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LABOUR LAWS AND PRACTICE

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LESSON 8

LABOUR CODES

Introduction

Work is part of everyone's daily life and is crucial to one's dignity, well-being and development as a human being. Economic development means not only creation of jobs but also working conditions in which one can work in freedom, safety and dignity. To improve the life and dignity of labour force of the country by protecting & safeguarding the interest of workers, promotion of their welfare and providing social security to the labour force both in organized and unorganized sectors, Parliament enacted various Labour Laws.

Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment.

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 Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020
- The Code on Social Security, 2020
- The Industrial Relations Code, 2020

The Labour Code is a mean 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.

The Code on Wages, 2019 has been passed by both Houses of the Parliament and assented to by the President on 08.08.2019. The other three Labour Codes such as Code on Social Security, 2020, Industrial Relations Code, 2020 and Occupational Safety, Health and Working Conditions Code, 2020 received the assent of President on 28th September, 2020.

THE CODE ON WAGES, 2019

The Code on Wages, 2019 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 Code on Wages, 2019 is an Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

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 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 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 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 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 advise the Central Government and the State Governments, respectively, on matters relating to wages, 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.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE 2020

Occupational Safety, Health and Working Conditions Code, 2020 is an Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment.

Occupational Safety, Health and Working Conditions Code, 2020 amalgamate, simplify and rationalise the relevant provisions of the following thirteen Central labour enactments relating to occupation, safety, health and working conditions of workers, namely:— 1. The Factories Act, 1948; 2. The Plantations Labour Act, 1951; 3. The Mines Act, 1952; 4. The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955; 5. The Working Journalists (Fixation of Rates of Wages) Act, 1958; 6. The Motor Transport Workers Act, 1961; 7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; 8. The Contract Labour (Regulation and Abolition) Act, 1970; 9. The Sales Promotion Employees (Condition of Service) Act, 1976; 10. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979; 11. The Cine Workers and Cinema Theatre Workers Act, 1981; 12. The Dock Workers (Safety, Health and Welfare) Act, 1986; and 13. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The salient features of the Occupational Safety, Health and Working Conditions Code, 2020 inter alia, are as under:—

(i) to impart flexibility in adapting technological changes and dynamic factors, in the matters relating to health, safety, welfare and working conditions of workers;

(ii) to apply the provisions of the Code for all establishments having ten or more workers, other than the establishments relating to mines and docks; more employees.

(iii) to provide the concept of "one registration" for all establishments having ten or more employees. However, for the applicability of all other provisions of the Code in respect of

factories, except registration, the threshold has been fixed twenty workers in a factory (with power) and forty workers (without power);

(iv) to include the journalist working in electronic media such as in e-paper establishment or in radio or in other media in the definition of "working journalists";

(v) to provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment;

(vi) to provide free of cost annual health check-ups for employees above the specified age in all or certain class of establishments by which it would be possible to detect diseases at an early stage for effective and proper treatment of the employees;

(vii) to make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months and also provide that a Inter State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar;

(viii) an Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess;

(ix) 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;

(x) to constitute the State Occupational Safety and Health Advisory Board at the State level to advice the State Government on such matters arising out of the administration of the Code;

(xi) to make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments;

(xii) to employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent;

(xiii) to make 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 a period of five years to engage the contract labour;

(xiv) to enable the courts to give a portion of monetary penalties up to 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;

(xv) to provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or

pandemic or disaster;

(xvi) to make provision for Social Security Fund for the welfare of unorganised workers; and

(xvii) to make provision for adjudging the penalties imposed under the Code.

THE CODE ON SOCIAL SECURITY, 2020

Code on Social Security, 2020 is an Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

Code On Social Security, 2020, amalgamate, simplify and rationalise the relevant provisions of the following nine central labour enactments relating to social security, namely:—(i) The Employees' Compensation Act, 1923;(ii) The Employees' State Insurance Act, 1948;(iii) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;(iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;(v) The Maternity Benefit Act, 1961;(vi) The Payment of Gratuity Act, 1972;(vii)The Cine Workers Welfare Fund Act, 1981; (viii) The Building and Other Construction Workers Welfare Cess Act, 1996; and(ix) The Unorganised Workers' Social Security Act, 2008.

The salient features of the Code on Social Security, 2020, inter alia, are—

(i) to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors;

(ii) to provide for an establishment to be covered under Chapter III relating to Employees' Provident Fund (EPF) and under Chapter IV relating to Employees State Insurance Corporation (ESIC) on voluntary basis even if the number of employees in that establishment is less than the threshold. It further seeks to make those Chapters inapplicable to such establishments on fulfilment of certain conditions;

(iii) to define various expressions used in the Code such as, "career centre","aggregator", "gig worker", "platform worker", "wage ceiling", etc. Further, the definition of "employee" has been comprehensively elaborated to cover maximum number of employees and workers;

(iv) to provide for registration, electronically or otherwise, of every establishment to which the Code applies, within such time and in such manner as the Central Government may by rules determine. It further provides for an option for cancellation of registration by any establishment whose business activities are in the process of closure, subject to the conditions as may be prescribed by the Central Government;

(v) constitution of various social security organisations for the administration of the Code, namely, (a) the Central Board of Trustees of the Employees' Provident Fund (Central Board),

(b) the Employees' State Insurance Corporation (Corporation), (c) the National Social Security Board for Unorganised Workers (National Social Security Board), (d) the State Unorganised Workers' Social Security Board and (e) the State Building Workers Welfare Boards;

(vi) to provide that the medical education institutions and training institutes of the Employees' State Insurance Corporation may be run by the Corporation itself or on the request of the Corporation, by the Central Government, any State Government, any Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government;

(vii) to empower the Central Government to frame schemes for unorganised workers, gig workers and platform workers and the members of their families for providing benefits relating to Employees' State Insurance Corporation;

(viii) provisions for maternity benefits such as prohibition from work during certain periods, provision of nursing breaks, crèche facility, claim for maternity benefits, etc.;

(ix) to empower the Central Government, by notification, to assign additional work, including administration of any other enactment or scheme relating to social security, to any of the social security organisations and the expenses towards such additional work shall be borne by the Central Government;

(x) to empower the Central Government to frame schemes for the purposes of providing social security benefits to self-employed workers or any other class of persons;

(xi) to empower the Central Government to specify by notification, rates of employees' contributions to the Employees' Provident Fund Scheme and the period for which such rates shall apply for any class of employee;

(xii) to provide for appeal against an order passed by any authority in regard to determination and assessment of dues and levy of damages relating to Employees' Provident Fund by an employer only after depositing with Social Security Organisation concerned, twenty-five per cent of the amount due from him as determined by the authority against whose order the appeal has been preferred;

(xiii) to provide that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years;

(xiv) to make provision for payment of cess by employer in case of building and other construction work, payable under Chapter VIII on the basis of his self-assessment;

(xv) to provide for registration of every unorganised worker, gig worker or platform worker on the basis of self-declaration electronically or otherwise, along with such documents including Aadhaar number, in such form and in such manner, containing such information as may be prescribed by the Central Government;

(xvi) to empower the Central Government by order, to defer or reduce employer's contribution, or employee's contribution, or both, payable under Chapter III or Chapter IV, as the case may be, for a period up to three months at a time, in respect of establishment to

which Chapter III or Chapter IV, as the case may be, applies, for whole of India or part thereof in the event of pandemic, endemic or national disaster;

(xvii) to provide for establishment and maintenance of separate accounts under social security fund, for the welfare of unorganised workers, gig workers and platform workers; and a separate account for the amount received from the composition of offences under the Code or under any other central labour laws.

THE INDUSTRIAL RELATIONS CODE, 2020

Industrial Relations Code, 2020 is an Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Industrial Relation Code 2020 amalgamate, simplify and rationalise the relevant provisions of -- (a) the Trade Unions Act, 1926; (b) the Industrial Employment (Standing Orders) Act, 1946; and (c) the Industrial Disputes Act, 1947.

The salient features of the Industrial Relations Code, 2020, inter alia, are as follows:—

(i) to define “workers” which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;

(ii) to provide for fixed term employment with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation. The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector;

(iii) to revise the definition of “industry” that any systematic activity carried on by co-operation between the employer and workers for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) with certain exceptions;

(iv) to bring concerted casual leave within the ambit of the definition of strike;

(v) to provide the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment;

(vi) to provide for a new feature of recognition of negotiating union and negotiating council

in an industrial establishment by an employer for the purpose of negotiations. The criterion for recognition of negotiating union has been fixed at fifty-one per cent or more workers on a muster roll of that industrial establishment. As regards negotiating council, a Trade Union having support of every twenty per cent of workers will get one seat in the negotiating council and the fraction above twenty per cent shall be disregarded;

(vii) to provide for appeal against non-registration or cancellation of registration of Trade Union before the Industrial Tribunal;

(viii) to empower the Central Government and the State Governments to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or State Trade Unions, respectively;

(ix) to provide for applicability of threshold of three hundred or more workers for an industrial establishment to obtain certification of standing orders, if the standing order differ from the model standing order made by the Central Government;

(x) to provide that if the employer prepares and adopts model standing order of the Central Government with respect to the matters relevant to the employer's industrial establishment, then the model standing order would be deemed to be certified. Otherwise, the industrial establishment may seek certification of only those clauses which are different from the model standing orders;

(xi) to set up Industrial Tribunal consisting of a Judicial Member and an Administrative Member, in place of only Judicial Member who presently presides the Tribunal. For certain specified cases, the matters will be decided by the two-member Tribunal and the remaining shall be decided by single-member Tribunal as may be provided for in the rules;

(xii) to set up Industrial Tribunals in the place of existing multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts;

(xiii) to remove the reference system for adjudication of Industrial Disputes, except the reference to the National Industrial Tribunal for adjudication;

(xiv) to provide that the commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in an industrial dispute after the receipt of the notice of strike or lock-out by the conciliation officer;

(xv) to prohibit strikes and lock-outs in all industrial establishments without giving notice of fourteen days;

(xvi) to provide for the obligation on the part of industrial establishments pertaining to mine, factories and plantation having three hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification;

(xvii) to set up a re-skilling fund for training of retrenched workers. The fund shall, inter alia, consist of the contribution of the employer of an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment or such other number of days, as may be notified by the Central Government, in case of retrenchment only. The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of the retrenchment as may be provided by rules;

(xviii) to provide for compounding of offences by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence punishable with fine only and for a sum of seventy-five per cent provided for such offence punishable with imprisonment for a term which is not more than one year, or with fine;

(xix) to provide for penalties for different types of violations to rationalise with such offences and commensurate with the gravity of the violations;

(xx) to empower the appropriate Government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.
