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CHAMBER OF COMMERCE

# INDIA'S NEW EMPLOYMENT LAWS

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# INTRODUCTION

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- All four codes have been passed by Parliament and received the assent of the President
- Not yet notified into effect. Expected to take effect on April 1, 2021  
Replaces over 40 legislations
- Four codes – on wages, industrial relations, social security conditions & occupational safety, health and working conditions
- Objective is to simplify and modernize labour laws in India, with an emphasis on ease of doing business

# CODE OF WAGES, 2020

# CODE ON WAGES, 2020

- Replaces four legislations including the Payment of Wages Act, Payment of Bonus Act, Equal Remuneration Act and Minimum Wages Act.
- Draft Central Rules replace 8 different rules presently framed under the existing laws.
- Code seeks to bring uniformity across all the previous laws. Example – uniform definition of “wages”, “employees” defined which includes even managerial / supervisory employees.
- All obligations of employer towards timely payment of wages, etc., to now apply to all “employees”.
- Substantive aspects of the law are more or less the same.
- The Code does achieve simplification and consolidation – 60 odd Sections in the Code and 50 odd rules in the Central Rules.
- 2 registers to be maintained (down from 10 registers) and 1 return to be filed (down from 4 under the previous laws).
- States can however frame separate Rules – should not defeat the purpose of the new enactments.

## CODE ON WAGES, 2020

- “Inspector cum Facilitator” – moving from “inspector raj” to “facilitator” (tasked with advising employers and workers on compliances);
- ‘Faceless interaction’ – may reduce corruption. Code introduces web-based inspection and calling of information.
- Code recognizes that labour law violations are technical offences rather than criminal offences. De-criminalization of offences – Imprisonment (maximum of 3 months and fine of INR 100,000) if violation is repeated within 5 years.
- Substantially higher fines (of INR 10,000 to INR 50,000).
- Company law type “compounding” of offences introduced – ‘pay fine and be excused’ – compounding fee 50% of the fine prescribed. Not available for 2<sup>nd</sup> similar violation in the next 5 years.
- Allowances in excess of 50% of wages to be considered as wages. For example, if allowances constitute 55% of CTC, excess 5% deemed to be part of wages.
- Payment for overtime introduced by Central law – cannot be less than twice the normal wages. In the above example, OT to be paid on 55% as wages.

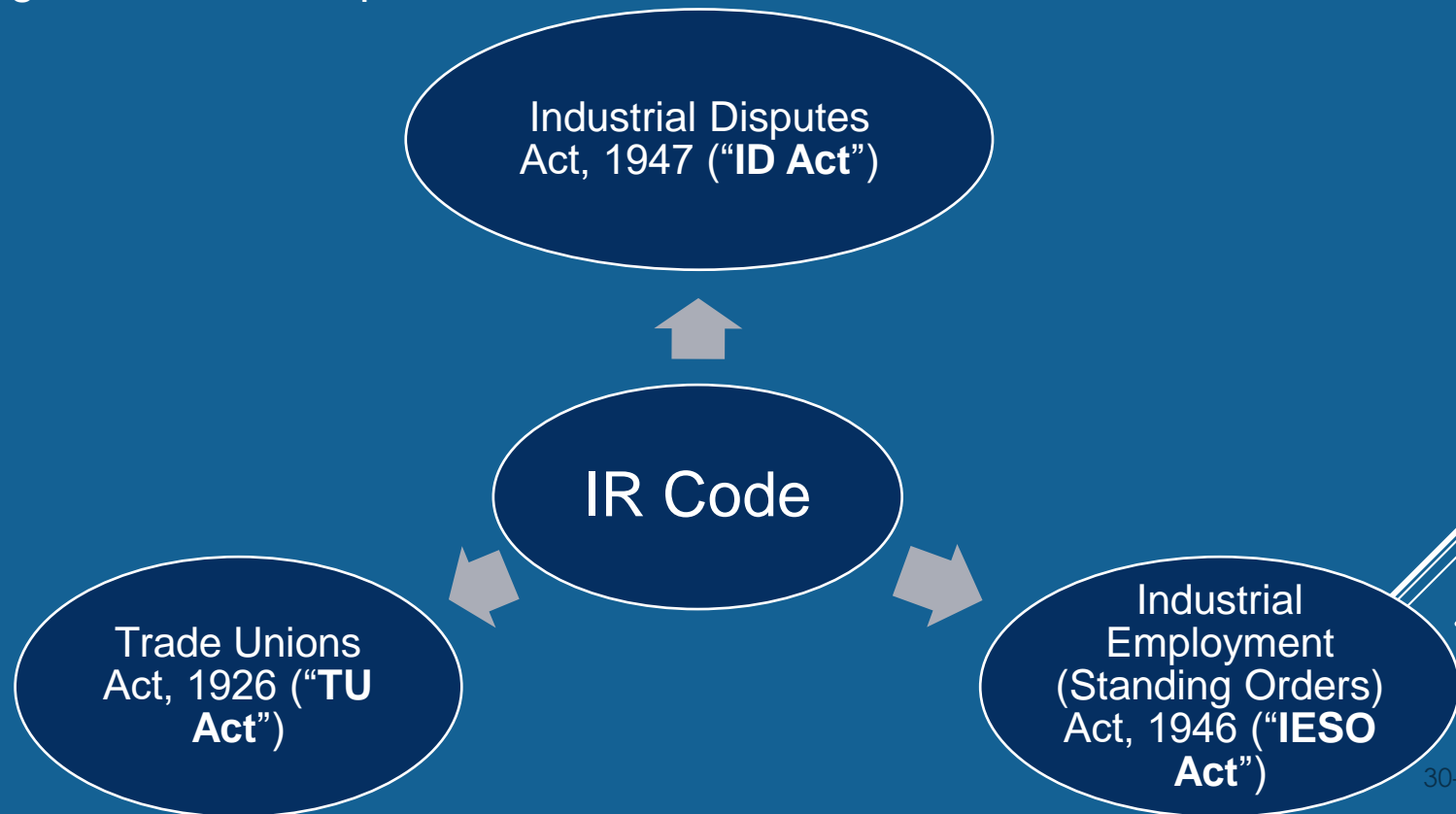
# CODE ON WAGES, 2020

- Wage period flexibility – may be beneficial to MNCs who prefer to align salary payments fortnightly in line with group practices.
- Salary payments – certain notified sectors can only make electronic payments.
- Full and final settlements to be made within 2 days of termination or resignation.
- Claims by employees – limitation period extended to 3 years.
- Burden on employer to prove that they have made timely and accurate payments. Records to be preserved for at least 3 years.

# THE INDUSTRIAL RELATIONS CODE, 2020

# THE INDUSTRIAL RELATIONS CODE, 2020

The IR Code will consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishments/undertakings and matters relating to industrial disputes.



## “Workman” replaced by “Worker”

- The term “worker” replaces the term “workman” under the ID Act.
- Definition broadly similar to that of a workman under the ID Act - workman includes an employee *inter alia* engaged to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward but will not include an employee engaged (a) mainly in a managerial or administrative capacity; or (b) a supervisory capacity and drawing wages more than Rs. 10,000 per month.
- IR Code increases the supervisory role monthly wages cap to Rs. 18,000 per month, an increase up from the previous monthly wages cap on a supervisory role of Rs. 10,000.

# Fixed Term Employment and Fixed Term Employee

- Fixed term employee (FTE) means the engagement of a worker on the basis of a written contract of employment for a fixed period.
- Fixed term employment will be allowed across all sectors.
- FTEs will have parity in terms of employment working conditions, pay and social security benefits as applicable to a permanent employee engaged in the same or similar work, regardless of working for the qualifying period.
- Gratuity will be paid to a FTE who works for more than one year.
- Main exception is that retrenchment obligations would not arise when a worker's contract is not renewed on expiry of the fixed term.

# Grievance Redressal Mechanism

- Section 9-C of the ID Act required industrial establishments employing 20 or more workmen to constitute a grievance redressal committee. The ID Act also permitted establishments to have their own grievance redressal mechanism.
- The IR Code now requires the grievance redressal committee as per the specific format under the Code.

# Government Approval for Closure, Lay-Off and Retrenchment

- Under the ID Act, a factory, mine or plantation with 100 or more workmen requires prior permission of the concerned Government to close down an undertaking, to lay off or retrench workmen.
- The IR Code has increased this threshold for requirement of prior Government approval to 300 or more workers.
- All other requirements in relation to a lay-off, closure or retrenchment remain unchanged under the IR Code for such entities.
- No change for IT / ITeS sector in relation to closure, retrenchment or lay-off

# Standing Orders for Establishments with 300+ workers

- Industrial establishments with 300 workers or more are now required to prepare standing orders on the matters listed in Schedule 1 to the IR Code relating to (i) classification of workers, (ii) manner of informing workers about work hours, holidays, paydays, and wage rates, (iii) termination of employment, and (iv) grievance redressal mechanisms.
- This is an increase from the previous threshold of 100 workmen under the IESO Act.
- Thresholds of applicability under the IESO Act varied from State to State based on local amendments. Certain States had provided exemption from the applicability of the IESO Act to specific sectors, as seen in the exemption granted in Karnataka to IT/ITeS establishments subject to the establishment fulfilling specific employment-related conditions. There is no clarity at this stage on State exemptions to this requirement.
- Standing orders under the IR Code will need certification by the labour authorities.

# Strikes and Lockouts

- The IR Code imposes a blanket prohibition on strikes and lock-outs in all industrial establishments without notice and is not limited to public utility services.
- The provisions in relation to notice requirement remain the same as seen under the ID Act.
- The ID Act applied only to public utility services, where there was a prohibition on strikes and lock-outs without notice. A unit could not go on strike in breach of contract without giving notice 60 days before the strike or within 14 days of giving such a notice, or before the expiry of any date given in the notice for the strike.
- Similar notice period requirements were provided during conciliation proceedings or industrial tribunal proceedings. Provisions are provided in relation to a public utility service employer attempting a lock-out of workmen.

# Trade Unions – Negotiating Union

- If there is more than one registered trade union of workers functioning in an establishment, the trade union having more than 51% of the workers as members would be recognized as the sole negotiating union.
- In case no trade union is eligible as sole negotiating union, a negotiating council will be formed consisting of representatives of unions that have at least 20% of the workers as members.
- This restricts the negotiating capacity of workers, as previously allowed under the TU Act read with State practice.

# Electronic Filings

- The IR Code provides that procedures and filings can be made electronically.
- The old Acts did not have specific provisions for electronic filing.

# Dispute Resolution Streamlined

- The dispute resolution mechanism has been streamlined. Certain courts like board of conciliation, court of inquiry and labour courts have been abolished.
- Sections 43 and 44 of the IR Code now provide only for Conciliation Officers, Industrial Tribunals and National Industrial Tribunals.

# Increase in Penalties

- Penalties have been substantially increased under the IR Code. E.g., the penalty for contravention of section 70 (Conditions precedent to retrenchment of workers) under the IR Code is a fine upto Rs. 2 lakhs, whereas under the ID Act, the penalty was Rs. 100.
- Compounding of penalties is now possible for first-time offences, subject to conditions.

# Exemptions possible from applicability

- The appropriate Government is empowered to exempt any new industrial establishment or class of establishments from the IR Code in public interest.

# THE CODE ON SOCIAL SECURITY, 2020

# THE CODE ON SOCIAL SECURITY, 2020

- The SS Code will consolidate and amend the laws relating to social security
- The SS Code will replace 9 Central laws:
  1. The Employees' Compensation Act, 1923 (“**EC Act**”);
  2. The Unorganised Workers' Social Security Act, 2008;
  3. The Payment of Gratuity Act, 1972; (“**Gratuity Act**”)
  4. The Employees' State Insurance Act, 1948; (“**ESI Act**”)
  5. The Cine Workers Welfare Fund Act, 1981;
  6. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952; (“**PF Act**”)
  7. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
  8. The Maternity Benefit Act, 1961; (“**MB Act**”)
  9. The Building and Other Construction Workers Cess Act, 1996.

# Rationalized and New Definitions

- The SS Code rationalizes and introduces new definitions. These include:
  - Contract labour, Contractor, Confinement, Dependent,
  - Employee (expanded to include workers employed through contractors),
  - Employer, Employment injury, Exempted employee, Factory, Family, Fixed term employment,
  - Inter-state migrant worker (expanded to include self-employed workers from another state),
  - Self employed worker,
  - Social Security Organisation (EPF Board, ESIC, National Social Security Board for Unorganised Workers, State Unorganised Workers' Social Security Board, State Building and other Construction Workers' Welfare Boards, any other Board by Gov),
  - Unorganised sector / unorganised worker
  - Wages – aligned with Code on Wages.

## Provident Fund Provisions

- The PF Act applied to establishments employing 20 or more employees. This remains unchanged under the SS Code.
- Contributions under the PF Act are at 12%. Under the SS Code, contributions are at 10%. Central Government may, by notification, increase contribution rate from 10% to 12%.
- Under the PF Act, appeal could be made by any person aggrieved by a notification / order issued by the Central Government / any authority. Under the SS Code, ambit of appeal process has been reduced -any person aggrieved by an order passed by any authority in regard to determination and assessment of dues and levy of damages may prefer an appeal to the Tribunal.
- Other main aspects remain unchanged under the SS Code.

# Employees State Insurance Provisions

- The ESI Act provisions inter alia applied to establishments employing 10 or more employees. This remains unchanged under the SS Code. Also applies to establishments which carry out hazardous or life-threatening work notified by Central Government.
- Under the ESI Act, contributions paid by the employer to the fund shall be 3.25%. Contribution rate under the SS Rules is 3.25% for employer and 0.75% by employee.
- Other main aspects remain unchanged under the SS Code.

# Gratuity Provisions

- The Gratuity Act provisions applied to establishments employing 10 or more employees. This remains unchanged under the SS Code.
- The gratuity eligibility stands for most employees at 5 years, but this is reduced in certain cases, such as 3 years for working journalists.
- The gratuity cap is Rs. 20 lakhs under the Gratuity Act. This will now be specified by the Government under the SS Code.
- Main matters, such as mode of computation of gratuity, possible withholding of gratuity, remain unchanged.

# Maternity Benefit Provisions

- The MB Act provisions applied to establishments employing 10 or more employees. This remains unchanged under the SS Code.
- The MB Act provides for payment of a medical bonus of Rs. 3,500 by the employer, in case no paid pre-natal confinement and post-natal care is provided by the employer. Under the SS Code the requirement remains the same, but the Central Government may modify the bonus amount by notification.
- Under the SS Code, employers may pool their resources and set-up a common creche facility or inter alia use a private creche. This was not provided for under the MB Act.
- Other main benefits and aspects remain unchanged under the SS Code.

# Employees' Compensation Provisions

- The EC Act applies to specified employees and industries, including employers and employees to whom ESI chapter does not apply. This remains unchanged under the SS Code.
- Other main aspects remain unchanged under the SS Code.

# Unorganized Sector

- The unorganized sector has obtained representation and coverage for first time.
- Gig worker - workers outside the traditional employer-employee relationship,
- Home-based worker - person engaged in the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other input.
- Platform work / platform worker - workers who access organizations or individuals through an online platform and provide services or solve specific problems engaged in additional categories of services or activities as may be notified by the government.
- Registration of worker – In order to claim coverage, registration of unorganised sector workers will be required, with linkage to the Aadhaar number.

# Social Security for Unorganized Sector

- Central Government funds - Social security funds for life and disability cover; health and maternity benefits; old age protection; education; and any other benefit to be set up.
- State Government schemes - Social security schemes for PF; employment injury benefit; housing; educational schemes for children; skill upgradation of workers; funeral assistance and old age homes to be set up.
- Aggregator contribution - Aggregators - digital intermediaries or market places for a buyer or user of a service to connect with the seller or the service provider.
  - Schemes for gig workers and platform workers may be funded through a combination of contributions from Central Government, State Governments and aggregators.
  - Contribution from aggregator may be at a rate notified by Government between 1-2% of the annual turnover of the aggregators.
  - Contribution towards welfare fund cannot exceed 5% of the amount paid or payable by an aggregator to gig workers and platform workers.
  - Covers ride sharing services, food and grocery delivery services, content and media services and e-marketplaces.

# Electronic filings

- The SS Code provides that procedures and filings can be made electronically.
- The old Acts did not have specific provisions for electronic filing.

# Pandemics Recognised

- Powers during an epidemic have been provided to the Government.
- The Government may defer or reduce employer's or employee's contributions under PF and ESI for a period of up to three months in the case of a pandemic, endemic, or national disaster.

## Increase in Penalties

- Penalties have been substantially increased under the SS Code. E.g., under the MB Act, if the employer fails to provide any maternity benefit to which a woman is entitled, the employer is punishable with a fine upto Rs. 5000/- or imprisonment upto 1 year. Under the SS Code, the punishment for the same offence is imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs. 50,000, or with both.
- Compounding of penalties is now possible for first-time offences, subject to conditions.
- Employers will be given an opportunity to correct non-compliance within a specified time period for any offence under the SS Code prior to initiation of prosecution or proceedings.

# OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

# OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE

- OSH Code replaces and consolidates 13 Acts including key enactments such as the outdated Factories Act, Contract Labour Act, etc.
- Code applies to all establishments in which 10 or more workers are employed. Thus, covering all types of activities including services sector. May result in dual compliance – both OSH Code and local Shops Act may apply.
- Factories and construction workers subject to special provisions. To be regulated, a factory should employ 20 workers using power or 40 workers without the use of power. State Government may exempt a factory from the applicability of OSH Code to create more economic or employment opportunities.

# OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE

- Contract labour thresholds also increased from 20 to 50 contract workers for both principal employers and contractors.
- Common registration under the OSH Code (factories require additional licenses). All establishments now governed by the new OSH Code must register within 60 days. Cannot hire employees unless registered or if the registration is cancelled.
- Any change in ownership or management of an establishment should be reported.
- Closure of an establishment must be reported within 30 days along with certification that all dues to employees have been paid.
- Obligations imposed on persons who supply articles to an establishment to ensure that there is no health hazard associated with such articles.
- Employers are required to compulsorily issue appointment letter (if not previously issued, to issue within 3 months of the commencement of the Code), provide free annual health check.

# OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE

- Employers to report deaths and serious bodily injuries (not able to work for 48 hours or more) at the work place. Employers and employees are required to disclose work place dangers to the Inspector, whose decision on the matter is final.
- Women who consent are allowed to work in factories during night time (7 pm – 6 am). OT is permissible with prior consent of the workers and they are to be paid at twice the normal wages.
- Separate toilets, bathing facilities and lockers for male, female and transgenders.
- Welfare officer to be appointed if a factory employs more than 250 workers (threshold reduced from the earlier 500). Canteen to be provided if an establishment employs more than 100 workers (reduced from the earlier threshold of 250 workers in a factory). Creche to be provided if the establishment employs more than 50 workers.
- If contract workers are employed through an unlicensed contractor, such employment is illegal and may potentially make such workers deemed employees of the principal employer.

# OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE

- Contract workers to be issued experience certificate by the contractor if demanded by such workers.
- Civil courts barred from hearing matters under the OSH Code. Specifically, no injunction can be granted by a civil court in relation to matters under the OSH Code.
- Compounding of offences introduced by paying 50% of the fine amount. Fines varying between INR 200,000 – 300,000 imposed for violations by employer of the OSH Code. Fine of INR 50,000 for failure to maintain registers or file returns.
- Failure to comply with duties relating to hazardous processes or violations which result in death of an employee subject to 2 years imprisonment and fine of INR 500,000. 50% of fine may be paid as compensation to next of kin.<sup>78</sup> Employees who contravene are subject to fine of INR 10,000.

# KEY CONCLUSIONS

- Substantial law is more or less the same
- Government approvals for retrenchment, layoff, etc threshold for factories, mines, plantations increased from 100 to 300 employees
- Flexibility to employers to hire and fire without Government approval
- Requirement for permission to retrench, close down remains for 300+ facilities
- Statutory payment for retrenchment still based on tenure
- Moves towards better EEO workplace
- Initial violations can be compounded; penalties have however been increased
- Covering Gig Workers and other unorganized sector for the first time

# KEY CONCLUSIONS

- Trade union representation made clearer
- Fixed term employment possible across all sectors
- Ban on strikes in private establishments without notice
- Not very progressive in terms of attracting investments in manufacturing sector
- Rationalization and simplification of definitions, though plurality remains
- Simplification of regulatory procedures – filings, registers, etc
- Applicability of statutory benefits to contract workers
- Streamlining dispute resolution mechanism
- E-filing given legal backing



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