Presenters

Subject matter experts

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Contents

• Legislative intent
• The four new codes
• The Code on Social Security
  – An overview
  – Key definitions
  – Salient features of various legislations
• Highlights of other labour codes
Introduction of new labour codes
Background and legislative intent

New codes intend to amalgamate, simplify, and rationalize the relevant provisions of the subsumed enactments.
Amalgamation of labour laws will:

1. Facilitate implementation
2. Remove multiplicity of definitions
3. Facilitate use of technology
4. Ensure transparency & accountability
5. Aid in effective enforcement of the provisions
6. Facilitate ease of compliance
The four new codes

Basics

- **Code on Wages, 2019**
  - Subsumes four legislations relating to wage rate, time of payment and bonus
  - Received presidential assent in August ’19, awaiting notification of effective date

- **Code on Occupational Safety, Health and Working Conditions**
  - Amalgamates 13 labour laws relating to safety and health standards
  - Introduced in Parliament in July ’19 and referred to Standing Committee in October ‘19

- **Code on Industrial Relations**
  - Consolidates three enactments relating to Industrial relations
  - Introduced in Parliament in November ‘19

- **Code on Social Security**
  - Integrates nine statutes in the social security space
  - Tabled in the Lok Sabha last week
Code on Social Security
An overview
Code on Social Security
Evolution

- **2002**: Second National Commission on Labour proposed for the amalgamation of various labour laws
- **2017**: Draft of the Labour Code on Social Security and Welfare placed in the Ministry’s website for consultations and comments in March 2017
- **2018**: 
  - **Revised draft** prepared after considering comments of various stakeholders
  - Called The Labour Code on Social Security, 2018, draft placed in Ministry’s website for information
  - Consultation process with Employers’ and Workers’ organizations initiated
- **2019**: 
  - **Updated version** of the Code published for comments in September 2019
  - Introduced in the Lok Sabha in December 2019 as The Code on Social Security, 2019
  - Proposed to be referred to Parliamentary Standing Committee on Labour for examination
- **Next steps**: 
  - Discussions in both houses of Parliament
  - Review by Parliamentary Committee and amendments
  - Approval of final version of the Bill by Parliament
  - Presidential assent
  - Framing of Schemes and rules
  - To come into force

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## Code on Social Security

### Scheme of arrangement

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subsumes nine central labour enactments relating to provident fund, employees’ state insurance, compensation, gratuity, maternity benefit etc.</td>
</tr>
<tr>
<td>2</td>
<td>Comprises of 163 sections encased in 14 chapters besides six schedules. Effective date to be notified – multiple dates for different provisions.</td>
</tr>
<tr>
<td>3</td>
<td>Definitions provided in Chapter I – applicable across all chapters and provisions. Chapter II details the constitution of various governing organizations and their functions.</td>
</tr>
<tr>
<td>4</td>
<td>Chapters III to IX deal with provisions relating to Provident Fund, ESI, Gratuity, Maternity Benefit, Compensation, Social Security for Building and Construction Workers and Unorganized workers.</td>
</tr>
<tr>
<td>5</td>
<td>Specific provisions for finance and accounts, Payment of Dues, Claim and Audit, Inspector cum Facilitator, Offences and Penalties, Miscellaneous provisions etc.</td>
</tr>
<tr>
<td>6</td>
<td>Applies to all establishments, employees and employers as defined and to the extent specifically called out in the Code.</td>
</tr>
</tbody>
</table>
Changes in key definitions
## Existing laws on social security

### Definition of wage

<table>
<thead>
<tr>
<th>Law</th>
<th>Includes</th>
<th>Excludes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provident Fund</strong></td>
<td>Basic, DA, Retaining Allowance and cash value of food concession</td>
<td>HRA, overtime allowance, bonus, commission or any other similar allowance. Test of universality specified by the Supreme Court in February 2019</td>
</tr>
<tr>
<td><strong>ESI</strong></td>
<td>All remuneration paid in cash</td>
<td>Perquisites, Employer PF / ESI contributions, LTA, sum paid to defray special expenses and gratuity</td>
</tr>
<tr>
<td><strong>Maternity Benefit Act</strong></td>
<td>Basic salary, dearness allowance, HRA, other cash allowances, incentive bonus, value of food grains and other articles</td>
<td>Other than incentive bonus, overtime wages, employer contribution to PF and gratuity</td>
</tr>
<tr>
<td><strong>Gratuity</strong></td>
<td>Basic salary and Dearness Allowance</td>
<td>Bonus, Commission, HRA, overtime wages and any other allowances</td>
</tr>
<tr>
<td><strong>Employee Compensation Act</strong></td>
<td>Any privilege or benefit which is capable of being estimated in money</td>
<td>Travelling allowance or value of any travelling concession, employer PF contributions and sum paid to workman to cover special expenses</td>
</tr>
</tbody>
</table>
# Code on Social Security

## Definition of wage

### Meaning and inclusions

Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, in terms of employment, express or implied, where fulfilled, be payable to a person employed in respect of his employment, and includes:

- Basic pay;
- Dearness allowance; and
- Retaining allowance, if any.

### Specified exclusions

- Statutory bonus payable but not forming part of remuneration;
- Value of house accommodation and utilities (such as light, water, medical attendance, etc.);
- Employer contribution to provident fund / pension together with accretions;
- Conveyance allowance or value of travelling concession;
- Sum paid to defray special expenses due to nature of work;
- House rent allowance;
- Remuneration payable under any award settlement;
- Any overtime allowance;
- Any commission payable;
- Any gratuity payable on termination;
- Any retrenchment comp/ benefit payable or ex gratia payment made

### Conditional inclusions

Where the aggregate of specified exclusions as highlighted:

- exceeds one-half or such other notified percentage of all remuneration calculated under this clause,
- amount which exceeds such one-half or other percent, so notified
- shall be deemed as remuneration and
- shall accordingly be added under this clause

Conveyance/value of travel concession, house rent allowance, remuneration payable under award or settlement and overtime allowance shall be taken for computation of wage – for the purpose of equal wages to all genders

### Value of remuneration in kind

Where an employee is given remuneration in kind

- in lieu of either the whole or part of the wages payable to him
- value of such remuneration as does not exceed 15% of total wages payable to him

Shall be deemed to form part of wages of such employee.

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- Whether performance bonus / bonus forming part of employment contract are wages?
- How to value benefit in kind such as stock awards, car etc.?
- Why is the proviso on equal remuneration to all genders retained as in Wage Code?
Code on Social Security
Computation of wages

Example

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
<th>Benefits in kind</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic salary</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Fuel reimbursement</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Statutory bonus</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>House Rent Allowance</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Special allowance</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
<td></td>
</tr>
</tbody>
</table>

Value of housing accommodation *(In lieu of HRA)*: 20

Wages for the different chapters under the Code

- Wages as per the current PF regulations (Basic (including spl. Allowance) + DA + Retention allowance): INR 60
- Wages as per Payment of Gratuity Act before factoring 15 day criterion (last drawn basic + DA): INR 40
- Wages as per Maternity Benefit Act: (Basic + cash allowances): INR 100
- Wages as per the Code:
  - for a structure with HRA: INR 60 (40+20)
  - for a structure with housing accommodation: 15% to be applied on total wages i.e. 100 or wages as defined i.e. 60?
Key definitions and implications

**Code on Social Security**

**Employer**

Means a person who employs directly or through any person or on behalf of any person one or more employees in his establishment.

Includes a **Contractor** and legal representative of the deceased employer.

**Employee**

*exclusion specified*

Any person (other than an apprentice) employed on wages by the establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied and also includes a person declared to be an employee by the appropriate government.

*For the purposes of Provident Fund and Employees State Insurance employees drawing equal to or less than wage ceiling only will be included - option for voluntary membership?*

**Under current provisions:**

**PF:** Employer does not include contractor; Employee: skill levels / category of work (other than manual) not listed. Phrase “work in or in connection with” included. Excluded employee as per scheme eligible to become a member.

**ESI:** Separate definitions for principal and immediate (contract) employer – employed on the work of or connected to the work of, reference to place work is performed.

No specific definition under Payment of Gratuity Act.
Key definitions and implications (contd.)

**Gig worker**
Means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

**Fixed term employment**
Means the engagement of an employee on the basis of a written contract of employment for a fixed period.
Can the conditions in proviso be brought into the contract leading into exclusion of such employees?

**Platform work**
Means a form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment.

**Unorganized worker**
Means a home based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by the Industrial Disputes Act, 1947 or Chapters relating to Provident fund, State Insurance, Gratuity, Maternity Benefit and Compensation under this Code.
- Reference to employee count in definition of unorganized sector as against Chapter references for unorganized worker
Salient features of various legislations
**Code on Social Security**

**Employees Provident Fund**

- Applies to all establishments with 20 or more employees; restrictive definition of employee – covers only those with salary below threshold wage ceiling to be notified. 
  
  *International Workers not mentioned in the Code, Status of exemptions provided under PF Act not indicated, optional membership for other employees?*

- Contribution to be done at 10% (12% for notified establishments) by employer and employee including for contract employees – similar to current provisions

  Maximum of 1% of wages towards EDLI, administration charges not to exceed 0.25% of EDLI

- Schemes for PF, pension and Insurance to be framed – to cover aspects such as eligibility of employees to join the fund, time and manner of contributions, recovery, administration charges, forms to be used, etc.

- Rate of contribution aligned to current provisions – **differential rates can be notified for any class of employee**; contributions paid for employees employed by / through contractor can be recovered either by deduction from amount payable to contractor or as debt

- **Period of limitation** (five years) for initiation of enquiry and two years for completion of the same.
Code on Social Security
Employees State Insurance

• Applies to every establishment with 10 or more employees – no threshold for establishments carrying out hazardous or life threatening occupation;
• Provides sickness, pregnancy related, disablement, dependents, medical treatment related benefits as also for funeral expenses;
• Mandates that all employees of covered establishments need to be insured – onus on employer;
• Recovery of expenses met by the Corporation on account of failure to insure from defaulting employer;
• Contributions due on the last day of the wage period – rates to be notified;
• Primary responsibility for payment of contributions on employer – recovery provided for;
• Presumption of accident arising out of employment;
• Schemes for gig, platform and unorganized workers to be framed for providing eligible benefits.
Code on Social Security
Gratuity

- Provisions under Payment of Gratuity Act (PoGA) carried into the Code
- Individuals on fixed term employment included for gratuity on pro-rata basis irrespective of period of service
- Establishments exempt under PoGA to continue to remain exempt
- Widening of wage definition (as against last drawn basis under PoGA) – enhanced gratuity entitlements – need to provide for the past – cost burden
## Gratuity

**Impact of the new Wage Definition**

<table>
<thead>
<tr>
<th>Pay Components</th>
<th>Existing Laws (INR)</th>
<th>Social Security Code(INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost To Company</td>
<td>6,00,000</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Basic Pay (40% of CTC) A</td>
<td>2,40,000</td>
<td>2,40,000</td>
</tr>
<tr>
<td>House Rent Allowance B</td>
<td>1,20,000</td>
<td>1,20,000</td>
</tr>
<tr>
<td>Leave Travel Concessions C</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Fuel reimbursement D</td>
<td>60,000</td>
<td>60,000</td>
</tr>
<tr>
<td>PF Contributions E</td>
<td>28,800</td>
<td>36,000</td>
</tr>
<tr>
<td>Statutory Bonus F</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Special allowance G</td>
<td>51,200</td>
<td>44,000</td>
</tr>
<tr>
<td><strong>Total wages to be considered</strong></td>
<td><strong>2,40,000</strong></td>
<td><strong>284,000</strong></td>
</tr>
</tbody>
</table>

+Adj for exclusion as per definition

### Understanding the impact for an employee with 7 years of service

<table>
<thead>
<tr>
<th>Monthly Wages</th>
<th>240,000/12</th>
<th>50% of total remuneration i.e. 300,000/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly wages for gratuity purpose</td>
<td>20,000</td>
<td>25,000</td>
</tr>
</tbody>
</table>

**Formulae for gratuity**

- Last drawn pay / 26 * 15 * no of years of service
- Last drawn pay / 26 * 15 * no of years of service

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>80,769</td>
<td>100,961</td>
</tr>
</tbody>
</table>

*It is assumed that last drawn salary and average salary for 12 months is same.*

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Code on Social Security
Other subsumed legislations – maternity benefit, employees’ compensation, building and other construction workers, unorganized workers, etc.

- Provisions predominantly aligned with those in the erstwhile statutes;
- Change in definitions – to apply consistently to all chapters of the Social Security Code;
- Provisions relating to Employees’ State Insurance mutually exclusive to those providing for maternity benefit, employees’ compensation;
- Specific provision for creation of social security boards for unorganized workers;
- Inclusion of gig / platform workers widens coverage of social security;
- Provides for funding of notified schemes for unorganized workers through Corporate Social Responsibility Fund besides other funding mechanisms (partly by Central / State Governments, contributions collected etc.)
<table>
<thead>
<tr>
<th>Offence</th>
<th>Fine</th>
<th>Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure by an employer, to pay employees contributions deducted by him from the employees’ wages</td>
<td>INR 100,000 and</td>
<td>Imprisonment between one to three years</td>
</tr>
<tr>
<td>Failure by an employer, to pay any contribution liable to be paid under the Code</td>
<td>First instance INR 50,000 and Second and subsequent instances: INR 300,000</td>
<td>Imprisonment upto six months Second or subsequent instance: Between two to five years</td>
</tr>
<tr>
<td>Deducts employers contribution, reduces wages, penalizes woman employee, fails to pay gratuity, maternity benefit, cess, fails to produce records, doesn’t comply with any provisions</td>
<td>First instance: upto INR 50,000 &amp; /or Second and subsequent instances: INR 300,000 for failure to pay charges, cess, gratuity, maternity benefit or compensation and</td>
<td>First instance: Upto One year Second and subsequent instances: Between two to five years</td>
</tr>
<tr>
<td>Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident</td>
<td>First instance: upto INR 50,000;</td>
<td></td>
</tr>
<tr>
<td>Dishonesty makes a false return, report, statement or information to be submitted</td>
<td></td>
<td>Imprisonment upto six months</td>
</tr>
</tbody>
</table>

- Fine of INR 200,000 and imprisonment upto two years for second or subsequent offence except where specifically provided
- Option of compounding subject to conditions
Code on Social Security

In a nutshell

- Broad based applicability – coverage for gig, platform and unorganized workers, thresholds for specified chapters
- Impact of the wage definition on contribution / entitlement
- Limitation period of five years for initiation and two years for concluding enquiries
- Provision for filing single return electronically or otherwise by the employer
- Significant increase in penalties and prosecution – No compounding for repeat offences
- Aadhaar linked identification of employee / beneficiary
Other labour codes

Highlights
Legislations subsumed

The Code on Wages Act, 2019 subsumes four legislations viz.
- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and

Individual chapters for each of the first three legislations and inclusion of provisions relating to Equal Remuneration in the first chapter.

Applicability and current status

- The Code applies to all establishments, employees and employers unless specifically exempt in the Code.
- Code received Presidential assent in August 2019 - awaiting notification of effective date.
- Draft Central Rules placed for stakeholder suggestions and comments during November 2019.
- Final version of the Rules to be released.

Differentiators

- Consistency in provisions across all sections of the Code;
- Definition of wages revamped and made uniform for all chapters
  - Includes all remuneration payable to a person;
  - Exclusions specifically listed – to be limited to 50% of total wages;
  - Benefits in kind to be part of wages
- Managerial employees included;
- Contractor identified as employer
- Concept of floor wages introduced in addition to minimum rate of wages;
- Early settlement of claims envisaged.
Overview

Legislations subsumed

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 (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 (Condition of Employment) Act, 1966;
The Cine Workers and Cinema Theatre Workers Act, 1981

Applicability and current status

• Applicable to all establishments having 10 or more employees and mines and docks;
• Consolidates procedural aspects and provides uniformity in threshold;
• Introduced in Parliament in July 2019;
• Referred to Parliamentary Standing Committee on Labour and Employment in October, 2019 for examination.

Key features

• Employees include workers and all other persons employed in a managerial, administrative, or supervisory role (with monthly wage of at least INR 15,000);
• Mandatory registration and licensing process for establishments covered by the Code;
• Work hours, working conditions and welfare facilities to be notified;
• Entitled to one day of leave for every 20 days of work per year.
• Bar on civil courts from hearing matters under the Code
Code on Industrial Relations

Overview

**Acts integrated**
- The Trade Unions Act, 1926,
  The Industrial Employment (Standing Orders) Act, 1946 and
  The Industrial Disputes Act, 1947.

**Applicability and current status**
- Applies to all employers and employees;
- Definition of employer / employee aligned to Code on Wages

**Differentiators**
- Treats fixed term workers on par with regular employee for benefits
- Provides for sole negotiating trade union;
- Re-skilling fund for training of retrenched employees.
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