

NEW LABOUR CODES - AN OVERVIEW

1. Background of Labour Legislation

One of the bad side effects of rapid industrialisation was exploitation of labour. Abnormally long working hours, poor safety conditions, un-hygienic and hazardous working conditions, child labour and total absence of job security were some of the major difficulties faced. Labour was not in a dictating condition. Labour had to accept unfair service conditions as he was always at 'receiving end'. There was no doubt that labour needed protection and it was necessary to ensure some basic minimum human working conditions.

In *Bhilwala Dudh Utpadak Sahakari S Ltd. v. Vinod Kumar Sharma* 2001 LLR 1079 (SC), it was observed that labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, employers cannot be allowed to subterfuge to deny the rights of workmen under different statutes.

Various labour laws were passed to protect interests of workmen. Side by side, Trade Union movement also took roots so that workmen can become united and get their legitimate rights. The result is that workers in organised sector are enjoying reasonably good working conditions and job security. In fact, now the pendulum is swinging to 'other side' so far as organized sector is concerned. There is a feeling that now managements need 'protection' from unreasonable demands from workmen and militant Unions. The most glaring example is that of West Bengal where many industries shifted from that State due to labour troubles, and growth rate of the State was stifled.

Crippling and closure of all textile units in Mumbai due to strike by militant labour union in 1982 is another classic example.

Luckily, many of Trade Unions have realised futility of this approach, particularly after liberalisation in industrial policies. Trade Unions also have been taking a comparatively balanced view of the matter.

1.1 Management can reorganize business

Management can reorganize and arrange business in the manner it considers best. So long as it is done *bona fide*, its propriety cannot be questioned. - *Parry & Co. v. P C Pal* AIR 1970 SC 1334 = 1970(2) LLJ 429 (SC) * *Ghatge Patil Employees Union v. Ghatge Patil Transport* 1968(1) SCR 300 * *D Macro Polo v. Their Employees Union* 1958(2) LLJ 492 (SC) * *Siemens Ltd. v. Siemens Employees Union* 2012 LLR 79 (SC).

In *Indian Leaf Tobacco Development Co. Ltd. v. Management* AIR 1970 SC 860, it was held that Industrial Tribunal cannot interfere in decision of management in the matter of closing down some of its branches or depots. Such stoppage is purely at the discretion of company carrying on business - quoted with approval in *District Red Cross Society v. Babita Arora* 2007 LLR 1125 (SC).

Management cannot force employee to work in another company - Without consent, workmen cannot be forced to work under different Management, even if terms of employment remain same - *Sunil K.R. Ghosh & Ors. v. K. Ram Chandran & Ors.* 2012 LLR 76 (SC).

2. Consolidation of Labour Legislation

Over the years, there has been proliferation of labour legislation. Numerous labour laws provided for some specific issues. Often, there were duplications and contradictions. Compliance with numerous labour legislation was becoming a big challenge.

Need was felt to consolidate numerous labour laws.

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. Accordingly, Government had taken steps for the codification of existing Central labour laws into 4 Codes by simplifying, amalgamating, and rationalizing the relevant provisions of the Central Labour laws.

It is expected that codification of the Labour Laws will reduce multiplicity of definitions & authorities, facilitate implementation & use of technology in the enforcement of labour laws and bring transparency & accountability in enforcement.

After lot of efforts and elaborate discussions and feedbacks, some 29 labour laws have been consolidated into four Labour Codes, as follows—

- (1) The Code of Wages, 2019 consolidates four labour legislations. The Code of Wages has received assent of President on 8-8-2019 and was gazetted on 8-8-2019.
- (2) The Code on Social Security, 2020 consolidates nine labour laws. The Code on Social Security, 2020 has received assent of President on 28-9-2020 and was gazetted on 29-9-2020.
- (3) The Industrial Relations Code, 2020 consolidates three labour legislations. The Industrial Relations Code, 2020 has received assent of President on 28-9-2020 and was gazetted on 29-9-2020.
- (4) The Occupational Safety, Health and Working Conditions Code, 2020 consolidates 13 labour laws. The Occupational Safety, Health and Working Conditions Code, 2020 has received assent of President on 28-9-2020 and was gazetted on 29-9-2020.

These four Labour Codes will become effective from the date they are notified.

The labour ministry had circulated the draft rules on the Wage Code Bill in 2019. Draft rules on other three Codes were circulated in November 2020. Suggestions and objections were invited. However, many States have yet to frame rules. Further, there is some political risk in implementing the new Codes. Hence, it is possible that the new Labour Codes will be notified only after general elections to Parliament in year 2024.

2.1 Hotchpotch Labour Codes

The labour codes are not truly consolidated codes. The separate Acts are included in each Labour Code as separate chapters, practically and mostly, independent of each other.

Definition clause is common in each Code. However, definitions are not uniform across all codes. Definitions of Establishment, Employer, Employee, Worker are not same across all four codes.

For example, definition of 'factory' in factory requires ten or more employees while definition of 'factory' in Occupational Safety, Health and Working Conditions Code required 20 or more *workers* (not employees).

Definition of 'wages' is common in all four labour Codes, but it is a very litigation prone. There will be no 'ease of doing business' in that definition.

Interestingly, in some provisions, reference has been given to earlier labour legislations, which are supposed to be repealed when the new Labour Codes become effective.

2.2 No radical change in statutory provisions

The Four Codes mainly consolidate earlier legislation. There is no radical change in any of the laws.

Some redundant provisions have been omitted.

Industrial Disputes Act has been made slightly industry friendly. Fourteen days notice is required for a strike or lockout. Provisions relating to closure, layoff and retrenchment will apply only when number of workers exceed 300 (present limit is 100). However, the wide definition of 'industry' has been further widened, though earlier, there was talk to trim scope of definition of 'industry'.

Scope of Minimum Wages Act has been widened and rationalised. Provision has been made to declare 'floor wage' by Central Government. Any minimum wage notified by State Government cannot be less than 'floor wage'.

MGNREGA has been specifically excluded from purview of the Code of Wages, to avoid disputes.

Rule making powers have been considerably widened. Thus, many provisions, which were in the Act will now get covered through Rules, giving more flexibility to Government in implementing law.

2.3 Common Definitions in four Labour Codes

Some definitions are common across all four Codes, with some variations. Some definitions are common in three Codes with some variations while some definitions are common in two Codes. The common definitions are - Establishment, Appropriate Government, Employer, Employee, Occupier, Worker, Wages, Factory, Plantation, Building and Construction workers etc. Broadly, the definitions are identical with some minor variations. Case law will also normally apply to all four Codes.

3. Some new concepts, some controversial issues and debatable issues in four Labour Codes

Though the Labour Codes mostly follow present labour laws, there are some new concepts and some controversial issues.

3.1 Definition of 'Wages'

The term 'Wages' is defined in all four Labour Codes. The definition is uniform except a few minor variations. There are some problematic or controversial issues.

Some payments made to employee in exclusion clauses will be part of 'wages' if they exceed 50% of all remuneration - For calculating the wages under this clause, if payments made by the employer to the employee under specified clauses exceeds one-half (50%), or such other % as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the % so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause - first *proviso* to definition of 'wages' under Labour Codes.

The intention is clear that employer should not reduce its liability of PF, ESIC, gratuity etc. by camouflaging wages as different kinds of 'allowances'.

However, some sub-clauses under this head are highly problematic.

For example, the term '*any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon*' is highly unrealistic. If interest only on that year's contribution is considered, the quantum may not be huge. However, if interest on accumulated balance is considered, the amount is likely to be huge. Further its quantification is possible only after annual statement is received from PF authorities. Highly impractical and unrealistic provision indeed.

If employee's travel expenses for official work are reimbursed on actual basis, these cannot be part of 'conveyance allowance'. This needs clarification.

The phrase 'any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment' is also prone to different interpretations.

The new definition of 'wages' would be nightmare to employers and platinum opportunity (not only 'golden' opportunity) to legal practitioners [as is happening in GST].

Remuneration in kind upto 15% will be part of 'wages'? - Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which *does not exceed 15%* of the total wages payable to him, shall be deemed to form part of the wages of such employee - *explanation* to section 2(y) of Code on Wages, 2019.

Remuneration in kind upto 15% will be part of 'wages'. If remuneration in kind exceeds 15%, only 15% will be part of wages [This appears to be the intention, but the drafting of clause is faulty. The clause can be interpreted to mean that canteen subsidy, free transport etc. will be part of 'wages', if they are less than 15% of 'total wages'. If such remuneration in kind exceeds 15%, it will *not* be includable in 'total wages'. This does not seem to be intention at all].

Quantification of canteen subsidy, free or subsidized transport, uniform etc. will be a big challenge and will be highly litigation prone. Such remuneration in kind should not form part of 'wages' at all.

There is no 'ease of doing business' at all in new definitions, though intentions are sound.

Some payments will be part of 'wages' for purpose of equal wages to all genders - For the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage - second *proviso* to definition of 'wages' under Labour Codes.

Minimum wages are 'wages' and cannot be split - Definition of 'wages' only includes basic wage, DA and retaining allowance. Other allowances are not part of wages. Hence, where minimum wages are paid, these cannot be split into various allowances to reduce liability of PF, ESIC, bonus, gratuity etc. **Thus**, an employer paying minimum wages should not pay any allowance. Such allowance will be treated as part of 'wages' for purposes of PF, Gratuity, ESI etc. but will not be treated as 'wages' for purpose of 'Minimum Wages Act'.

3.2 Some relaxations in Industrial Relations matters

14 days' notice for strike and lockout is required. Flash strikes are prohibited. Concept of 'public utility service' is eliminated, as now 14 days' notice for strike and lockout is required in all cases. Labour Unions may not like this restriction on their rights.

Prior permission of the government will be required before closure, lay-off, or retrenchment mandatory to establishments with at least 300 workers, instead of 100 workers.

Standing orders on matters related to workers' classification, holidays, paydays, and wage rates, termination of employment and grievance redressal mechanisms is mandated to establishments with at least 300 workers, instead of 100 workers as at present.

Person employed in a supervisory capacity drawing wage exceeding Rs. 18,000 per month will be 'employee' and not 'worker'.

3-3 Some issues in 'Code on Wages'

Full wages are payable to part time employees also [This is to avoid payment of full wages by showing the employee as part time]. However, issues will arise in respect of casual wages and wages where really the person works only for few hours in a day.

Definition of 'wages' is cumbersome and prone to litigation as explained above.

3.4 Fixed Term Employee - new concept

This is a new concept introduced in Labour Code. At present, any employment is considered as for life time. However, the technology, market, demand, supply, Government policies and economic conditions change so rapidly that assuring life time employment is practically impossible. Hence, concept of 'fixed term employee' is really need of the day.

"Fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period - Section 2(34) of Code on Social Security, 2020.

However, employers are likely to misuse this provision. Further, Labour Unions are not likely to accept this provision easily. Strikes and agitations are quite possible on this issue.

3.5 Social security for unorganised workers

Provisions relating to unorganised workers, home based worker, construction workers, migratory workers, self-employed worker, GIG workers and platform workers have been made in new Labour Code. These are contained in Chapter IX of Code on Social Security, 2020 [sections 109 to 114].

This is really ambitious provision as providing social security to such unorganised workers is not easy at all. However, at least their existence in economy and need for social security to them has been recognised, as really, workers in unorganised sectors far outnumber workers in organised sectors.

"Home-based worker" means a 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 inputs - Section 2(36) of Code on Social Security, 2020.

“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 - Section 2(35) of Code on Social Security, 2020. [He offers his own services without going through contractor].

“Platform worker” means a person engaged in or undertaking platform work - Section 2(61) of Code on Social Security, 2020 [like Ola and Uber drivers, Dunzo or Swiggy delivery boys, persons providing specific service like cleaning, maintenance etc. on basis of orders received online from website].

4. Code of Wages, 2019

The Code on Wages, 2019 combines four Acts -

Once the Code on Wages are notified and made effective, the aforesaid four Acts will be repealed, as per section 69 of Code on Wages.

4.1 Consolidation of four Acts

Code on Wages consolidates four different Acts.

- (1) Equal Remuneration Act
- (2) Minimum Wages Act
- (3) Payment of Wages Act
- (4) Payment of Bonus Act.

There is no radical change made from earlier laws in basic scheme, while consolidating these four Acts into one.

However, scope of Payment of Wages Act, Minimum Wages Act and Equal Remuneration Act has been considerably expanded and coverage widened with enlarged definition of ‘establishment’.

Scope of Payment of Bonus Act has not been much enlarged.

4.2 Key Highlights of Code of Wages, 2020

Following are major highlights of Code on Wages, 2019—

- ◆ The provisions of Code on Wages shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service - Section 61 of Code on Wages, 2019.
- ◆ New definition of ‘establishment’ covers any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment. The scope has been widened to include all types of establishments. The term ‘occupation’ in the definition vastly increases the scope of definition of ‘establishment’. Any establishment where even one employee or worker is employed will be ‘establishment’.
- ◆ Contracting out not allowed under Code on Wages. An employer cannot enter into agreement with employee whereby employee agrees to forego any benefit under the Code on Wages.
- ◆ Any contract or agreement where an employee relinquishes, removes or reduces the right to any amount or right to bonus under Code on Wages, shall be null and void, insofar as it purports to remove or reduce the liability of any person to pay such amount under Code on Wages - section 60 of Code on Wages.
- ◆ Definition of ‘wages’ has been elaborated. It has been provided that if allowances paid to employee exceed 50% of basic pay plus DA plus retaining allowance, the excess will be treated as part of ‘wages’. This will discourage tendency of manipulating salary package to reduce liability of PF, ESIC, bonus, gratuity etc. However, the definition is faulty and will lead to litigation and harassment.
- ◆ Remuneration in kind upto 15% will be part of ‘wages’. If remuneration in kind exceeds 15%, only 15% will be part of wages [This appears to be the intention, but the drafting of clause is faulty. The clause can be interpreted to mean that canteen subsidy, free transport etc. will be part of ‘wages’, if they are less than 15% of ‘total wages’. If such remuneration in kind exceeds 15%, it will *not* be includable in ‘total wages’. This does not seem to be intention at all].

- ◆ Definition of 'wages' only includes basic wage, DA and retaining allowance. Other allowances are not part of wages. Hence, where minimum wages are paid, these cannot be split into various allowances to reduce liability of PF, ESIC, bonus, gratuity etc.
- ◆ An employer paying minimum wages should not pay any allowance. Such allowance will be treated as part of 'wages' for purposes of PF, Gratuity, ESI etc. but will not be treated as 'wages' for purpose of 'Minimum Wages Act'.
- ◆ The Equal Remuneration Act was applicable only to workers and that too of notified establishments and employments only [Many State Governments had not bothered to issue such notifications]. Scope of Code of Wages is much wider than Equal Remuneration Act, as now all employers and all employees in any establishment are covered.
- ◆ In case of Minimum Wages, scope has been widened. Concept of 'scheduled employment' has been eliminated. Thus, the provisions can apply to all employees and employers.
- ◆ Scope of provisions relating to payment of wages has also been widened and coverage extended to all establishments.
- ◆ Scope of provisions relating to bonus has been more or less same as per earlier provisions. There is not much change in basic provisions relating to bonus.
- ◆ Overtime rate shall not be less than twice the normal rate of wages (Earlier, overtime of twice the normal rate was mandatory only in respect of workers covered under Factories Act).
- ◆ Full wages are payable to part time employees also [This is to avoid payment of full wages by showing the employee as part time. In fact, this provision is in existing Minimum Wages Act also].
- ◆ Time limit for payment of wages in case of monthly payment has been made uniform as 7th of following month. Earlier, in some cases, payment was allowed to be made within 10 days of following month.
- ◆ Deduction from wages can be maximum upto 50% of wages. Earlier, deduction upto 75% was allowed, if deduction included payments to cooperative societies.
- ◆ Upper limit of salary of Rs. 21,000 for eligibility of bonus removed from definition, but such limit can be prescribed under section 26(1) of Code of Wages by notification by 'Appropriate Government'.
- ◆ Contractors and Sub-Contractors have been specifically included in definition of 'Employer'. Thus, they would be treated as 'Employer' for all purposes of Code of Wages.
- ◆ Inspector-cum-Facilitator is expected not only to inspect by also advice employers and workers.
- ◆ Provisions for claims under Code of Wages and its recovery from employer have been made.
- ◆ Penalties can be imposed by officer of State Government not below the rank of Under Secretary.
- ◆ MNREGA removed from provisions of Code on Wages, particularly Minimum Wages. Coal Mines PF Act is also outside the Code on Wages.
- ◆ In many offences, instead of imprisonment, provision of imposing fines has been made. Imprisonment is mostly provided for repeat offense. In some cases, imprisonment has been provided but period of imprisonment has been reduced.
- ◆ In most cases, the offense can be compounded. Thus, offender can pay compounding fee and get away, instead of facing trial in criminal court. Thus, now, cases will be filed in criminal court very rarely
- ◆ Jurisdiction of civil court barred or restricted

4.3 Section-wise Comparison between Code on Wages and Earlier Acts

Following table gives broad section-wise comparison between Code on Wages and earlier Acts. Only significant definitions have been indicated, for the sake of brevity.

4.3A Comparison between Equal Remuneration Act, 1976 and Code on Wages, 2020

Section No. of Code on Wages	Section No. of Equal Remuneration Act	Description (as used in Code on Wages)
2(z)	2(i)	Definition of 'worker'
2(v)	2(h)	Definition of 'same work or work of a similar nature'
3	4 and 5	Prohibition of discrimination on ground of gender
4	7(1)(3)	Authority to decide whether a work is same or similar nature

4.3B Comparison between Minimum Wage Act, 1948 and Code on Wages, 2020

Section No. of Code on Wages	Section No. of Minimum Wages Act	Description (as used in Code on Wages)
Nil	2(a) and 2(bb)	No definition of adolescent or child
Nil	2(d)	Definition of cost of living index
2(k)	2(i)	Definition of Employee
2(l)	2(e)	Definition of Employer
2(r) and 51	19	Inspector-cum Facilitator appointed under section 51(1) of Code on Wages
2(y)	2(h)	Definition of 'wages'
6	3	Fixation of Minimum Wages
7	4	Components of minimum wages
8	5	Procedure for fixing and revising minimum wages
10	10	Wages of employee who works for less than normal working day
11	16	Wages for two or more classes of work
12	17	Minimum time rate wages for piece work
13	13	Fixing hours of work for normal working day
14	14	Wages for overtime work
60	23	Contracting out prohibited

4.3C Comparison between Payment of Wages Act, 1948 and Code on Wages, 2020

Section No. of Code on Wages	Section No. of Payment of Wages Act	Description (as used in Code on Wages)
2(l)	2(ib)	Definition of Employer
2(m)	1(4) and 2(ii)	New Definition of 'establishment'
2(r) and 51	14	Inspector-cum Facilitator appointed under section 51(1) of Code on Wages
2(y)	2(vi)	Definition of 'Wages'
15	6	Mode of payment of wages
16	4	Wage period shall not exceed one month
17	5	Time limit for payment of wages
18	7	Deductions which may be made from wages

Section No. of Code on Wages	Section No. of Payment of Wages Act	Description (as used in Code on Wages)
19	8	Imposition of Fine on employees
20	9	Deduction for absence from duty
21	10	Deductions for damage or loss
22	11	Deductions for services rendered by employer to employee (like accommodation, amenities)
60	23	Contracting out not permitted

4.3D Comparison between Payment of Bonus Act, 1965 and Code on Wages, 2020

Section No. of Code on Wages	Section No. of Payment of Bonus Act	Description (as used in Code on Wages)
2(a)	2(1)	Accounting year
2(c)	2(3)	Definition of Agricultural income-tax law
2(j)	2(12)	Definition of Direct Tax
2(k)	2(13)	Definition of 'employee'
2(l)	2(14)	Definition of 'employer'
2(m)	1(3) and 2(15)	Definition of 'establishment'
2(r) and 51	27	Inspector-cum Facilitator appointed under section 51(1) of Code on Wages
2(y)	2(21)	Wages
26	8, 10, 11 and 16	Eligibility for bonus
27	13	Proportionate reduction in bonus in certain case
28	14	Computation of number of working days
29	9	Disqualification for bonus
30	3	Establishments to include departments, undertakings and branches
31	2(4)	Payment of bonus out of allocable surplus
32	4, read with First and Second Schedule	Computation of gross profits
33	5	Computation of available surplus
34	6	Sums deductible from gross profits
35	7	Calculation of direct tax payable by employer
36	15 read with Fourth Schedule	Set on and set off of allocable surplus
37	17	Adjustment of customary or interim bonus against bonus payable under Code on Wages
38	18	Deduction of certain amounts from bonus payable
39	19	Time limit for payment of bonus
40	20	Application of provisions of bonus to establishments in public sector in certain cases
41	32 and 1(3)(b)	Non-applicability of provisions of bonus

4.4 Some Important Provisions in Code of Wages, 2019

Some important provisions are summarised below/

Gender equality - Provisions in respect of gender equality are contained in sections 3 and 4 [Chapter I] of Code on Wages, 2019. These provisions replace Equal Remuneration Act, 1976.

No discrimination in recruitment and wages except where employment restricted - No employer shall — (i) for the purposes of complying with the provisions of section 3(1), reduce the rate of wages of any employee; and (ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force - section 3(2) of Code on Wages, 2019.

Equal pay for equal work - The principle of 'equal pay for equal work' has been accepted in *Surendra Singh v. Engineer in Chief* 1986(1) SCC 639 * *Randhir Singh v. UOI* 1982 (44) FLR 299 (SC) * *State of Punjab v. Jagjit Singh* (2017) 1 SCC 148 * *Umrala Gram Panchayat v. The Secretary, Municipal Employees' Union* 2015 LLR 449 (SC).

Meaning of 'same work or work of a similar nature' - "Same work or work of a similar nature" means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment - section 2(v) of Code on Wages, 2019.

5. Code on Social Security, 2020

Social security primarily refers to social welfare service concerned with social protection, or protection against socially recognized conditions, including poverty, old age, disability, unemployment and others.

Social security - "Social security" means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under Code on Social Security, 2020 - Section 2(78) of Code on Social Security, 2020.

5.1 Consolidation of various labour laws in Code on Social Security

The Code on Social Security, 2020 consolidates following nine labour laws.

1. The Employee's Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
5. The Maternity Benefit Act, 1961
6. The Payment of Gratuity Act, 1972
7. The Cine-Workers Welfare Fund Act, 1981
8. The Building and Other Construction Workers' Welfare Cess Act, 1996
9. The Unorganised Workers' Social Security Act, 2008

5.2 Key Highlights of Code on Social Security, 2020

Following are major highlights-

- ◆ Definition of 'wages' has been elaborated. It has been provided that if allowances paid to employee exceed 50% of basic pay plus DA plus retaining allowance, the excess will be treated as part of 'wages'. This will discourage tendency of manipulating salary package to reduce liability of PF, ESIC, bonus, gratuity etc. However, the definition is faulty and will lead to litigation and harassment.
- ◆ Remuneration in kind upto 15% will be part of 'wages'. This is faulty drafting. The words 'does not exceed' should have been 'exceeds'. Otherwise, all canteen subsidy, free transport etc. will be part

of 'wages', if they are less than 15% of 'total wages'. Ironically, if they exceed 15%, these will not be includable in 'total wages'.

- ◆ Provision made for Social security funds for unorganised workers
- ◆ Fixed Term Employees' service conditions, salary, leave and social security will be at par with the Regular Employee. In addition, the Fixed Term Employee has also been given the right to *pro rata* Gratuity.
- ◆ Definition of employees expanded to include more workers like - inter-State migrant workers, platform worker, gig workers, film industry workers and construction workers.
- ◆ The scope of ESIC increased. A provision has been made that now its coverage will be in all 740 districts of the country. In addition, the option of ESIC will also be for plantation workers, unorganized sector workers, gigs and platform workers, and institutions with less than 10 workers. If there is a risky work in an institute, that institute will inevitably be brought under the purview of ESIC even if it is a sole labourer.
- ◆ The provisions of ESIC would be applicable to establishment employing even one worker, if the establishment is engaged in hazardous and life threatening activities.
- ◆ To increase the scope of EPFO, the schedule of the institutions has been removed all institutions which have 20 or more workers will come under the ambit of the EPF. The option of EPFO for institutions with less than 20 workers and self-employed workers is also given.
- ◆ Central government may defer or reduce the 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.
- ◆ Randomised selection of inspection of establishment to reduce inspector raj - no surprise inspection
- ◆ In many offences, instead of imprisonment, provision of imposing fines has been made. Imprisonment is mostly provided for repeat offense. In some cases, imprisonment has been provided but period of imprisonment has been reduced.
- ◆ In most cases, the offense can be compounded. Thus, offender can pay compounding fee and get away, instead of facing trial in criminal court. Thus, now, cases will be filed in criminal court very rarely
- ◆ Jurisdiction of civil court barred.

5.3 Section-wise comparison between Code on Social Security and earlier Acts

Following charts show comparison between section numbers of Code on Social Security, 2020 and earlier Acts. Only significant definitions have been indicated, for the sake of brevity.

5.3A Comparison between Code on Social Security and Employees' Provident Funds and Miscellaneous Provisions Act, 1952

Section No. of Code on Social Security	Section No. of Employees' Provident Fund and Miscellaneous Provisions Act	Description
2(3)	2(a)	Appropriate Government
2(5)	2(aa)	Authorised Officer
2(21)	2(c)	Contribution
2(26)	2(f)	Employee
2(27)	2(e)	Employer
2(31)	2(ff)	Exempted employee
2(32)	2(g)	Factory