relates to the extra wages for overtime.

Clause 28 of the Code relates to the provisions regarding night shifts.

Clause 29 of the Code relates to the prohibition of overlapping shifts and arrangement of the system of shifts.

Clause 30 of the Code relates to the restriction on double employment in factory and mine. Clause 31 of the Code relates to the notice of periods of work.

Clause 32 of the Code relates to the provision of annual leave with wages in an establishment.

Chapter VIII - Maintenance of registers and records and returns

Clause 33 of the Code relates to maintenance of registers and records and filing of returns by the employer electronically or otherwise in accordance with the rules made by the appropriate Government.

Chapter IX - Inspector-Cum-Facilitators and Other Authority

Clause 34 of the Code relates to the appointment of Inspector-cum-Facilitators and Chief Inspector-cum-Facilitator.

Clause 35 of the Code relates to the powers of Inspector-cum-Facilitators which includes power to enter to work place, examine the premises, etc., and inquire into any accident or dangerous occurrence, etc., with necessary details in this regard.

Clause 36 of the Code relates to the powers and duties of District Magistrate in respect of mines.

Clause 37 of the Code relates to the third party audit and certification by the empanel experts. Clause 38 of the Code relates to the special powers of Inspector-cum-Facilitator in respect of factory, mines and dock work and building and other construction work.

Clause 39 of the Code relates to the secrecy of information by Chief Inspector-cumFacilitator or Inspector-cum-Facilitator, etc.

Clause 40 of the Code relates to the facilities to be afforded to the Inspector-cumFacilitator. Such facilities shall be provided by the employer of the establishment.

Clause 41 of the Code relates to the powers of Special Officer to enter, measure, etc., in relation to mine.

Clause 42 of the Code relates to the appointment of the medical officer.

Chapter X - Special Provision Relating to Employment of Women

Clause 43 of the Code relates to the employment of women in night subject to the conditions to safety, holidays and working hours with the consent of such women before 6 a.m. and beyond 7 p.m.

Clause 44 of the Code relates to the prohibition of employment of women in dangerous operation.

Chapter XI - Special Provisions for Contract Labour and Inter-State Migrant Worker

Clause 45 of the Code relates to the details of the applicability of part I of chapter XI of the proposed Code.

Clause 46 of the Code relates to the appointment of licensing officers who shall be the Gazetted Officers of the appropriate Government for the purpose of part I, chapter XI of the proposed Code.

Clause 47 of the Code relates to the licensing of contractors.

Clause 48 of the Code relates to the grant of license. Clause 49 of the Code relates to the provisions that the contractor shall not charge directly or indirectly, in whole or in part, any fee or commission from the contract labour.

Clause 50 of the Code relates to the information regarding work order to be given to the appropriate Government.

Clause 51 of the Code relates to revocation, suspension and amendment of licence.

Clause 52 of the Code relates to the provisions of the appeal. Such appeal shall be made by the aggrieved person against the order made in respect of licensing of contractor, grant of licence and revocation, suspension and amendment of licence.

Clause 53 of the Code relates to the liability of principal employer for welfare facilities relating to providing of canteens, rest rooms, drinking water and first aid.

Clause 54 of the Code relates to the effect of employing contract labour from a no licenced contractor. In case of employment of contract labour through such contractor shall be deemed to be employed by the principal employer.

Clause 55 of the Code relates to the responsibility for payment of wages.

Clause 56 of the Code relates to the experience certificate to be given by the concerned contractor or principal employer of the establishment concerned to the contract labour annually or as and when demanded giving details therein of the work performed by the contract labour.

Clause 57 of the Code relates to the prohibition of employment of contract labour. The appropriate Government is empowered under this clause to impose restriction in respect of the employment, after consultation with the National Board or a State Advisory Board.

Clause 58 of the Code relates to the power to exempt in special cases. Such exemption relating to provisions of the proposed Code or the rules made thereunder shall be made by the appropriate Government, in the case of an emergency as specified in the clause.

Clause 59 of the Code relates to the facilities to inter-State Migrant workers. Such facilities shall be provided by the employer of an establishment employing inter-State Migrant worker for the purposes as specified in the clause.

Clause 60 of the Code relates to displacement allowance. Such allowance shall be paid by the contractor to the inter-State Migrant worker at the time of recruitment which shall be equal to fifty per cent. of the monthly wages payable to the workers, and so paid amount shall not be refundable and shall be in addition to the wages or other amount payable to the worker.

Clause 61 of the Code relates to the journey allowance, etc. Such journey allowance shall be confined from the place of residence of the inter-State Migrant workers in his State to the place of work in the other State and vice versa and shall be payable by the contractor.

Clause 62 of the Code relates to the past liabilities. On the completion of the period of employment of the inter-State migrant worker, the past liabilities deemed to have been extinguished and shall not be recoverable by the principal employer or the contractor.

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Clause 63 of the Code relates to the prohibition of employment of audio-visual worker without agreement. Such agreement shall be in writing and between the audio-visual worker and the producer of audio-visual programme or between producers of the audio-visual programme with the contractor and shall be registered with the competent authority.

Clause 64 of the Code relates to the managers in mine. Subject to the rules made in this behalf, every mine shall be under the sole manager. The clause also provides the responsibility of a manager.

Clause 65 of the Code relates to non-applicability of the Code in certain cases such as excavation in mine being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale subject to the conditions specified in the clause and in case the mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand, etc., as specified in the Code.

Clause 66 of the Code relates to the exemption from provision of the Code regarding employment. Such exemptions or in case of emergency involving serious risk to the safety of the mine or of persons employed therein, or in case of an accident, or in case of any act of God or in case of any urgent work to be done to machinery, plant or equipment of the mine as a result of breakdown of such machinery plant or equipment.

Clause 67 of the Code relates to the employment of persons below eighteen years of age. It provides that no person below eighteen years of age shall be allowed to work in any mine or part thereof but in case of apprentices and other trainees, such age limit is not below sixteen years.

Clause 68 of the Code relates to decision of question whether any excavation or working or premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on in a mine shall be decided by the Secretary to the Government of India and a certificate given by him in this behalf shall be conclusive.

Clause 69 of the Code relates to provide licence to industrial premises and person. Without licence no employer shall use or allow to use any place or premises.

Clause 70 of the Code relates to appeals. A person aggrieved by the decision of the competent authority refusing to grant or renew a licence or cancelling or suspending a licence may, within the prescribed time and with prescribed fee, appeal to such authority notified by the State Government.

Clause 71 of the Code relates to permission to work by employees outside industrial premises. Such permission shall be granted by the State Government and the employer shall maintain the record of the work permitted to be carried on outside the industrial premises.

Clause 72 of the Code relates to non-applicability of part IV relating to beedi and cigar workers.

Clause 73 of the Code relates to prohibition of employment of certain persons in certain building or other construction work. The employer shall not allow the person who is deaf, of defective vision or has a tendency to giddiness to work in any operation of building or other construction work as specified in the clause.

Clause 74 of the Code relates to approval and licensing of factories. The registration and licensing shall be made in accordance with the rules framed by the appropriate Government.

Clause 75 of the Code relates to liability of owner of premises in certain circumstances. The owner of the premises and occupier of the factories utilising common facilities shall jointly and severally be responsible for provision and maintenance of the common facilities and services as specified in the clause.

Clause 76 of the Code relates to power to apply the proposed code certain premises. The provision of part VI of the proposed code shall apply to any place wherein manufacturing process is carried on with or without the aid of power irrespective of the number of workers working in the factory by the appropriate government by notification.

Clause 77 of the Code relates to dangerous operation. In this respect, the appropriate government may make

the rule relating to any factory or class or description of factories in which manufacturing process is carried on in which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease as specified in the clause.

Clause 78 of the Code relates to constitution of Site Appraisal Committee. The Site Appraisal Committee constituted under this clause shall make its recommendation within a period of ninety days of the receipt of the application for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of such factory, etc.

Clause 79 of the Code relates to compulsory disclosure of information by the occupier. The disclosure shall be in the manner provided by the State Government in the rules and as specified in the clause.

Clause 80 of the Code relates to the specific responsibility of the occupier in relation to hazardous process. Such responsibility of the occupier of a factory involving hazardous process relates to maintaining accurate and up-to-date health records.

Clause 81 of the Code relates to National Board to inquire into certain situations specified in the clause. In such situation, the Central Government may direct the National Board to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of the failure or neglect in the adoption of any measures or standards as per rules.

Clause 82 of the Code relates to emergency standards. The Central Government may direct the Directorate General Occupational Safety and Health formerly known as Directorate General of Factory Advice Service and Labour Institutes or any Institution authorised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of the hazardous processes.

Clause 83 of the Code relates to permissible limits of exposure of chemicals and toxic substances. The maximum permissible limits in any factory shall be of the value as may be in the rules by the State Government.

Clause 84 of the Code relates to right of workers to warn about imminent danger. In the case of reasonable apprehension of imminent danger, the workers may bring the same in the notice of the occupier, agent, manager, or any other person who is in charge of the factory or the person concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector-cum-Facilitator.

Clause 85 of the Code relates to appeal against the order of Inspector-cum-Facilitator in case of factory. The details regarding appeal shall be provided by the State Government in the rules.

Clause 86 of the Code relates to the power to make exempting rules and order. This clause provides for defining by rules made by the appropriate government defining the persons who hold positions of supervision or management or employed in a confidential position in a factory.

Chapter XII – Offences and Penalties

Clause 87 of the Code relates to the general penalty for offences. Such offences are those offences which are not expressly provided under the other provisions of the proposed Code. Clause 88 of the Code relates to the punishment for causing obstruction to Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator etc.

Clause 89 of the Code relates to penalty for non-maintenance of register, records and non-filing of returns, etc.

Clause 90 of the Code relates to punishment for contravention of provisions of the proposed code or any rules, regulation, or bye-laws, etc. It also provides enhanced punishment in case of repetition of such offences after conviction.

Clause 91 of the Code relates to punishment for falsification of records, etc.

Clause 92 of the Code relates to penalty for omission to furnish plans, etc., without reasonable excuse and the burden of proof lies on the person making the omission.

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Clause 93 of the Code relates to punishment for disclosure of information. The details regarding the information have been specified in the clause.

Clause 94 of the Code relates to penalty for wrongfully disclosing results of analysis. The details of the disclosure have been specified in the clause.

Clause 95 of the Code relates to penalty for contravention of the provisions of duties relating to hazardous processes as specified in the clause.

Clause 96 of the Code relates to penalty for contravention of the provisions of duties relating to safety provisions resulting in an accident.

Clause 97 of the Code relates to punishment for working in contravention of any general or special order issued under the provisions of clause 38.

Clause 98 of the Code relates to punishment for failure to appoint manager in contravention of the provision of the clause 64. Clause 99 of the Code relates to offences by employees.

Clause 100 of the Code relates to prosecution of owner, agent or manager of a mine as specified in the clause.

Clause 101 of the Code relates to exemption of owner, agent or manager of a mine or occupier of a factory from liability in certain cases. Such cases are that the owner, agent or manager or occupier proves to the satisfaction of the court that he has exercised due diligence to enforce execution of the proposed court or that the other person committed the offence in question without his knowledge, consent or connivance.

Clause 102 of the Code relates to offences by companies, etc., under the circumstances specified in the clause every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the 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.

Clause 103 of the Code relates to limitation of prosecution and cognizance of offence under the proposed Code.

Clause 104 of the Code relates to power of officers of appropriate Government to impose penalty in certain cases. Such cases are offences under the proposed Code in which only fine is the penalty.

Clause 105 of the Code relates to jurisdiction of a court for entertaining proceedings, etc., for offence. The jurisdiction of the court shall be the place where the establishment is for the time being situated.

Clause 106 of the Code relates to the power of court to make order. Such order relates to the awarding punishment requiring the offender within a period specified in the order.

Clause 107 of the Code relates to compounding of offences. Under the provision, the offences in which only fine is punishment, are compoundable.

Chapter XIII- Miscellaneous

Clause 108 of the Code relates to delegation of powers. In delegation, the conditions subject to which the delegation would be made, may be specified.

Clause 109 of the Code relates to onus as to age. The burden of onus is on the accused to prove that such person is not under such age.

Clause 110 of the Code relates to onus of proving limits of what is practicable, etc. This relates to the failure to comply with the duty to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or all practicable measures were taken to satisfy the duty or requirement.

Clause 111 of the Code relates to common licence for contractor, factories and to industrial premises and person.

Clause 112 of the Code relates to effect of law and agreements inconsistent with the proposed Code.

Clause 113 of the Code relates to power of the appropriate Government to direct inquiry in certain cases. Such cases relate to event of the occurrence of an accident in an establishment which has caused or had the potentiality to cause serious danger to employees and other persons within, and in the vicinity of the workplace or whether immediate or delayed, or any occupational disease as specified in the Third Schedule.

Clause 114 of the Code relates to publication of reports. Such reports are the reports, submitted to the appropriate Government by the National Board or State Advisory Board or any extracts from any report submitted to it under the proposed Code.

Clause 115 of the Code relates to powers of Central Government to give directions to State Government for the implementation of the provisions of the proposed Code.

Clause 116 of the Code relates to general restriction on disclosure of information.

Clause 117 of the Code relates to barring of the jurisdiction of civil courts in respect of the matters to which any provision of the proposed Code applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under the proposed Code.

Clause 118 of the Code relates to protection to the person from legal proceeding if action is taken in good faith in pursuance of the proposed Code.

Clause 119 of the Code relates to power to exempt in special cases as specified in the clause.

Clause 120 of the Code relates to power to exempt during public emergency.

Clause 121 of the Code relates to power to exempt public institution. Such institution, workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training, research or information, from all or any of the provisions of the proposed Code.

Clause 122 of the Code relates to persons required to give notice, etc., legally, bound to do so within the meaning of section 176 of the Indian Penal Code.

Clause 123 of the Code relates to power of Central Government to amend the Schedule by way of addition, alteration or omission therein.

Clause 124 of the Code relates to power of Central Government to remove difficulties by the order published in the Official Gazette.

Clause 125 of the Code relates to power of appropriate Government to make rules subject to condition of previous publication and by notification, for carrying out the purposes of the proposed Code.

Clause 126 of the Code relates to power of the Central Government to make rules subject to condition of previous publication and by notification, for carrying out the purposes of the proposed Code.

Clause 127 of the Code relates to power of the State Government to make rules subject to condition of previous publication and by notification, for carrying out the purposes of the proposed Code.

Clause 128 of the Code relates to power of Central Government to make regulations in relation to mines and dock work by notification in the Official Gazette which shall be consistent with the proposed Code.

Clause 129 of the Code relates to prior publication of rules, etc. The power to make rules, regulations, and bye-laws under the proposed Code shall be subject to the condition of the previous publication.

Clause 130 of the Code relates to power to make regulation without previous publication. The matters in which regulations shall be made are specified in the clause.

Clause 131 of the Code relates to frame bye-laws. The employer of a mine is empowered to made bye-laws as specified in the clause.

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Clause 132 of the Code relates to laying of regulations, rules and bye-laws, etc., before Parliament.

Clause 133 of the Code relates to laying of rules made by State Government before the State Legislature.

Clause 134 of the Code relates to repeal and savings. The enactments which are being repealed are enumerated in the clause. Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed for the purposes under any of the provisions of the enactments repealed by the proposed Code, shall be deemed to have been appointed under the proposed Code for such purposes under the proposed Code. Certain actions under the repealed enactments have also been saved.

LABOUR CODE ON SOCIAL SECURITY

It is the duty of the society in general and government in particular to ensure that nobody who has contributed to the growth of the nation in his good days is left alone to face the problems like sickness, accident, unemployment, disability, maternity and old age in his lean days. Under a Social Security System, these risks and eventualities can be managed through small contributions by all through a robust social security framework.

Social Security means a program that requires the government to create a fund or system which can be used to make payments to people who are unable to work (and earn his livelihood) because of circumstances. Essential features of Social Security are that it is mandatory (by law), administered by government and it has provisions of rights and enforcements. The social security paradigm is not a simple goodwill gesture or appeasement from the government to the citizen but a Right.

No wonder that the right to social security has been treated as a human right by the United Nations. According to Articles 22 and 25 of the Universal Declaration of Human Rights, access to Social Security is a basic right. The 'Social Security (Minimum Standards) Convention 102' adopted by the International Labour Organization (ILO) in 1952 also prescribes minimum standards for benefits in the important areas of social security. India has not yet ratified this convention. It is high time now that the Country moves towards providing the minimum standards of social security to all its citizen.

As per the practices prevalent worldwide, Social Security benefits can be State (taxpayer) funded, employer funded or worker funded, or any combination of these though the ideal scenario would be that every citizen of the country earns enough to pay for his social security to the state.

Social Security is not only aimed at personal welfare of citizen, but is also linked to National economic prosperity, as it enables the person(s) exposed to these risks to spend the earnings in maintaining a decent standard of living with a life of dignity instead of stashing the earnings somewhere for unforeseen eventualities.

Social Security also contributes to economic progress as effective Social security Policy, labour protection laws, medical facilities and unemployment benefits play a highly significant role in avoiding social costs and safeguarding efficient labour potential.

The Labour Code on Social Security is an attempt to simplify, rationalize and consolidate the hitherto fragmented laws to make them less complex for easier comprehension implementation and enforcement.

According to the statement of objects and reasons of the Labour Code on Social Security & Welfare, the Second National Commission on Labour, which submitted its Report in June 2002, had recommended that the existing set of labour laws relating to social security should be grouped into a single Social Security Code. Provision of adequate Social Security for the entire workforce regardless of the nature of their employment has also been accepted as a fundamental element towards achievement of Goal 8 (Decent Work and Economic Growth) of the 2030 Sustainable Development Goals Agenda adopted at the UN Summit held in September 2015. In pursuance with the recommendation of the National Commission on Labour and fulfilling our Commitment towards the attainment of Sustainable Development Goals, the Government of India decided to formulate a comprehensive code relating to Social Security.

The objective of this Code is to provide a legislative back-up and an Administrative Structure for a right based, Universal basic Social Security to the entire workforce in the Country.

Salient features of the Labour Code on Social Security

The Labour Code on Social Security, *inter-alia* aims to achieve the following:

- a) Provide universal social security including Pension, Sickness Benefit, Maternity Benefit, Disablement Benefit, Invalidity Benefit, Dependent's benefit, Medical Benefit, Group Insurance Benefit, Provident Fund, Unemployment Benefit and International worker's pension benefit
- b) Cover all kinds of employment including part-time workers, casual workers, fixed term workers, piece rate commission rated workers, home-based workers, domestic workers, own account workers etc.
- c) Merge, simplify, rationalize and consolidate the fragmented labour legislations and Schemes on social security to make them less complex, easier to implement, comprehensive and effectively enforceable while protecting and maintaining the existing level of protection to those already covered through appropriate transitory provisions.
- d) Create causal linkages such as between Occupational Safety and Health and employment injury; employment policy and unemployment benefit at policy level to create synergies and to encourage decent working conditions.
- e) Establish a National Social Security Council for regulation of Social Security Schemes administered by various authorities in order to bring fragmented Social Security Schemes under a single umbrella.
- f) Create a single-window decentralized structure for administration of social security by establishing Central Board and State Boards of Social Security
- g) Empower local bodies and Panchayats for enforcement, facilitation and delivery of service.
- h) Establish a unique Aadhaar based registration system for all the workers of different categories and provide a portable Social Security Account.
- i) Extending the outreach of Social Security to the most deprived sections of society through government contribution, while to others, through a system of employers' and workers' contributions.
- j) To establish a comprehensive complaint redressal system to ensure effective rights based Social Security.

Labour Code on Social Security & Welfare subsumes the following Labour Acts:

1. The Employees' Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Employees' Provident funds and Miscellaneous Provisions Act, 1952
4. The Maternity Benefit Act, 1961
5. The Payment of Gratuity Act, 1972
6. The Unorganized Workers' Social Security Act, 2008
7. The Mica Mines Labour Welfare Fund Act, 1946
8. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
9. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
10. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976

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11. The Beedi Workers Welfare Cess Act, 1976
12. The Beedi Workers Welfare Fund Act, 1976
13. The Cine Workers Welfare (Cess) Act, 1981
14. The Cine Workers Welfare Fund Act, 1981
15. The Building and Other Construction Workers Cess Act, 199

Coverage of the Labour Code on Social Security

The Labour Code on Social Security & Welfare is divided into twenty three parts, named Part - A to Part -W. The Executive Summary of Draft Labour Code on Social Security 2018 issued by the Ministry of Labour and Employment dated 1st March, 2018 stated as under:

PART – A : Application and Definitions

Attempt has been made to 'Universalise' the applicability, hence the Code is Applicable to all 'entities' and all 'workers'. Accordingly, the definition of these terms have been worded in this part. As may be seen from above, 'Entity' is a much broader term which includes the entire spectrum of units (wherein work is done by persons) irrespective of the nature and quantum of work. Enterprise and households are sub-set of the larger universe i.e. Entity. This differentiation has been provided for in the Draft to distinguish between the enterprises which engage work for any economic activity and households who engage work for domestic requirements. Further 'enterprise' may or may not employ any worker ('establishments' are the ones that employ at least one worker).

The different terms such as business, factory, project etc. have been specifically defined to ensure that all kinds of employees get coverage under the code and there is no room for the employer to use any possible gap or loophole to avoid coverage under the provisions of the code. The term 'business' has been used to specify the kind of activity the 'enterprise' undertakes – such as manufacturing, agriculture etc. The term enterprise also include the units in which an own account worker works. Households are also included in the term 'entities' and 'employer' and thus, as such (if not specifically excluded through an entry in Schedule-I) the code applies to households and domestic workers as well.

Similarly, attempt has also been made to recognise the plethora of employment relationships that exist in labour market today. Here the objective is to include every employment relationship in the definition of 'employee' so that the employer does not get a loop-hole to avoid coverage.

Exhaustive definitions leave lesser flexibility of diverse interpretations and as inadequate coverage is one of the problematic issues in the present labour legislations in India, we have attempted comprehensive definitions of these terms to ensure universal coverage.

Schedule – I provides for exclusions: i.e., entities / workers who will be excluded. Regular Government servants will be excluded (who are covered under CCS Rules), however, contractual employees even of Government are included. Schedule-I is proposed to be dynamic – to be used for phased implementation of the Code. As such, the code has been made applicable universally, and provisions exists to cater to special treatment of various classes of entities / workers, but, for the purpose of phased implementation many such workers / entities (which we would like to cover in long run) will initially find place in Schedule – I. Thereafter gradually the Schedule – I will be pruned out to universalise the coverage.

There are two cut-offs (in respect of wage/income) defined. 'Income Threshold' and 'wage ceiling'. The term 'wage ceiling' is for the purpose of determining a maximum limit on contribution payable. On the other hand, the term 'income threshold' (which will be somewhere between minimum wage and wage ceiling) has been used for the purpose of enabling the government to provide for two different kind of schemes (for same purpose) for two different class of workers (low income and high income). One may be subsidised while the other may not.

Similarly it has been used for eligibility under sickness benefit scheme.

There is another threshold – in terms of Number of employee working under an establishment. It is used to define organised and un-organised sector. Although the Code applies to all sectors (organised or un-organised), this distinction has been kept for the purpose of eligibility of gratuity.

The term 'benefit wage' is for the purpose of arriving at the benefits for the worker under the schemes. The benefits under the schemes generally are a factor multiplied by benefit wage. The term 'deemed wage' is defined for the purpose of determining gratuity / employee compensation (where there is employer liability) and slightly differently for the purpose of determining scheme benefits.

PART – B : Social Security Organisations

This part sets out Administrative Structure for implementation of the Code. The term 'Social Security Organisation' is the collective name given to the National Council, Central Board and the State Board, i.e., the administrative set-up created by virtue of this part.

A Universalised social security will require a set-up to service almost 50 Crores of workers. As the scope of this Code expands to almost 10 times as compared to the present EPF/ESIC, a decentralised structure (with central coordination and regulation) has been proposed. Another reason for decentralised approach is Federal nature of our Constitution. The subject 'Labour' (or Social Security) fall under concurrent list of the constitution and hence sufficient role, powers and jurisdiction need to be given to States. Moreover, many Social Security schemes are run and funded by States. For integrating them in comprehensive system, it is necessary that the Social Security administrative set-up is run by the States. Considering the vast scope and jurisdiction of Social Security, Administering/ Enforcement Agency that is decentralised is more effective, and infrastructure of local bodies can be used for providing registration / grievance redressal services.

The concept behind design of the Social Security Organisations is to build strong tripartite autonomous organisations that can reach remotest rural parts of the country. Further, it is envisaged that all social security schemes and programmes will be run through this comprehensive administrative set-up – so as to remove the problem of fragmentation. Very important role has also been given to the Local Bodies (i.e. panchayats and municipal bodies) in administration of the social security system.

As per the recommendation of 2nd NCL, an overarching Regulatory body is proposed in the Code (National Social Security Council). The National Council, headed by the Prime Minister and composed of Ministers of Finance, Health and also Chief Ministers/ Administrators of all States/Union Territories apart from workers and employers is envisaged as the apex body to bring out harmonious co-ordination amongst different ministries and also at the Centre-State level. The National Council has been proposed on similar lines to the Goods and Service Tax (GST Council) which has been able to successfully roll out the GST Regime in India. The NSSC has the function to regulate and coordinate this multi-disciplinary / multi authority jurisdiction of Social Security.

The Central Board is also a tripartite body at Central Level with the functions to coordinate national comprehensive Social Security Schemes, portability of Social Security and do professional investment of funds (on behalf of state boards). Central Board shall also manage the IT system required for comprehensive registration and scheme management.

State Board is the final body (also tripartite) which shall actually administer and execute the Schemes. It includes providing services, administer collection of contributions, enforcements, managing hospitals, etc. In addition functions have been prescribed for local bodies (panchayats / urban local bodies) of registrations and facilitation.

Both the Central Board and the State Boards will also have experts of certain fields (related to social security) as members, who will be appointed by Central / State Governments respectively.

The Executive Committee and Standing Committee are sub-ordinate to National Council and State Board

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respectively. Powers can be delegated by the main body to these Committees for day-to-day functioning of these organisations.

The Code also continues the concept of 'Advisory Boards' that are in existence today for welfare of certain class of workers (such as bidi workers etc.). We understand that there will be certain sectors where informalisation is so prevalent that it may be difficult to capture employer-employee relationship and thus the contribution(s) from employer / employee too will be difficult to collect. For this purpose, the Concept of 'Contribution Augmentation Fund' has been created where money can be credited by way of budgetary allocation or imposition of Cess. These advisory boards will be advising the State Boards on the use of the 'Contribution Augmentation Fund' created for the said class of workers.

Central Government has been given the powers to supersede the Central or State Board if the Board has not been performing due functions as per the Code, while State Government has been given powers to supersede Standing Committee.

PART – C : Registration of Workers and Establishments

This part provides for a statutory universal registration of workers and entities. Basically, the primary responsibility of registration of a worker is that of the employer. In case of own-account-worker, he can register himself. However, safeguards have been provided that if the employer fails, the worker can register by himself, and also obligation has been provided to the State Board to undertake proactive campaigns / surveys to cover left-over workers, if any.

The Registration of a worker is a once in a lifetime activity, thereafter any change in status, employment etc. is to be done through amendments of Registration. Aadhar has been made mandatory so that true identification of the worker (specially in case of migration) can be made at the time of granting benefits. Also Aadhar will prevent malpractices of multiple registration of same person.

Registration is common for organised and unorganised workers – that means present concept of IP (of ESIC), UAN (of EPFO) and UWIN (of unorganised workers' SS Act) will merge into one. The Code provides for Socio-economic classification of workers at the time of Registration based on parameters that will be determined in Rules. This Socioeconomic Classification will enable the governments to handle various classes of people differently, especially in the matters of collection of contributions.

A common & universal Registration system implies that all the workers (organised or un-organised) shall be covered under the same set of Basic Schemes. The only difference would be the manner in which the contribution (or subscription charges for the schemes) shall be collected, and who would pay such contribution.

A (worker's) registration shall remain active till he indulges in proactive work (in India). If he retires, or does not engage himself in work, the registration gets de-activated. The worker's registration ceases when he dies (or migrates out of country).

It is understood that in-spite of our best efforts to cover all the workers under Registration fold (and consequently within the scope of social security schemes) there will be persons who are left out. This will specially be true in case of persons who are old and infirm at the time of application of Code and cannot be taken into fold of a contributory system. For such persons, the Code envisages (state government funded) social assistance programme, and for that purpose there is a concept of 'Special Registration' of such persons.

For persons who can-not be covered as workers but need to be provided Social Assistance (meaning fully government funded support) there is a provision of Special Registration. For example, persons who are currently old and infirm, and not in workforce will be registered under 'Special Registration'. Such special registered persons will be eligible for Social Assistance programme of the state government.

As regards registration of entities are concerned, Code prescribes for Registration of all kind of employers – be it establishments (that have a commercial purpose) or households (that employ domestic workers). An 'own-

account enterprise' will be registered both as employer and worker automatically. The objective is to bring all kinds of employers in the fold of a universal social security system.

There is a TDS like concept for collection of Contribution (to ensure better and automatic compliance) in the Code. Therefore, entities (who may otherwise not be covered under the code, but are required to do TDS) are also required to be registered and obtain a 'TAN – like' number. A manpower contractor or a placement agency too is compulsorily required to be registered.

Upon Registration, the establishments are classified in four categories based upon OSH standards of the establishments, based upon parameters that will be determined in Rules. This is done to empower the government to collect differential contribution on the basis of OSH standards. This will improve OSH compliance in establishments as there will be a financial incentive for higher OSH standard.

For implementing such a vast and universal registration system, the Panchayats and Municipal Bodies are given the task of registration of workers and entities. The State Boards will provide necessary finance. For this purpose, Facilitation Centres shall be established so that registration can happen at grassroots level.

PART – D : Funds and Schemes

This Part of the Code makes provision for establishing social security fund in the States, Union Territories wherein State Board has been constituted. It also makes provision for establishing State Gratuity Fund.

The code lays down the maximum limit (17.5% of monthly income upto wage ceiling) of contributions payable by the employer while providing that Central Government may notify such rate of contribution that are not exceeding the said maximum limit. There is power to levy lesser rate of employer's contribution where any cess have been levied on such class of employer. Similarly, employer's contribution can be lesser for establishments that are classified as those maintaining higher OSH standards.

In addition, employers (where gratuity applies) need to pay 2% of the wages as contribution to gratuity Fund. The principal employer is made liable for payment of gratuity contribution even for workers employed through contractors. The Gratuity Fund is maintained in the name of Principal Employer (and not individual employee).

Employer can also pay contribution on optional basis in respect of a person who is an Indian citizen in the event that such member is deployed to work in another country with which India does not have a social security agreement.

The employees' contribution is also limited to a maximum rate (12.5%). However, if the employee belongs to SEC-IV category, the Employee's contribution shall be zero (i.e. single contribution from employer only be collected in such cases).

In case of own account worker (and owner-cum-worker of an enterprise), there is no 'employer', and hence a single contribution from the worker himself (maximum 20% of income) is prescribed. However, if the worker is of SEC-IV, the contribution to be paid is zero (it is expected that government will contribute on his behalf). Further, in case of such own account worker belong to SEC-III, a lump-sum contribution is to be paid by the worker (without going into actual income of such worker).

The Code enjoins the employer to pay his own contribution as well as on behalf of the worker employed by him directly or by through contractor in the first instance. Contributions are to be paid on monthly basis; However, for simpler compliance provision, households (employing domestic workers) can pay consolidated contribution for quarter, semester etc. Own account workers too have to pay contributions on monthly basis, however, they too have option to pay consolidated contributions.

The code empowers the Central Government or the State Government to establish contribution augmentation fund as deemed necessary by the Central or State Government, as the case may be. The contribution augmentation fund would be administered by the respective State Board. The State Boards are empowered to

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credit to the state Social Security Fund from the State contributions on behalf of workers by general or special orders.

There is also a 'Social security Reparation fund' which will also be administered by the State Board. Such fund shall be expanded for payment of any reparation awarded to a worker for failure to provide any service to such worker or for deficiencies in the services provided. The Credits to this fund shall be from the penalties and damages recovered under the Code.

The code empowers the Central Government to prescribe and frame schemes in consultation with the National Council for providing social security for workers or employees. These will be general, basic schemes under which all the workers throughout the country shall be covered. These scheme will be uniform throughout the country and portability of benefits under these schemes shall be provided.

The State Governments have also been empowered to prescribe one or more supplementary schemes in addition to the schemes made by the Central Government in respect of workers who are not covered or not adequately covered by the schemes made by the Central Government. The code stipulates establishing a separate fund for each of the schemes framed under it.

A consolidated contribution is to be made by the Employer / worker into the State Social Security Fund. He need not bifurcate it Scheme-wise while paying the contribution. This contribution received in the State SS Fund will be credited in the name of each individual worker's account (called VIKAS). This VIKAS Account acts like an escrow account for each worker, and from the said account, subscription amount in respect of each scheme will be debited, and credited into the Scheme fund.

The code provides for establishing a National Stabilisation fund which will be used for harmonising the Scheme Funds across the country. National Stabilisation Fund will be managed by the Central Boards. Any actuarial surpluses in any scheme or unclaimed amounts will be credited to the National Stabilisation Fund, and it will be used if any state's scheme fund falls in distress. It can used for providing loans or grants to State Boards in case of deficit found in any scheme after actuarial evaluation.

The code provides that while the State Scheme Funds will vest in the States, for the purpose of professional investment of scheme fund, Central Board shall provide the investment services to the State Boards. The State Boards shall therefore transfer the current surpluses to the Central Boards for professional investments, who will invest the amounts on behalf of the State Boards. In case of any current deficits, State Boards can draw such amount as may be required from the invested amount.

The Code provides for a provision for providing Social Assistance to persons who cannot be covered under the regular contributory schemes. For Social Assistance, the person will be registered under 'special registration' and through the Funds received from the State Governments, social assistance to such persons shall be provided.

Any payment or benefit under the code shall not be transferrable or assignable. It further, provides that payment of any benefit, assistance or gratuity under this code shall not be liable for attachment in execution of any decree or order of any Court or under any Act.

The code provides that benefits can be paid to an entitled person even in the case where an employer fails to register an employee or neglects to pay any contribution in respect of the employee. In such instances, the employer shall be liable to pay the present value of the long term and short term benefits as well as any cost of medical benefit or long compensation as well as the contribution payable by the employer including interest and damages.

Provisions have been made for the manner, form and procedure for portability of benefits under the scheme in the event of change in employment from one state to another state. Thus any change in employment or state of work will be seamless in terms of availing of benefits.

PART – E : Cess and Contribution Augmentation Funds

This Part specifically provides for a levy of Building and Construction Cess, on all construction works above a certain threshold. This is for the protection of Building & Construction workers, as generally it is found that these workers are not engaged in formal employment relationship basis.

The liability of payment of BOCW cess has been imposed on the landlord (i.e. the person who commissions construction work) as the entire cost of construction has to be ultimately borne by the landlord, who commissions the construction work. The cess shall be collected by the Commissioner and proceeds of the cess shall be credited further to the Building and Other Construction Workers Contribution Augmentation Fund set up by the State Government. The landlord may pay an amount of cess in advance which shall be adjusted in the final assessment.

The Code also provides for a general power of Central Government to levy Cess on other products and services.

As such, the provision of Cess has been kept only as an alternate mechanism to collect contributions (of employers / employees). The Government does not intend to levy cess on any sector, as the normal Employer's and Employee Contribution levied under Part D should be sufficient to meet the Social Security requirement. However, it is understood that certain sectors are very prone to informality, due to which number of employees are not declared by the employers, leading to their exclusions from social security. In order to handle such sectors, the powers to levy cess has been kept, so that in sectors where employers are escaping their obligations, the concerned workers can be protected by levy of cess, and providing their contribution from this collection of cess.

There is a corresponding provision in Part D wherein it has been specified that in sectors where Cess is levied, the Government may reduce the Employer's Contribution percentage so as to avoid double taxation in such sectors.

The code also permits exemption from levy and collection of cess in any State or part thereof, provided that the Central Government, after consultation with the concerned State Government, is satisfied that there is in force a law which has adequate provision for the financing of activities to promote the social security of such persons for whom any particular cess is being collected.

PART – F : Obligations

This chapter lays down the duties of various persons under this Code. Every Employer and Contractor is obliged to deliver returns to the State Board providing detail about the employees in respect of whom contributions become due. A self-employed worker or household file a simpler return-cum-challan. The frequency will be specified in Rules. Return is also to be filed by a person who is obliged to do CDS (Contribution deduction at source). The part also obliges employers & contractors to maintain registers.

Administrative Charges are to be paid by the employers. The manner of calculation of contribution has been changed slightly as compared to EPF system. Instead of certain percentage of wage, the Administrative charges shall be certain percentage (less than 4%) of contribution. In case of State (i.e. government) contribution, same administrative charges will be deducted from the government's contribution.

Interest on delayed payments of dues is payable @ simple interest at 12% rate. Similarly, refunds, if due will be payable with interest.

If a person claims or receives benefit to which he was not entitled to, the beneficiary is obliged to return the said amount of benefit with interest.

This part also provides for a concept of Contribution deduction at source (CDS), which is on the same lines as TDS of income tax. Any person awarding a (high value) works contract to any other agency, he is obliged to deduct, from the payment due to the contractor, certain amount as CDS and deposit to SS Board. This payment goes in the credit of the said contractor, and can be utilised for payment of contractor's liability to pay contributions.

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The Part also obliges the principal employer to pay contributions and administrative charges in respect of every employee, including those engaged through contractors. The principal employer can deduct the said payments of contributions and administrative charges made to the SS Fund from the payments made to the contractor, to furnish certificate to the contractor about such deductions.

Employer cannot reduce the wages of any employee on account of employer's liability to pay contributions to the Social Security Fund. In case of transfer of ownership of any establishment, the transferor and transferee are both jointly and severally liable to pay the outstanding dues under this Code.

The Code ensures confidentiality of returns etc. No person can intentionally disclose, transmit, copy or otherwise disseminate any information collected in the course of implementing the provisions of this Code, to any person not authorized under this Code. Similarly Code prohibits unauthorised access, download, steal, tamper or destroy the data of any Social Security Organisation (SSO).

This chapter classifies as "confidential" the data and information produced during the implementation of this Code and lays down the exceptions where this restriction of confidentiality shall not apply to the Governments, their agencies and the Courts.

PART – G : Gratuity

This part pertains to payment of gratuity on the lines of the provisions under the Payment of Gratuity Act, 1972. The provisions under the code in respect of applicability of Gratuity Scheme, entitlement of gratuity, payment in lump-sum amount of gratuity, entitlement of an employee to receive better terms of gratuity under any award or agreement or contract, calculation of amount of gratuity & continuous service, interest in delay in payment of gratuity are similar to those already exists under the Payment of Gratuity Act, 1972. However, the code does not specify the minimum number of employees that should be employed in an established for applicability of gratuity scheme and the same is to be provided for in the Rules.

However, there is complete shift in the code wherein it is purposed to create State Gratuity Fund from the contribution of employer @ 2% of wages. Monthly contribution of the employer will be collected by the State Board to be credited to the individual account of the employer in the State Gratuity Fund. Thus, the State Gratuity Fund will comprise of accumulation of contribution of individual employer, which would not be a pooled fund. It has been envisaged to make employer compulsorily save for payment of gratuity, whenever required so as to ease burden on employer at the last of moment, when gratuity is to be paid.

If funds are available in the Employer's Gratuity Fund, and any employee of the said employer becomes entitled to gratuity, the Commissioner, shall release the said gratuity amount due to the employee from the amount standing in the Credit of the employer in the State Gratuity Fund. If sufficient amount is not available in the gratuity fund account of the employer, the Commissioner shall direct the employer to pay the gratuity to the employee from his own funds within 15 days. Therefore, in the proposed scheme of things, the maximum period for payment of gratuity has been enhanced to 60 days.

The most important aspect of this part of the code is to count qualifying continuous services rendered for a Principal Employer, who will be liable to pay gratuity, though under different contractors or under a contractor, who will be liable to pay gratuity, may be under different Principal Employers. This is to ensure portability of service rendered by an employee under the same Principal Employer or under the same contractor. This will benefit the employee, whose services were otherwise not counted for becoming eligible for payment of gratuity even when working under the same Principal Employer or under the same contractor.

Part – H : Maternity Benefits

The Code stipulates that the Maternity benefit scheme will be applied to all employees employed by the establishment whether employed directly or through contractor as well as own-account workers and also to

those SEC-IV workers on whose behalf, the government contributes. Maternity benefits shall be payable (in normal case) for 26 weeks.

Basically, the liability of Maternity Benefits will be taken care of by the Maternity Benefit Fund, in which the subscription amounts will come from the contribution received. However, if the employer fails to cover his employee under the maternity benefit scheme, the worker shall be provided the benefits from the fund, and recoveries shall be made from the employer under section 28.

Employer is bound not to employ any woman who has given child-birth (etc.) for a period of six weeks. He is also bound not to employ pregnant woman in arduous work, provide nursing break to woman, provide paid leave for (extended) period in case of illness arising out of confinement.

Employer can-not dismiss a woman on account of absence due to pregnancy etc. Commissioner has been given powers to investigate into complaints of wrongful dismissals in this regards and order corrective measures. Employer cannot discriminate against women during recruitment.

PART – I : Pension Schemes- Retirement, Disablement and Dependent benefits.

This part contains elaborate provisions of the social security provided to the workers in the form of old age pension upon retirement or on account of their disablement and pension to the dependents of a deceased worker.

The basic objective of this part is to provide comprehensive coverage to the workers throughout their active service life and a guarantee of old age, disability or dependent pension. Further, this part does not distinguish between death/disablement due to employment injury or otherwise as for a worker and his family, occurrence of such a contingency brings a lot of grief and mostly, where the worker is the sole breadwinner, his death or disability pushes the entire family into scarcity. Thus, by making a provision for pension through the pension schemes as may be instituted, it provides an income security to the worker and his family in times of distress.

The benefits to the workers are guaranteed and if any employee becomes disentitled from availing benefits under the Pension Scheme on account of non-coverage by the employer, the benefits are to be paid by the Commissioner in the first instance and subsequent recovery to be made from the employer in accordance with section 28 of the code.

In case of ineligibility of an employee to receive the dependent/disablement benefits due to non-completion of the qualifying service or conditions, the employer would be liable to pay compensation which would be determined by calculating the capitalized value of the pension which would have been admissible to the worker in case of disablement or to the dependents' in case of his death.

Therefore, while the provisions of this Part make compensation for personal injuries a fund based liability; it adequately protects the rights of the employee to receive compensation from the employer as well, if necessary.

Occupational diseases have been included as part of personal injury to protect the interests of the workers working in hazardous environment and compensation is admissible on the happening of such disease. The Central Government has been given the powers of fixing the minimum and maximum amounts of compensation admissible under this Part.

Any question of disablement and its extent would be determined by a medical board and the medical board shall also conduct periodical medical examination of the persons receiving disablement benefit every five years for the purpose of assessing the improvement or aggravation of disability. No such review would be required in respect of persons who have attained the age of sixty years.

Other major provisions of this Part : -

- (i) Distribution of compensation through Commissioner; direct payment to the employee not admissible;

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- (ii) Statutory duty of the employer to maintain and make entries in the accident notice book in the prescribed manner;
- (iii) Notice of claim to Commissioner through employer in case of employee and by the non-employee himself or any of his dependents in case of a non-employee;
- (iv) The Commissioner entrusted with the responsibility of disposing the matter relating to compensation under this Code within a period of three months from the date of reference and communicating the same to the worker.

PART – J : Sickness Benefits and Medical Benefits

Code endeavours to provide Sickness Benefit and Medical Benefit to all category of workers as per prescribed contributory conditions. Sickness benefit will be available only to low income workers as per income threshold. Medical benefits will be applicable only in notified areas.

While the Sickness Benefit attempts to cover loss of wages during sickness requiring abstention from work on medical advice, the Medical Benefit provides appropriate medical care.

The code envisages funding from the contributions of wage workers, self- employed persons and State contributions in respect socio-economically weaker members, separately for Sickness Benefit Fund Account and Medical Benefit Scheme Fund. The subscriptions to both schemes shall be mandatory.

The code lays down modalities of certification of sickness and abstention required from work by authorized/ recognized medical practitioners for claiming Sickness Benefit.

The code also provides for medical care to persons and their spouse who cease to be in insurable employment on account of permanent disablement or who vacate employment consequent upon superannuation, when the normal contribution ceases to be payable. The persons who retire under a Voluntary Retirement Scheme or take premature retirement are also included. In such cases, on fulfilment of certain conditions, the members have to pay contribution as specified in Medical Benefit Scheme.

On part of the employers, safeguards have been provided to prevent dismissal, discharge, reduction and penal action against an employee during his abstention on account of certified sickness or medical treatment. For early recovery from illness/sickness, the insured employee has to observe medical advice.

The State Governments are expected to meet the incidence of Sickness Benefit if it is in excess of subscriptions received. In case of shortfall, the Central Govt. may step in to cover the deficit on justified/bonafide grounds.

Similarly, the Labour Commissioner may intervene in case the incidence of sickness is abnormally high in any establishment owing to insanitary working or lodging conditions. If he is convinced, he may determine the excess expenditure incurred on Sickness Benefit and recover the same and recoup the State Sickness Fund Account.

The code enables the State Governments to establish, designate, utilize health care infrastructure and share with that of other State Governments for reasonable medical/surgical and obstetric treatment. The State Board can also designate Intermediate Agency through third party participation for providing medical care to its members and their families.

Further, the State Governments can also allow the non-members to use its unutilized health care infrastructure on user charges as per its notified protocol. The user charges would replenish the MBS Fund.

PART – K : Intermediate Agencies.

As explained earlier, the Social Security Code envisages universalisation of social security provisions so far available to a limited class of organised sector workers. A Universalised social security will require a set-up to service almost 50 Crores of workers as against 5-6 crore covered presently under ESIC/EPFO. Given the vast

scope and jurisdiction of Social Security, the code proposes a decentralised Administering/ Enforcement set up down below at the level of local bodies. At the same time, provision for intermediate agencies has been made, on the lines of PFRD Act, in the select fields such as Fund Management, Point of Presence, Service delivery, Benefit disbursement, Record keeping and Facilitation for enabling PPP system in administering social security. These Intermediate Agencies work on behalf of the State Board. The thought behind this provision is to expand the service delivery net to cater to the broad base of subscribers who are not just very large in numbers but are also very heterogeneous in their characteristics, including geographical spread, access to information, and ability to participate in this right based system. At the same time, this provision allows for engaging expertise for specialised yet non-core activities related to administration of provisions of Social Security Code while reducing the pressure on the SSAs in terms of routine responsibilities. The Core Activities under the Code continue to be the responsibility of social Security Organisations.

The scope of work/functions of the intermediate agencies is to be decided as per the terms and conditions of the licence to be given by the Director General (Central Board). Intermediate Agencies will have to meet extensive eligibility criteria depending on the function they are undertaking. There is also a provision for State Boards to nominate one or more member/director to the governing body of the IA.

The apprehension that such PPP mode of administering the activities under the code may lead to evasion or contravention of the provisions of the Code by the Intermediate Agencies has been well guarded in the Code. The code envisages adequate safeguards for exercising control over Intermediate Agencies for protecting the interest of subscribers. At the same time, it provides for appropriate opportunity to the Intermediate Agencies to put their case for consideration.

There is a provision for cancellation and suspension of licence by the Director General, if it is established, after due inquiry, that Intermediate Agency has breached the provisions of the Code related to functions for which it has been provided licence, or, without any such inquiry if Intermediate Agency fails to comply with the eligibility criteria for licence at any point of time. Under the powers to investigate the matters of any intermediate agency, the Commissioner can appoint an investigating officer to carry out the due procedure. The Code further provides for search and seizure of documents and other records by the authorised officer, appointed by the Commissioner, following the due process of inquiry. Maintenance and furnishing of such documents and records would be the responsibility of intermediate agency. Only in those cases where the Intermediate Agency is into the task of fund management, the search and seizure provisions would be exercised by the Director General.

The Code provides for State Boards to submit a report, based on the inquiry related to operations, persons involved and overall adherence by the Intermediate Agency with the provisions of the Code to the Central Board, which in turn may, inter alia decide to issue appropriate orders to the Intermediate Agency, cancel or suspend licences, supersede the Governing Body of Intermediate Agency and appoint an Administrator, as well as secure and manage the funds of the Intermediate Agency to ensure the protection to the interest of the subscriber.

PART – L: Alternate Coverage Mechanism

The objective of this chapter is to allow any establishment to operate its own PF / Gratuity Fund in lieu of such Fund framed under this Code for the benefit of employees and workers. The thumb rule for an establishment to qualify to run such an alternate mechanism is to ensure that the benefits to the employees and workers are at par or better than the benefits envisaged in the concerned scheme of this Code.

The permission to run the alternate coverage mechanism shall be granted by the concerned State Government after the consultation with the concerned State Board. However, the Central Government can also allow certain establishments to operate the alternate coverage mechanism.

Following qualifying conditions are required to be fulfilled by the establishment seeking to run its alternate coverage mechanism:

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- (i) The establishment must have complied as a covered establishment under this Code without any violation for a continuous period of five years immediately before the date of seeking the permission.
- (ii) The establishment must employ one hundred or more employees.

If alternate coverage mechanism is sanctioned, the contribution payable to the State Social Security Fund by the employer of such an establishment shall be reduced by appropriate percentage.

The Code requires that when permitted to run its alternate coverage mechanism, the employer of the concerned establishment shall establish a Board of Trustees for the administration of the respective Scheme Fund and the said Board of Trustees shall perform the duties laid down upon it u/s-95.1 of the Code. The employer of such establishment also shall perform the duties laid down upon it u/s-95.2 of the Code.

The Code has made provisions for appropriate penalty against the Trustees and the Employer who fail to observe the duties cast upon them under the Code, including the provision to cancel the permission to operate the alternate coverage mechanism. In the event of cancellation, appropriate mechanism to transfer the accumulations to the credit of employees is envisaged under the Code.

PART – M: Finance and Accounts

The provisions related to finance and accounts for Social Security Organisations as well as Intermediate Agencies have been primarily developed on the standard lines following existing provisions of EPF and MP Act 1952 and ESI Act 1948 in matters related to audit, budget estimates, holding of properties etc., valuation of assets and liabilities, writing off losses and annual report. The CAG Report so prepared will be placed before the Parliament or the State Legislature as the case may be.

The Code however, envisages few innovative and new approaches to ensure a transparent and fair financial set up. These include:

- (i) Accounts of Intermediate Agencies to be subject to CAG Audit on the same lines as that of Social Security Organizations.
- (ii) Time bound preparation of Accounts within six months of the end of the financial year.
- (iii) Provision for social audit of social security schemes by State Boards in every five years by agencies empaneled by the Central Board. Since the social security mechanism envisaged in the code operates at various levels including that of local bodies' level, social audit may help in creating ownership amongst the subscribers specially in the lower socio-economic workers strata whose contribution will be subsidized from the Government fund which will help in identifying the corrective measures right at the ground level.
- (iv) The management of unclaimed amount is the most prominent departure from the present practice. Unlike the present practice in EPFO where unclaimed amount is left as it is in the suspense account, the Code proposes for Commissioner and Board of Trustees of Alternately Covered establishments to specify, as on 30th April every year, a timeline, not less than 6 months, to invite claims and objections for the unclaimed amount for last financial year. On the completion of such timeline, the unclaimed amount at the disposal of commissioner and with the Board of Trustees of Alternately Covered establishments will be confiscated and credited in the National Stabilization Fund. While this provision, at first glance may appear to be unjust to the individual worker whose unclaimed amount was pushed to common pool, yet this provision is in fact, envisaged to correct the present situation where large unclaimed amount is lying in the suspense account to no avail. Also, with the proposed elaborate mechanism for identification and registration and update on registration including deregistration for the worker in every category, the possibility of any amount remaining unclaimed is also expected to go down drastically. This, in turn, would mean that only genuine cases where the worker has left the sphere of the code will be left for unclaimed amount. The augmentation of this surplus to the National Stabilization Fund

will push the fund back into the system to strengthen the social security scheme thus ensuring larger benefit.

Part – N : Officers and Staff of Social Security Organisations

The part deals with the Human Resource of existing as well as the proposed Social Security Organizations, their mode of recruitment, their powers if the same has not been enumerated elsewhere in the code. These officers shall be deemed to be public servants and their action which is in good faith done or intended to be done under this Code or the rules or regulations made thereunder have been protected. Senior officers of the Social Security Organizations may delegate their powers to junior officers and employees. Police Officers have been given the responsibility to inform and assist the Officers in compliance of the code.

Regulator General of Social Security of India shall be the member secretary and executive head of the National Council. Similarly, there is a provision for Director General for Central Board who is the Executive Head of the Central Board.

Regulator General and Director General shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing officer shall be eligible for reappointment if he is otherwise qualified. He can be removed by a resolution in a special meeting passed by not less than two thirds of the total strength of the National Council / Central board respectively.

The method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employees of Central Board and National Council shall be in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay unless any departure is given prior approval by the Central Government.

At the State level, there shall be a Commissioner of Social Security in each State, who shall be appointed by the State Government, shall work under the general superintendence and control of the State Board and shall be the Chief Executive and member secretary of the State Board. He shall normally hold office for maximum five years in a term and shall be eligible for reappointment if he is otherwise qualified. He can be removed by a resolution in a special meeting passed by not less than two thirds of the total strength of state board.

The method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employees of the State Board shall be such as may be stipulated in By-laws. State Board may on approval of the State Government make a departure from the said By-laws.

The salary and allowances for the officers and staff of the Central Board and the State Boards shall be paid from the administrative fund.

The Code provides for constitution of a Service named Indian Social Security Service (ISSS) which would be an Organized Group A service under Ministry of Labour and Employment, Government of India. The service has been envisaged to act as the main backbone of the Human resource of the SS Organizations running across the nation. Central recruitment and training of the social security organizations shall make sure that there is uniformity in the quality of decision making and implementation across the nation. Moreover, their all India transfer liability would make sure that every state board gets an officer with best mix of experiences. The officers of ISSS can be posted in any of the Social Security Organizations by the Central Government. ISSS will man certain percentage of posts in the respective Boards, and the rest will be manned by departmental officers of the concerned Board.

The service shall be manned by recruits from an annual competitive examination conducted by Union Public Service Commission or by encadrement of Group A officers of the Social Security Organizations or the predecessor organizations (meaning EPFO, ESIC, DGLW etc.).

For the purpose of enforcement of the Code, State Boards have been entrusted with the responsibility of appointment of inspectors.

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The Code provides for Inspectors who shall have the power to conduct enquiry, ascertaining applicability of the code and its compliance and check misuse of benefits under the code. They shall have the responsibility to inspect establishments which have been permitted to operate Alternate Coverage Mechanism too.

Social security laws are primarily beneficial for the marginalized sections of the society but they are not able to use these laws to their benefit due to lack of understanding and knowhow of the procedures. This is the reason there is a provision for facilitators by the name of Samajik Suraksha Mitras in this part.

The local bodies shall be authorized to appoint Samajik Suraksha Mitras under this Code in accordance with the rules and orders applicable to the officers and employees of the State Government drawing corresponding scales of pay. The SSMs shall get their salary from the Administrative Fund of the State Board through a grant to the local body.

Samajik Suraksha Mitras have been given the role and responsibility to be the friend and guide of the employers and the workers as far as procedural formalities for complying with or taking benefits under the provisions of the code is concerned. Their role becomes more important in cases of assisting persons with special needs.

They have been given powers to make preliminary enquiry from employers in case a worker files a complaint with them. They have also been given responsibility to mediate and conciliate between employer and employee to settle the grievance of the worker and promoting compliance of the Code and make such reports to the Commissioner for the proper discharge of his duties.

PART – O : Assessment of Dues and Resolution of Disputes

This part refers to the powers of Commissioner (i.e. his officers) to initiate compliance actions against defaults by the employer or any other persons to comply with the provisions of the code. These are Commissioner's powers and he has full authority to examine compliances by establishments etc. and determine if they have been proper/ adequate and if not, determine dues and damages (for non - compliance) against the establishments. The assessing officer also has the powers to get the records of the employer get audited by specialists in certain cases.

The part also provides for review and appeal mechanism whenever the employer / establishment has a grievance against this determination that is handled by section 122. The first level appeal, in the cases where the employer is aggrieved by the compliance action by the Commissioner lies to a authority called appellate officer.

Elsewhere, the Code (Part Q) provides for any worker / beneficiary (or even trade unions) to file a complaint in the matters of non-coverage, denial of services etc. to the Samajik Suraksha Mitra. The Samajik Suraksha Mitra is obliged to do certain actions on the complaint and the Commissioner is obliged to act upon the report of the Samajik Suraksha Mitra. Where the beneficiary is aggrieved by the action taken (or non-action) by the Commissioner on his complaint, the first level appeal can be filed to the same appellate officer.

The first appellate officer also hears appeals against other orders of the authorities (under the code) such as orders related to registration (or denial thereof), orders relating to entitlement of gratuity, confiscation of unclaimed amounts etc. He also has been given role of determining certain questions and disputes, such as whether any person will be treated as employee or not, whether any entity is principal employer or not, etc.

There is no condition for pre-deposit of (disputed) assessed amount before entertainment of appeal before the (first level) Appellate officers. However, admitted amount has to be paid before entertainment of appeal. This will enable easy resolution of employers' disputes.

The Assessing officer / Appellate officer has powers to levy damages for wilful default or delay of payment of contributions and dues.

Second Appeal (against the orders of Appellate officer) is to the Tribunal formed under this code. For entertainment

of (second) Appeal, the appellant has to deposit such amount as may be determined by the Tribunal. Tribunal also directly hears appeals on the decisions of Medical Boards, and matters relating to Commissioner's actions against the Intermediate Agencies.

Subsequent Appeal (on question of law) is to the concerned High Court.

PART – P : Appellate Tribunal

The Code envisages that the Social Security Appellate Tribunals (SSATs) shall consist of two members: one of whom shall be a Judicial Member and the other an Administrative Member. It further provides that the Tribunal in the National Capital Region of Delhi shall be treated as the Principal Appellate Tribunal and it shall have three members, one of whom shall be a Judicial Member and the other two shall be the Administrative Members.

The Code provides that the nature and categories of the officers and staff of the SSAT shall be determined by the concerned State Government and the officers and staff of the Tribunal shall discharge their functions under the general superintendence of the Presiding Officer. The Code further provides that administrative expenditure and salary of the officers and staff of SSAT shall be borne by the concerned State Board.

The Code provides that in case of difference of opinion among the members of the Tribunal, the decision of the Principal Social Security Appellate Tribunal shall be decided by majority, whereas in case of other Tribunals, the matter of difference shall be referred to the Principal Appellate Tribunal.

Finally, in keeping with the constitutional spirit, the concerned High Court shall have supervisory jurisdiction over the respective SSAT.

Part – Q : Compliance

- (i) to lay a foundation for the enforcement of the provisions of this code by determining some illustrative criteria for conduct of inspections; and
- (ii) to make the social security admissible under this code and the schemes notified under this code right based i.e. to provide an easy and accessible grievance redress mechanism to the workers through the Samajik Suraksha Mitras, who would be stationed at the level of local bodies to ensure accessibility by all workers.

The Commissioner may notify a system for inspection of entities which may be designed taking into account, inter alia, such characteristics i.e. whether the entity is a household, small business or a large undertaking, geographical dispersions, type of employment, nature of work such as long and irregular working hours, irregular incomes, etc.

Every worker shall have the right for coverage under the Social Security System provided under this Code and scheme members and their families shall have access to clear, simple and timely information on the operation of the program. In case of denial of rights, the worker/ registered trade union/ Registered organization or association of workers may file a complaint with the Samajik Suraksha Mitra, under due acknowledgement. The Samajik Suraksha Mitra has been empowered to conduct enquiry on the basis of compliant or even on basis of suo-moto information available with him and submit report to the Commissioner.

The Commissioner has been entrusted with the responsibility of ordering the corrective action required for protecting the rights of the workers including the payment of compensation from the reparation fund in case of established deficiency in services. The complainant would be entitled to receive a copy of the Commissioners' directions through the Samajik Suraksha Mitra within the stipulated time frame.

PART – R : Recovery of Dues

This part explains the manner in which any amount due to be paid to the Social Security Fund is in arrears such as contribution, any due from an establishment permitted to operate alternate coverage mechanism, damages,

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value of benefit paid to the employee who was not covered due to fault of employer, interests on any due, cess and dues related to contribution augmentation fund, etc. is to be recovered from anybody and the powers of officers in such matters.

The officer designated as Recovery Officers are entrusted with execution of recovery procedures and exercise of powers associated with it. The Assessing officer shall issue certificate of recovery to the recovery officer in whose jurisdiction the employer or the persons resides or operates his business.

Thereafter the Recovery Officer can use any or all of the modes such as attachment and sale of properties, attachment of bank account, arrest of the employer or the person and his detention (in civil prison) or appointment of a receiver for the management of properties to make recovery. However there is an order of priority of use of these powers and modes and the reason for use of the same is to be recorded in writing.

In cases where an establishment or the employer or the person has property within the jurisdiction of more than one Recovery Officers the recovery certificate may be sent by the Assessing officer to multiple recovery officers also.

A recovery certificate once issued cannot be disputed for correctness of amount or objected on any ground. Only the Assessing officer has the power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate or to grant further time for payment of the amount by sending intimation to the Recovery Officer.

If the amount of recovery is ordered to be reduced in appeal or other proceeding under this Code but the order of appellate officer is the subject-matter of further proceeding under this Code the recovery of the amount over the reduced amount shall be stayed by the Assessing Officer for the period for which the appeal or other proceeding remains pending. However if the order issued as the result of an appeal has become final and conclusive the recovery certificate shall be amended or withdrawn.

The commissioner has been authorized to recover the due amount also from the debtor of the person or the employer from whom recovery is to be made originally. The Commissioner may direct such debtor to either pay forthwith or withhold such amount until sometime and the debtor shall be liable to the Commissioner as equivalent to the original defaulter. In case the money is held by the debtor jointly with any other person, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal. The person (i.e. the debtor) so paying shall be fully discharged from his liability to the employer (i.e. the said defaulter) or any other person to the extent of the amount so paid. Such order may be revoked or the time of payment may be extended by the Commissioner too. The commissioner may also apply to the court in whose custody there is money belonging to the employer for payment to him of the due amount.

For the purpose of the Indian Income-tax Act, 1961 all funds under this Code shall be deemed to be a recognized provident fund within the meaning of Chapter I of that Act except for the provisions that render ineffective any provisions of the Scheme under which the Fund is established.

The Director General and some officers have been given powers to conduct enquiry to determine dues in case of anybody corporate, institution, company, corporation or any other Organisation wherein the Fund has been invested by or on behalf the Boards or by any Trust permitted to operate Alternate Coverage Mechanism which commits default in the payments which remains outstanding for more than 3 months from its due date.

PART – S : Control

This part essentially establishes the hierarchy of the decision making with reference to the working of the Social Security Organizations. More importantly, it brings out the role of appropriate governments. This is important in a federal democracy where it is the Governments that are answerable to the legislature. This is also significant as the budgetary provisions for subsidizing the contributions of socio-economic category IV would be ensured by appropriate governments. National Council, by the virtue of its position in the Code is the apex authority amongst the Social Security Organizations. It can investigate any matter related to the working of the Central

Board or any of the State Boards, and after conducting a fair inquiry, may pass an order for either Central or State Board to cease. It may submit its report to the Central Government. Appropriate governments have the authority to call for information as well as for issuing directions to ensure the suitable and effective enforcement of the Code.

The order of precedence given in part S, Section 146.2 gives Central Government a higher hierarchical advantage over State Government. However, it may not be understood as an attempt to undermine the authority of States in a federal structure. The proposed clause is only to ensure that the basic social security set up is available across the board.

PART – T : Transitional Provisions

Implementation of the Code would require transition from the 16 existing schemes under various Acts to the corresponding new schemes under the Code. Hence, the existing Scheme Funds shall cease to operate and the new Scheme Funds under this Code shall come into effect from the date of Notification of this Code.

The Code provides for dividing the assets of the existing scheme Funds so as to determine the share of each State Board. The liabilities of the existing scheme Funds shall also stand transferred to the scheme Funds under this Code and the successor Boards shall be liable to bear them.

The rights and liabilities of the contracts entered into by the existing organisations shall become the rights and liabilities of the concerned State Board or, in case the subject matter of the contract exceeds the purposes of one state, of the Central Board.

The rights of the beneficiaries under the existing schemes have been protected under this Code by providing that the beneficiaries shall be entitled to draw the benefits which are on the whole are not less favourable than the benefits they were entitled to draw under the ceased schemes.

The Code also provides for the transfer of current provident fund accumulations standing to the credit of the employee, along with undistributed interest, if any, to the credit of the provident fund account to be created in respect of that employee under the Fund of this Code.

Regarding the outstanding litigation, the Code provides that the applications pending before the EPF Appellate Tribunal (under the EPF&MP Act 1952) or Employees' Insurance Court (under the ESI Act 1948) or High Court under the Employee Compensation Act 1923 or appropriate government under the Payment of Gratuity Act 1972, shall stand transferred to the appropriate Social Security Appellate Tribunal created under this Code.

Reorganization of the manpower of the existing (predecessor) organisations is also provided under the Code. It empowers the Central Government, in consultation with the National Council, to prepare a scheme for the reorganisation and division of posts of various cadres in EPFO, ESIC and DGLW and creation of new cadres in the Central and State Boards. On the other hand, the successor Social Security Organisation in respect of the employees of the existing organisations shall be determined by the Central Board in accordance with an Allocation Scheme, which shall be prepared in accordance with the Reorganisation scheme referred to above.

The Code protects the conditions of service of the employees of the existing organisations. It provides that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the successor Board shall continue to be governed by conditions of service applicable immediately before the appointed day and as may be amended from time to time thereafter.

The Code also preserves the exemptions under the EPF&MP Act 1952, or under the ESIC Act 1948, being currently enjoyed by the establishments, by providing that such exemptions shall be deemed to be the permission to operate the Alternate Coverage Mechanism u/s-94 of this Code.

PART - U: Offences and Penalties

The objective of this Part is to provide the commission/omission of such acts which would be considered

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offences under the code and to provide for the penalties in respect of these offences. The purpose of setting out penalties in any law is twofold- (i) to punish and (ii) more importantly as a deterrent against committing an offence. This part attempts to achieve both these objectives.

The Seventh schedule lists out the offences and the corresponding penalties in respect of these offences.

Provision for compounding an offence (other than an offence which is punishable with imprisonment under this Code) by the Commissioner on an application of the accused person either before or after the institution of the prosecution on such terms and conditions including payment of such sums as may be prescribed.

Provision for Community service order to undertake unpaid work as directed by the court, in cases where the punishment for the offence committed is not more than two years of imprisonment and the court considers it a fit case for awarding the Community service order.

Rationale for Community service order: - Any person committing an offence with regard to social security legislation, does not commit an offence against an individual, but against the society as a whole thereby putting the entire social security system in jeopardy and as such should be reformed against committing such acts in future.

The Central Government has been empowered to index the monetary penalties specified in this part and the seventh schedule by linking the fine increase or reduction to the change in Consumer Price Index. This provision is felt necessary as it would avoid the possibility of the monetary penalties remaining static for long periods of time.

PART – V : Subordinate Legislations

The Code provides powers to many authorities to make subordinate Legislations. The Central Government and State Governments can make 'Rules'; National Council can make 'Regulations' and Central Board can make 'by-laws'. Three different terminologies (viz., Rules, Regulations and by-laws) are used for distinguishing between them. The Code at various places uses the word 'prescribed' when it refers to rules made by Central Government; the word 'stipulated' when it refers to the regulations made by National Council and 'specified in by-laws' when it refers to bylaws made by Central Board. In addition if on any subject, Rules are to be made by State Government, the same is specifically provided in the respective provisions.

This part consolidates the matters on which sub-ordinate legislations can be framed.

Further, the Code refers to Schedules I to VII that are appended to the Code. This part also provides for Powers of Central and State Governments to amend these Schedules. It may be noted that Schedule – VII prescribes for penalties, which can-not be amended by Executive's notification as this is Legislature's prerogative.

PART – W : Repeal and Savings

The Code repeals 15 existing laws relating to social security. However, this part also provides for scope to implement the Code gradually, and these old laws get repealed only in those jurisdictions where the Act has come in force. Where the Act has not come in force, the existing laws continue as such. Further, in case of entities on whom the Code does not apply by virtue of its inclusion in Schedule – I, again the old Acts continue to apply on them as earlier.

Similarly, the Old EPFO / ESIC Schemes continue to apply until the new scheme repeals the old scheme.

The Part also provides for powers to remove difficulties to enable the Central Government to smoothen any initial hic-ups.

LABOUR CODE ON INDUSTRIAL RELATIONS

Labour Code on Industrial Relations subsumes following three Labour Acts:

1. The Trade Unions Act 1926 (TU Act): This act aims at registering the trade unions and defines the laws which control these registered trade unions.
2. The Industrial Employment (Standing Orders) Act 1946: This act required the employers to define the requirements of employment under them.
3. The Industrial Disputes Act 1947 (ID Act): This act includes methods for investigation and dealing with the industrial disputes. It also regulates the matters which relate to lay-offs, site closure, transfers of undertakings and changes in service conditions and retrenchments.

Salient features of the Labour Code on Industrial Relations

The Labour Code on Industrial Relations contains One Hundred Seven Clauses and Three Schedules. The One Hundred Seven Clauses are divided into thirteen chapters. They are as follows:

The Chapter one of the Code talks about the name and the extent of the code. It also explains the definitions used in the code.

Chapter two is called the bi-partite forums. It talks about establishment of Works Committee consisting of representatives of employer and workers engaged in the establishment, maintaining good relations between the employer and workers, forming a grievance redressal committee and its duties,

Chapter three deals with registration of trade unions. It talks about the requirements for registration, the application of registration, registrar of trade unions, Power to call for further information or alternation of name, Provisions to be contained in the Constitution and Rules of the Trade Union, Registration of a Trade Union, Deemed Registration in Certain Cases, Cancellation of Registration, Appeal against Non-Registration or Cancellation of Registration, Registered Office of the Trade Union, Change in Address and other Particulars of the Trade Union, Incorporation of a Registered Trade Union, Certain Acts not to Apply to Registered Trade unions, Objects on Which General Funds of a Trade Union may be spent, Constitution of a separate fund for political purposes, Immunity from Civil Suit in Certain Cases, Criminal Conspiracy in Industrial Disputes, Enforceability of Agreements, Right to Inspect Books of Trade Union, Rights of Minor to Membership of Trade Union, Membership Fee and Mode of Its Collection, Disqualification of Office Bearers of Trade Unions, Adjudication of Disputes of Trade Unions, Proportion of Office Bearers not engaged in the Establishment or Industry, Change of Name, Amalgamation of Trade Unions, Notice of Change of Name or Amalgamation, Effects of Change of Name and of Amalgamation, Dissolution and Annual Returns.

Chapter four talks about standing orders. It includes the circumstances of Non-application of this Chapter in Certain Circumstances. The main constituents of the chapter are about Making of Rules and Model Standing Orders by the Central Government, Preparation of Draft Standing Orders by the Employer and Procedure for Certification, Appeals, Date of operation of standing orders, Register of standing orders, Posting of standing orders, Duration and modification of standing orders, non-admissibility of Oral evidence in contradiction of standing orders, Temporary application of model standing orders, Interpretation, etc. of Standing Orders, the Time Limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance and the Power to exempt.

Chapter five includes the notice of change to be given to the employees. It talks about the Notice of change, Terms of Employment, etc. to remain unchanged under Certain Circumstances and the Power of Government to exempt.

Chapter six is based on the voluntary reference of disputes to arbitration. It talks about in detail about how to use arbitration as a means to solve disputes.

Chapter seven deals with procedures, powers and duties of authorities. It contains sections about Conciliation officers, Tribunal, Application to the Tribunal, National Tribunals, Disqualifications for the Presiding Officers of Tribunal and National Tribunals, Filling of vacancies, Procedure and Powers of Conciliation Officers, Tribunal

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and National Tribunals, Powers of Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of worker, Duties of conciliation officers, Duties of National Tribunals, Form of report or award, Publication of reports and awards, Commencement of the award, Payment of full wages to worker pending proceedings in higher courts, Persons on whom settlements and awards are binding, Period of operation of settlements and awards, Persons on Whom Awards are Binding, Recovery of Money under an Award, Commencement and conclusion of proceedings and about Certain matters to be kept confidential.

Chapter eight talks about strikes and lockouts. It contains provisions about Prohibition of Strikes and Lockouts, Illegal Strikes and Lockouts and about Prohibition of financial aid to illegal strikes or lock outs.

Chapter nine talks about lay off, retrenchment and closure. It contains Application of the Chapter, Definition of Continuous Service, Rights of Workers Laid off for Compensation etc., Duty of an employer to maintain muster rolls of workers, Workers not entitled for compensation in certain cases, Conditions precedent to retrenchment of workers, Procedure for Retrenchment, Re-employment of Retrenched Worker, Compensation to Workers in Case of Transfer of Establishment, Sixty days' notice to be given of intention to close down any undertaking and the Compensation to workers in case of closing down of undertakings.

Chapter ten contains special provisions relating to lay off, retrenchment and closure in certain establishments. It talks about Application of this Chapter, Prohibition of lay-off, Conditions precedent to retrenchment of workers and the Procedure for closing down an undertaking.

Chapter eleven talks about the miscellaneous provisions. They are Prohibition of unfair labour practice, Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings, Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings, Power to transfer certain proceedings, Recovery of money due from an employer, Protection of persons, Representation of parties, Power to remove difficulties, Power to exempt, Protection of action taken under the Code, Power to make rules, Power to make regulations, Delegation of powers and the Power to amend Schedules.

Chapter twelve talks about the penalties included in the code. They are explained under section 103. Also included is compounding of offences, Offences by companies and Cognizance of offences.

Chapter thirteen talks about the repeals and savings owing to this code.

LESSON ROUND UP

- In line with recommendations of Second National Commission on Labour, the Ministry has taken steps for formulating of four Labour Codes on (i) Wages; (ii) Industrial Relations; (iii) Social Security & Welfare; and (iv) Occupational Safety, Health and Working Conditions by amalgamating, simplifying, and rationalizing the relevant provisions of the existing Central Labour Laws.
- The Code on Wages, 2019 intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely: (a) The Payment of Wages Act, 1936; (b) The Minimum Wages Act, 1948; (c) The Payment of Bonus Act, 1965; and (d) The Equal Remuneration Act, 1976. The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The Code on Wages, 2019 contains Sixty Nine Clauses and divided into Nine Chapters.
- The Occupational Safety, Health and Working Conditions Code, 2019 incorporates the essential features of the thirteen enactments relating to factories, mines, dock workers, building and other construction workers, plantations labour, contract labour, Inter-State migrant workmen, working Journalist and other newspaper employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers and to repeal the respective

enactments. It provides broader legislative framework to secure just and humane conditions of work with flexibility and to provide enabling provisions for making rules and regulations in tune with the emerging technologies.

- Safety, Health, welfare and improved Working Conditions are pre-requisite for well-being of the worker and also for economic growth of the country as healthy workforce of the country would be more productive and occurrence of less accidents and unforeseen incidents would be economically beneficial to the employers also. With the ultimate aim of extending the safety and healthy working conditions to all workforce of the country, the Code enhances the ambit of provisions of safety, health, welfare and working conditions from existing about 9 major sectors to all establishments having 10 or more employees.
- It is the duty of the society in general and government in particular to ensure that nobody who has contributed to the growth of the nation in his good days is left alone to face the problems like sickness, accident, unemployment, disability, maternity and old age in his lean days. Under a Social Security System, these risks and eventualities can be managed through small contributions by all through a robust social security framework.
- The Labour Code on Social Security, *inter-alia* aims to provide universal social security including Pension, Sickness Benefit, Maternity Benefit, Disablement Benefit, Invalidity Benefit, Dependent's benefit, Medical Benefit, Group Insurance Benefit, Provident Fund, Unemployment Benefit and International worker's pension benefit .
- Labour Code on Industrial Relations subsumes the three Labour Acts, such as the Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act 1946 and the Industrial Disputes Act 1947. The Labour Code on Industrial Relations contains One Hundred Seven Clauses and Three Schedules. The One Hundred Seven Clauses are divided into thirteen Chapters.

SELF TEST QUESTIONS

1. Discuss the relevance of Labour Code in the emerging economic environment.
2. State the salient features of the Code on Wages, 2019.
3. State the salient features of the Occupational Safety, Health And Working Conditions Code, 2019
4. Enumerate the labour legislations that subsumes under the Labour Code on Social Security & Welfare.
5. Discuss Labour Code on Industrial Relation.

Lesson 9

Industrial and Labour Laws Audit

LESSON OUTLINE

- Learning objectives
- Introduction
- Scope of labour audit
- Methodology of conduct of labour audit
- Benefits of labour audit
- Benefits to Employer
- Benefits to Labour
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Audit under Labour Legislations is an effective tool for compliance management of labour legislations. It helps to detect non-compliance of various labour laws applicable to an organization and to take corrective measures. Objectives of labour audit is to protect the interests of all the stakeholders. This leads to better Governance and value creation for the organisation and to avoid any unwarranted legal actions against the organization and its management.

Labour Audit is a process of fact finding. It is a continuous process. The Labour Audit will ensure a win-win situation for all interested persons. Initially, the Employers may frown at the idea of such Audits, but with passage of time, the compulsion of labour audit will infuse self-regulation amongst certain employers.

The basic objective of this lesson is to make the students understand the basic framework of audit under labour legislations.

Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central and State Governments are competent to enact legislation.

INTRODUCTION

Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimisation, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an independent professional like Company Secretary. Workers in India report many cases relating to non-compliance of labour legislation by employers.

Social Justice is guaranteed by the Preamble of our Constitution. The Directive Principles of State Policy also provides that it shall be endeavour of the State to promote the welfare of the people by effectively securing and protecting a social order in which social, economic and political justice shall inform all the institutions of national life.

Directive Principles provide –

- that the State should direct its policies towards securing the right of citizens, men and women, to an adequate means of livelihood ;
- that the ownership and control of material resources of the community be so distributed as best to subserve the common good ;
- that the economic system should not result in the concentration of wealth and the means of production to the common detriment ;
- that there should be equal pay for equal work for both men and women ;
- that the State should endeavour to secure the health and strength of workers ;
- that State should ensure that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age and strength ;
- that childhood and youth are protected from exploitation and from moral and material abandonment ;
- that State shall secure to all workers living wage, decent standard of living and free enjoyment of leisure.

Labour Audit envisages a systematic scrutiny of records prescribed under labour legislations by an independent professional like Company Secretary in Whole Time Practice (hereinafter referred to as PCS), who shall report the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/ Factory/ Other Commercial Establishments. The Report should ideally, be addressed to the appropriate government. The appropriate government may provide for filing fees for such report on the lines of filing fees charged by Registrar of Companies for the documents filed with them.

SCOPE OF LABOUR AUDIT

The audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of an Independent Professional like Company Secretary in Whole Time Practice. The mode of disclosure has to be decided in consultation with the Ministry of Labour. An illustrative list of legislations, which may be covered under Labour Audit, is given in this lesson.

METHODOLOGY OF CONDUCT OF LABOUR AUDIT

At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit. The scope will certainly differ from employer to employer. Accordingly, if the employer does not own a factory, the provisions of the Factories Act, 1948 will not be applicable. Similarly,

certain factories in remote areas may not have the facilities of Employees State Insurance Corporation. In such cases, there is no need to ensure compliance of ESI Act.

As stated Independent Professional like Company Secretary in Whole Time Practice should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinising the compliance of provisions of various Acts/Rules. It will be in the fitness of things that the Report is drafted in the same manner as PCS do for Compliance Certificate under the proviso to Section 383A(1) of the Companies Act, 1956. Checklist for compliance of each legislation has to be formulated before commencement of his audit.

BENEFITS OF LABOUR AUDIT

Benefits to the Labour

- (a) Introduction of Labour Audit will boost the morale of the workers to a large extent.
- (b) It will increase their Social Security.
- (c) It will inculcate on workers a sense of belongingness towards their employer.
- (d) It will secure timely payment of wages, gratuity, bonus, overtime, compensation etc. of the workers.
- (e) Timely payment of entitlements will reduce absenteeism in the organisation.

Benefits to Employer

- (a) Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- (b) Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
- (c) Strict compliance of all labour legislation will be ensured by each of the employers, which, in turn, will reduce or even eliminate penalties / damages / fines that may be imposed by the Government.
- (d) Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

Benefits to the Government

- (a) Reduction in the number of field staff for inspection of Industries/Factories/ Commercial Establishments as most of their work will be done by an Independent Professional like Company Secretary in Whole Time Practice.
- (b) Compulsory Labour Audit will ensure compliance of past defaults.
- (c) In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally.
- (d) India's image before the International Labour Organisation will improve as a country with negligible non-compliance of labour legislation.

ILLUSTRATIVE LIST OF LEGISLATIONS THAT MAY BE BROUGHT UNDER THE AMBIT OF LABOUR AUDIT

S. No.	Name of the Legislation	Certificates to Cover
1	Payment of Wages Act, 1936	<ul style="list-style-type: none"> • Annual Certificate that the wages were paid in accordance with the Act. • Number of employees in the establishment who are governed by the Act. • No deduction from wages has been made other than those authorised under the Act. • Wage Period.
2	Payment of Bonus Act, 1965	<ul style="list-style-type: none"> • Determination of Available and Allocable Surplus and correctness of Computation. • Timely payment of bonus. • Eligible persons are paid bonus • Whether the company paid minimum or maximum bonus.
3	Provident Funds and Miscellaneous Provisions Act, 1952	<ul style="list-style-type: none"> • Timely deposit of Employer and Employee's dues with Provident Fund Provisions Act, 1952 Commissioner/Trust. • Reporting of cases where proceedings under the Act have been initiated against the Directors for recovery of dues. • If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust? <p>Whether conditions imposed by PF Commissioner for the creation of Trust is satisfied?</p>
4	Payment of Gratuity Act, 1972	<ul style="list-style-type: none"> • Whether liability for gratuity has been provided for in the Accounts or not? • Whether the company has formed any trust that would take care of the liability arising out of gratuity. • Number of claims during the year for the payment of gratuity and time taken for settlement. • Whether the Gratuity has been paid in accordance with the provisions of the Act? • Whether any dispute exists against the company against the payment of gratuity ? If so, details thereof.

5	Industrial Disputes Act, 1947	<ul style="list-style-type: none">• Certification that any industrial dispute arose during the year or not and manner of settlement of the same. Whether the dispute resulted in any closure of factory/strike/lockout and if so the period therefor.• Was there any reference of dispute to Arbitration under section 10-A of the Act and results of such reference?• Whether the industry has adopted any unfair labour practice.• Name of the Protected workmen. Whether or not the industry is declared as Public Utility Services.
6	Trade Unions Act, 1926	<ul style="list-style-type: none">• Number of Registered Trade unions in operation in the factory and its affiliations to any All India Organisations of Trade Unions.
7	Minimum Wages Act, 1948	Whether the company is paying the wages in accordance with the provisions of the Act.
8	Employees' Compensation Act, 1923	<ul style="list-style-type: none">• Fatal Accidents to be reported.• Time taken for payment for compensation. Disputes on settlement of compensation to be reported.• Any case of Occupational Disease reported in the factory or establishment.• Insurance Cover for meeting the liability.• Pending Disputes under the Act and its nature along with a note on liability accepted by the Employer.
9	Factories Act, 1948	<ul style="list-style-type: none">• Whether the factory is registered or not? If so, registration number of the factory be given.• Item of manufacture.• Whether hazardous industry or not if so steps suggested by appropriate government for safety has been complied with in toto.• Whether Chapter IV on Safety has been complied with or not.• Whether Chapter V on Welfare has been taken care of.• Whether working hours are in accordance with the provisions of the Act.• Maintenance of proper records of Attendance and Leaves.• Provisions relating to employment of women, young persons etc. are duly complied with.

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10	Contract Labour (Regulation and Abolition) Act, 1970	<ul style="list-style-type: none">• Whether the factory/establishment is covered by the provisions Contract Labour (Regulation and Abolition) Act, 1970• Whether the factory/establishment has duly submitted all returns to the Commissioner/Regional Commissioner as per the provisions of the Act, Rules and Regulations made in this behalf.• Whether the establishment has duly applied for and obtained the certificate of registration before the employment of any contract labour.• Whether all the contractors engaged by the establishment to supply workmen do possess valid licence.
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LESSON ROUND UP

- Labour Audit is a process of fact finding. It is a continuous process. The Labour Audit will ensure a win-win situation for all interested persons. Initially, the Employers may frown at the idea of such Audits, but with passage of time, the compulsion of labour audit will infuse self-regulation amongst certain employers.
- Social Justice is guaranteed by the Preamble of our Constitution. The Directive Principles of State Policy also provides that it shall be endeavour of the State to promote the welfare of the people by effectively securing and protecting a social order in which social, economic and political justice shall inform all the institutions of national life.
- The audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of an Independent Professional. The mode of disclosure has to be decided in consultation with the Ministry of Labour. An illustrative list of legislations, which may be covered under Labour Audit, is given in this lesson.
- Labour Audit will boost the morale of the workers to a large extent and it will increase their Social Security.
- Labour Audit will increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- Compulsory Labour Audit will ensure compliance of past defaults.

SELF TEST QUESTIONS

1. Briefly explain the scope of labour audit.
2. Briefly explain the benefits of Labour audit.
3. Discuss the certificates covered under the Contract Labour (Regulation and Abolition) Act, 1970 to be verified for labour audit .
4. Discuss the certificates covered under the Factories Act 1948 to be verified for labour audit.
5. Discuss the certificates covered under the Industrial Disputes Act, 1947 to be verified for labour audit.

**PROFESSIONAL PROGRAMME
LABOUR LAWS & PRACTICE (PAPER 9.6)**

PP-LL&P

WARNING

It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

“27. Suspension and cancellation of examination results or registration.

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation – Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute”.

PROFESSIONAL PROGRAMME

LABOUR LAWS & PRACTICE (PAPER 9.6) – TEST PAPER

[This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/ answers to this test paper to the Institute.]

Time Allowed: 3 Hours

Maximum Marks: 100

1. The Constitution of India embodies the concept of equality under Articles 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 19(1) (g) gives the fundamental right to all citizens to practise any profession, or to carry on any occupation, trade or business. This right pre-supposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No. 19 (1992), the United Nations Committee on CEDAW further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional rights as well as respect for its obligations under various international treaties is unequivocal.

The Supreme Court of India in the case of *Vishaka & Ors. v. State of Rajasthan & Ors.* [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

With more and more women joining the workforce, both in organised and unorganised sectors, ensuring an enabling working environment for women, Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

On the basis of the above facts, answer the following:

- (a) Discuss the applicability of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (b) Define "Domestic Worker" and "Workplace" under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (c) Discuss the constitution of Internal Complaints Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (d) Discuss the composition, tenure and other terms and conditions of Local Complaints Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- (e) State the Procedure for filing and hearing of complaints under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(8 Marks each)

2. (a) International Labour Organisation as a partner for development. Comment.
(b) What are the different types of benefits provided by the ESI Act, 1948?

(6 Marks each)

3. (a) Define "Mine" under the Mines Act, 1952
(b) Discuss "lay off" and "lock out" under the Industrial Dispute Act, 1947.

(6 Marks each)

4. (a) What do you mean by the term "manufacturing process" under the Factories Act, 1948?
(b) Explain the procedure for certification of Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

(6 Marks each)

5. (a) Discuss the other legislations that are applicable to newspaper establishment under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955?
(b) Discuss the procedure of registration of plantations under Plantations Labour Act, 1951.

(6 Marks each)

6. (a) Enumerate the legislations stated under the Schedule of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers) Act, 1988.
(b) Enumerate the labour legislation that subsumes under the Occupational Safety, Health and Working Conditions Code, 2019.

(6 Marks each)



