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**STANDING COMMITTEE ON LABOUR
(2018-19)
(SIXTEENTH LOK SABHA)**

MINISTRY OF LABOUR AND EMPLOYMENT

THE CODE ON WAGES BILL, 2017

FORTY THIRD REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2018/Agrahayana, 1940 (Saka)

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Presented to Lok Sabha on 18.12.2018

Laid in Rajya Sabha on 18.12.2018



LOK SABHA SECRETARIAT

NEW DELHI

December, 2018/Agrahayana, 1940 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2018-19)

DR. KIRIT SOMAIYA - CHAIRPERSON

MEMBERS

Lok Sabha

2. Shri Udayanraje Pratapsingh Bhonsle
3. Shri Rajesh Diwakar
4. Shri Ashok Kumar Dohrey
5. Shri Satish Chandra Dubey
6. Shri Devajibhai Fatepara
7. Shri Satish Kumar Gautam
8. Dr. Boora Narsaiah Goud
9. Shri Rama Chandra Hansdah
10. Shri C. N. Jayadevan
11. Shri Bahadur Singh Koli
12. Dr. Arun Kumar
13. Shri Kaushalendra Kumar
14. Shri Hari Manjhi
15. Shri R. Parthipan
16. Shri Dayakar Pasunoori
17. Shri Hariom Singh Rathore
18. Shri Naba Kumar Sarania (Hira)
19. Shri Kodikunnil Suresh
20. Shri Mulayam Singh Yadav
21. Vacant

Rajya Sabha

22. Dr. Banda Prakash
23. Shri Ram Narain Dudi
24. Shri N. Gokulkrishnan
25. Shri Nazir Ahmed Laway
26. Shri P.L. Punia
27. Shri Rajaram
28. Shri Amar Shankar Sable
29. Ms. Dola Sen
30. Shri Akhilesh Prasad Singh
31. Shri Madanlal Saini

SECRETARIAT

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| 1. Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. Shri P.C. Choulda | - | Director |
| 2. Shri C. Vanlalruata | - | Additional Director |
| 3. Shri Mohinder Paul Rana | - | Executive Assistant |

**COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2017-18)**

DR. KIRIT SOMAIYA - CHAIRPERSON

MEMBERS

Lok Sabha

2. Shri Udayanraje Pratapsingh Bhonsle
3. Shri Rajesh Diwakar
4. Shri Ashok Kumar Dohrey
5. Shri Satish Chandra Dubey
6. Shri Devajibhai Fatepara
7. Shri Satish Kumar Gautam
8. Dr. Boora Narsaiah Goud
9. Shri Rama Chandra Hansdah
10. Shri C. N. Jayadevan
11. Shri Bahadur Singh Koli
12. Dr. Arun Kumar
13. Shri Kaushalendra Kumar
14. Shri Hari Manjhi
15. Shri R. Parthipan
16. Shri Dayakar Pasunoori
17. Shri Hariom Singh Rathore
18. Shri Naba Kumar Sarania (Hira)
19. Shri Kodikunnil Suresh
20. Shri Mulayam Singh Yadav
21. YS Avinash Reddy

Rajya Sabha

22. Dr. Chiranjeevi
23. Shri Ram Narain Dudi
24. Shri N. Gokulakrishnan
25. Shri Nazir Ahmed Laway
26. Shri P.L. Punia
27. Shri Rajaram
28. Shri Amar Shankar Sable
29. Ms. Dola Sen
30. Shri Tapan Kumar Sen
31. Vacant

SECRETARIAT

- | | | |
|----------------------------|---|---------------------|
| 1. Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. Smt. Anita B. Panda | - | Director |
| 2. Shri C. Vanlalruata | - | Additional Director |
| 3. Shri Mohinder Pual Rana | - | Executive Assistant |

INTRODUCTION

1. I, the Chairperson, Standing Committee on Labour (2018-19) having been authorized by the Committee to present on their behalf this Forty-Third Report on 'The Code on Wages Bill, 2017' relating to the Ministry of Labour & Employment.

2. The 'Code on Wages Bill, 2017' was introduced in Lok Sabha on 10.08.2017 and referred to the Committee by the Hon'ble Speaker, Lok Sabha for examination and report within three months i.e. by 21.11.2017 from the date of publication of the reference of the Bill in Bulletin Part- II of Lok Sabha dated 21.08.2017. The Committee obtained extension of time from Hon'ble Speaker to present the Report to the House up to the end of Winter Session, 2018.

3. 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 groups, namely industrial relations; wages; social security; safety; and welfare and working conditions. It was decided to bring the proposed legislation, i.e. 'The Code on Wages, 2017'. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the four central labour enactments relating to wages viz. The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. The salient features of the Code on Wages are, to provide for all essential elements relating to wages, equal remuneration, its payment and bonus, provisions relating to wages shall be applicable to all employments covering both organised as well as unorganised sector and the power to fix minimum wages continues to be vested in the central government as well as the State Government in their respective spheres etc.

4. In the process of examination of the Bill, Committee invited the views/suggestions on the Bill from Trade Unions/Organizations/Individuals through a Press Communiqué and received around 100 views/suggestions. The Committee took evidence of the representatives of the Ministry of Labour & Employment on 6th October, 2017, 11th January, 2018 and 18th January, 2018 besides obtaining written clarifications from them on some major amendments proposed. The Committee also heard the views of some Central Trade Unions viz. Centre of Indian Trade Unions (CITU), All India Trade Union Congress (AITUC), Bharatiya Mazdoor Sangh (BMS) and Hind Mazdoor Sabha (HMS) at their sitting held on 24th October, 2017.

5. The Committee considered and adopted the Report at their sitting held on 19th November, 2018.

6. The Committee wish to express their thanks to the representatives of the Ministry of Labour & Employment for tendering oral evidence and placing before the Committee the detailed written notes and post evidence information as desired by the Committee in connection with the examination of the Bill. The Committee also express their thanks to the Trade Unions for appearing before them and all those who furnished useful written suggestions on the proposed amendments.

7. The Committee would like to place on record their deep sense of appreciation for the commitment, dedication and valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

8. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
17th December, 2018
26th Agrahayana, 1940 (Saka)

DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

GIST OF RECOMMENDATIONS

1. The Committee felt that a clarification may be required to be given in the Code so that the concept of minimum wage is actually 'the minimum wage at the time of entry/initial wage' and that experience/loyalty/years of service are to be taken into account over and above the minimum wage and they have gathered the impression that Ministry of Labour and Employment is willing to explore the possibility of including the same. Hence, the Committee recommended the Clause 2 (u) and Clause 6 Sub-section (6) may be modified accordingly.

2. The Committee were of the opinion that the definition of 'Wages' given in the Code is very lengthy and needs further clarification and simplification. The Ministry have justified the same by stating that the said definition consists of two parts, one for the purpose of calculation of bonus, as taken from the Payment of Bonus Act and second, for the purposes such as minimum wages, payment of wages etc. The Committee have found it confusing that in Clause 2 Section (x-iii) bonus is part of wages whereas in Clause 2 Section (x-A) bonus is not part of wages, though the Ministry have clarified that statutory bonus has been excluded from the wages, however, any other payment in the name of bonus is included. The Committee, therefore, recommended that the Ministry should try to address this issue through simplification of relevant Clause and explanations given therein and also discreet the Ministry to consider a suggestion received from them by the employers that inclusion of bonus should be allowed to be taken over in case the Establishment concerned does not earn profit. The Committee, therefore, further recommended that Clause 2 Sub-section (x) of the Code may be substituted accordingly.

3. The Committee observed that under clause 8 Sub-section (1-A), it has been prescribed that 'in fixing minimum rates of wages in respect of any employment for the first time under this Code or in revising minimum rates of wages so fixed, the appropriate Government shall either appoint as many Committees and Sub-Committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be' and they recommended that the following phrase may be inserted after the words 'so fixed' in Clause 8(1) (a) "based on the

norms/parameters prescribed by the appropriate Government from time to time". Further, the Committee observed that under Sub-section (4) of the same Clause, it has been provided that 'the appropriate Government shall review or revise minimum rates of wages at an interval of five years' and it has noted that the Minimum Wages Act 1948 gives the State Governments flexibility in deciding when to revise minimum wages as long as it is not more than five years and In order to maintain that flexibility, it recommended that in Clause 8 Sub-section (4), the words 'at an interval of five years' may be substituted with 'ordinarily at an interval not exceeding five years'.

4. The Committee recommended that the State Governments must be consulted before finalization of the National Minimum Wage by the Central Government. The Committee observed that Clause 9 Sub-section (3), which though provides that the Central Government may obtain the advice of the Central Advisory Board, does not reflect a positive obligation to consult the State Governments and it desired that the Code must underline the fact that the power to fix minimum wage shall continue to be vested in the Central Government as well as the State Governments in their respective spheres. Hence, they have recommended that Clause 9 Sub-Section (3) of the Code may be amended in the following manner: "The Central Government, before fixing the national minimum wage under Sub-section (1), shall obtain the advice of the Central Advisory Board constituted under Sub-section (1) of section 42 and State Advisory Boards constituted under Sub-section (4) of section 42." The Committee felt that this amendment would also be in tandem with the recommendation of the 46th Indian Labour Conference, 2015 to remove arbitrariness and unwarranted discretion in the fixation of minimum wage. The Committee, also were of the opinion that the Code must convey the message that the workers, who are getting minimum wages as per the present Act shall not get less than what they are getting now, once the Code on Wages Bill, 2017 is enacted and the same shall continue to be revised as per past practice.

5. The Committee observed that the existing provision under Clause 13 Sub-section (1)(a) of the Code, it is stated as: 'Where the minimum rates of wages have been fixed under this Code, the appropriate Government may (a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals'. The Committee felt that the working hours should not be beyond eight hours a day, hence, they have recommended that the following phrase may be added at the end of the above said Sub-section: 'not exceeding eight hours per day'. and further, they recommended that under Clause 13 Sub-section (2) (a), the words 'on urgent work or' may be deleted.

6. The Committee noted that as regards, the issue of using the term 'Facilitator' instead of 'Inspector' in the Code, the Ministry have sought to convince the Committee that the enforcement mechanism would be strengthened as the facilitator will also have the responsibility of preventing any violations of the provisions of the Code by way of providing guidance to both employers and workers. They have also stated that the inspection scheme is proposed to provide for risk based inspections and make it more effective and reduce arbitrariness. Notwithstanding the same, the Committee have felt that the use of the term 'Facilitator' instead of 'Inspector' in the Code gives the impression of diluting the enforcement mechanism and restricting the inspection which is the lifeline of enforcement. Hence, the Committee expressed agreement with the various suggestions received by them on inclusion of the word 'Facilitator' instead of 'Inspector' in the Code on Wages Bill, 2017 and they, therefore, recommended that under Clause 2 Sub-section (m) and Clause 51 the word 'Facilitator' be substituted by 'Inspector' in accordance with ILO norms.

7. The Committee observed that under Chapter VIII dealing with Offences and Penalties in the Code, penalty for offences by the employer vary from rupees ten thousand to rupees one lakh only. In Clause 53 (1)(a) particularly, it has been stated that any employer who pays to any employee less than the amount due shall be punishable with fine which may be extended to rupees

fifty thousand. While the Ministry has claimed that the penalties have been increased manifold in the Code as compared to the same in the existing Minimum Wages Act, the Committee still felt that in the present context the penalty amount proposed is not substantial enough to act as a deterrent. Hence, they have recommended that the Chapter VIII of the Code may be suitably modified to fix the penalty for offences by the employer from rupees fifty thousand to rupees ten lakh.

REPORT INTRODUCTION

The Code on Wages Bill, 2017 (**Annexure I**) was introduced in the Lok Sabha on 10th August, 2017 and was referred to the Standing Committee on Labour on 21st August, 2017 for examination and Report to Parliament in terms of Rule 331 (e) (1) (b) of the Rules of Procedure and Conduct of Business of Lok Sabha.

1.2 In their Background Note furnished to the Committee, the Ministry of Labour & Employment (MoL&E) stated as under:

"As part of the Labour Reforms initiatives, 38 Labour Acts are being amalgamated, simplified and rationalized into 4 codes. Code on Wages is the first out of the proposed 4 codes. 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 grouped into four or five groups of laws on functional basis. In line with the recommendation of the Commission, Ministry of Labour & Employment started the exercise of drafting four Labour Codes related to (i) Wages, (ii) Industrial Relations, (iii) Social Security and Welfare; and (iv) Safety and Working Conditions. The draft Code on Wages, has been prepared after amalgamating, simplifying and rationalizing the relevant provisions of following four Central Labour Acts:

- (i). The Minimum Wages Act 1948
- (ii). The Payment of Wages Act 1936
- (iii). The Payment of Bonus Act 1965
- (iv). The Equal Remuneration Act 1976"

1.3 Justifying the Code on Wages Bill, the Ministry further submitted as under:

"(i) Extend legislative coverage to every employee to get wages not less than minimum wages and thus providing Right to Sustenance to about 48 crore workforce of the country. It universalizes the right to get not less than minimum wages from employees of scheduled employments to all employees including

unorganized sector of the country. By abolishing the concept of scheduled employment for entitlement of minimum wages, large portion of workforce, which was out of the purview of the benefits available under the existing Minimum Wages Act, will now benefit to all the workers who have been left from these benefits up till now. As per the survey carried out by the National Sample survey Organisation in the year 2011-12, the total employment in both organized and unorganised sector in the country was of the order of 47 crore. Out of this, about 8 crore were in the organized sector and the balance of 39 crore in the unorganized sector. The workers in the unorganized sector constitute more than 90 percent of the total employment in the country. The unorganized workers constitute a big chunk of the population that is below the poverty line. By extending the benefit of minimum wage with timely payment to such categories of unorganised worker, the sustainable goal related to reduction of poverty may be achieved.

(ii) To provide an effective tool for reducing poverty and achieving Sustainable Development Goal 1 and 2 related with poverty and hunger: The Rangarajan Committee estimated, that the population below the poverty line in 2009-2010 was 454 million (38.2% of the population) and that in 2011-2012 was 363 million (29.5% of the population). In absence of any meaningful Minimum Wage, a section of such below poverty line population face hunger in their life As per the Code on Wages Bill 2017, provision of minimum wage will apply to all employments covering both organized as well as unorganised sector. Some of these norms recommended by the Indian Labour Conference, in 1957 for fixing the minimum wage are 3 consumption units for one wage earner and Minimum food requirements of 2700 calories per average Indian adult. Hence, the proposed Code on Wages will not only ensure minimum wages resulting in meaningful earning but also make sure adequate consumption patterns with no hunger.

(iii) To reduce disparity in minimum wages across the country: At present there are differences in minimum wages across States in various sectors. Such differences are due to the fact that minimum wage is fixed, revised and enforced by the appropriate governments for employments notified in the Schedule by them and there is no common provision linking their minimum wages.

By universalization of the applicability of the statutory right of getting wages not less than minimum wages has increased the probability of disparity amongst States. The concept of National Minimum Wage would ensure that there is less disparity amongst States in fixing their minimum wage and may contribute in providing a basic standard of living to all employees across the country.

(iv) The proposed Code on Wages would ensure the minimum rate of wages with timely payment and authorized deductions for all employees which in itself would safeguard the good health and well being of workers and their dependents.

(v) The minimum rate of wages with timely payment and authorized deductions for all employees will motivate them to up-skill them and would help in ensuring quality education for their dependents.

(vi) To promote Gender Equality: The proposed Code on Wages provides no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee. This would promote pay-parity and ultimately gender equality.

(vii) The Code on Wages would significantly improve the welfare of worker and secure their interests. The proposed Code on Wages for the first time has widened the scope and coverage of payment of minimum wages, timely payment of wages to all the workers irrespective of scheduled employment or wage ceiling which were hitherto provided for in the various Acts. This would promote decent work and economic growth in the Country.

(viii) Redistribution of resources and reduction in economic disparity: Minimum Wages to all the workforce would result in sharing of the benefit of economic growth with all the workforce, thus, promoting productivity as well as reduction in inequalities.

(ix) Rationalization, and simplification of existing Labour Laws: The proposed Code on wages intends to make the existing labour laws in sync with the emerging economic scenario; reduces the complexity by providing uniform definitions and reduction in

multiple authorities under various Acts and brings transparency and accountability in enforcement of labour laws. This in turn would lead to ease of compliance, catalyzing the setting up of manufacturing units, enhancing employment opportunities along with ensuring safety, social security and welfare of workers.

1.4 Salient features of the Code on Wages Bill, 2017, as per the MoL&E, are as under:

- (i) The Code on Wages Bill has been drafted after amalgamation, simplification and rationalisation of the relevant provisions of the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. After the enactment of the Code on Wages, all these four Acts will get repealed (*Refer clause 68 in the Code*).
- (ii) Effort has been made to bring uniformity in the definition of different terms used in four Acts being amalgamated. However, for the purpose of bonus, the definition of 'wage' has been modified enabling addition of allowances, concessions and incentives to be added to the wage for the purpose of calculating bonus if the total of such allowances, concessions and incentives exceed 50% of the wage (excluding these allowances) (*Refer clause 2 (1)(x) in the Code*).
- (iii) At present the provisions of Minimum Wages Act, apply only to employees engaged in scheduled employment. As per the Code on Wages Bill 2017, provision of minimum wage will apply to all employments covering both organized as well as unorganised sector. This would extend the benefit of minimum wage to all workers (*Refer clause 5 in the Code*).
- (iv) The power of fixation and revision of minimum wages will remain with the appropriate Government. However, Central Government may, by Notification, fix 'National Minimum Wage', which may be different for different States or geographical areas. Thereafter the minimum rates of wages fixed by the appropriate Government shall not be less than the 'National Minimum Wage', notified for that area by the Central Government. If the minimum rates of wages fixed by the appropriate Government earlier are more than that 'National Minimum Wage', then, the appropriate Government shall

not reduce such minimum rate of wage fixed by it earlier (*Refer clause 6 and 9 in the Code*).

- (v) The appropriate Governments will fix the minimum rate of wages payable to employees. Further, the appropriate Government may fix factors by which the minimum wages will be multiplied for different categories of employees. These factors will be fixed taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other factors which are considered appropriate by such Government (*Refer clause 6 (6) in the Code*).
- (vi) The revision or review of minimum wages will be held at an interval of 5 years. (*Refer clause 8 (4) in the Code*).
- (vii) At present the Payment of Wages Act, which ensure timely payment of wages and authorised deductions from wages, is applicable in respect of employees drawing wages less than Rs. 18000/- per month and in specified and notified establishments only. Now, the Code on Wages will apply to all employees irrespective of the sector of employment and wage ceiling of an individual worker. Further, provision has been incorporated in the Code to facilitate the appropriate Government to extend the coverage of provisions related to payment of wages to the Government establishments also, if the appropriate Government deems it fit. (*Refer clause 25 in the Code*).
- (viii) The wages to employees can also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. Further, the appropriate Government may, if desires so, can specify by notification, the industrial or other establishment, where the wages has to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee. This would not only promote digitization but also extend wage and social security to the worker(*Refer clause 15 in the Code*).
- (ix) With regards to the ceiling of wage for the purpose of eligibility for Bonus and for the purpose of calculation of Bonus, it has been

prescribed that such amount would be determined by notification, by the appropriate Government (*Refer clause 26 in the Code*).

- (x) Advisory Boards will be constituted at State and Central level to advise the State / Central Governments respectively, in the matter related to wages as well as increasing employment opportunities to women. At present separate Advisory Boards are constituted under the Minimum Wages Act 1948 and Equal Remuneration Act 1976, to consider these matters respectively (*Refer clause 42 in the Code*).
- (xi) Limitation period for filing of claims has been enhanced to 3 years as against existing time period varying from 6 months to 2 years under the Acts being amalgamated in the Code (*Refer clause 45 in the Code*).
- (xii) Provision of an Appellate Authority has been made between the Claim Authority and the Judicial Forum which will lead to speedy, cheaper and efficient redressal of grievances and settlement of claims (*Refer clause 49 in the Code*).
- (xiii) Records can be maintained as prescribed by the appropriate Government. Exception from this provision has been provided to the employers employing not more than five persons for agriculture or domestic purpose. However, if demanded by the Facilitator, such employers will have to produce reasonable proof of the payment of wages to the persons so employed by them (*Refer clause 50 in the Code*).
- (xiv) To ensure effective compliance, the Code envisages the change in the designation and role of the "inspector" from mere inspection to that of "facilitator" who would also guide and advise the employers and workers about the effective implementation of laws. Also to address the arbitrariness and malpractices, the inspections will be carried out through a transparent web based inspection scheme (*Refer clause 51 in the Code*).
- (xv) Penalties for different types of violations under this Code have been rationalized with the amount of fines varying from Rs. 10000/- to Rs. 1,00,000/- as per the gravity of violations and repetition of the

offence. The penalty of imprisonment is for repeat offences only. *(Refer clause 53 in the Code).*

- (xvi) Further, in case of offences excluding the less payment of due amount to the employee, the Facilitator, before initiation of prosecution proceedings, shall give an opportunity, to the employer to comply with the provisions of this Code with in a time period, by way of a written direction. If the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceedings *(Refer clause 53 (3) in the Code).*
- (xvii) Provision of compounding of offences has been made for those which are not punishable by a penalty of imprisonment. However, no offence of same nature shall be compounded, if it has been repeated within a period of five years. Further, an additional penalty of 20% of the maximum fine for such compounded offence will be imposed on the accused in case he does not comply with the orders of the compounding authority *(Refer clause 55 in the Code).*
- (xviii) The burden of proof for payment of remuneration or bonus or any other claims due to an employee shall lie with the employer *(Refer clause 58 in the Code).*

1.5 When asked by the Committee to indicate the specific areas where the Code on Wages Bill, 2017 will be helpful in protecting the minimum wages of contract workers employed by contractors providing services/outsourced services in various Government and private establishments, the MoL&E in their written replies, submitted as under:

"Minimum Wages Act, 1948 is applicable only to Schedule employments which are notified by the appropriate government. The contract workers employed in the scheduled employments are covered by the provisions of the Minimum Wages Act 1948 presently. However, the code of wages Bill, 2017 provide for fixation of minimum wages for all employments and is thus applicable to all employees including contract workers employed in all sectors. Therefore, a large number of workers including contract

workers, who are not presently covered under Minimum Wages Act, 1948 would be ensured minimum wages as per the code on wages Bill, 2017."

1.6 When the Committee expressed the apprehension that the Bill, while combining the above four laws, has sought to dilute many pro-labour components stipulated in those four laws, the Ministry stated as under:

"The Code on Wages Bill has been prepared after simplification, amalgamation and rationalization of the relevant provisions of the all 4 Central Labour laws. The Code on Wages significantly improves the welfare of worker and secures their interests. The Code on Wages for the first time has widened the scope and coverage of payment of minimum wages, timely payment of wages to all the workers irrespective of scheduled employment or wage ceiling which were hitherto provided for in the various Acts."

1.7 During the course of the sitting held on 24th Oct, 2017, the Committee observed as under:

"For our country, MSMEs are the heart for generating employment and for economic growth. Therefore, what I feel, safeguarding such interest is the need of the hour to reach the GDP goal of 8 per cent or something. The Code on Wages Bill, 2017 should have a balanced view, on one side, conforming sustained economic growth of the country and, on the other side, it should create a social harmony coupled with labour welfare. These are the things we need. Labour unrest will lead to social dislodging and similarly approaching an employer or owner in harsh manner with legal tools will lead to failure in economic growth of our country. Both should be avoided. Therefore, a balanced view should be taken in the Code on Wages Bill, 2017."

II. CONSULTATION PROCESS BEFORE INTRODUCTION OF THE BILL

On being enquired by the Committee about consultations held and the stakeholders whom the Ministry consulted before drafting the Code on Wages Bill, 2017, as well as a gist of the suggestions

received from the stakeholders during such consultations and reforms pressed by them in the existing Wage Laws, the Ministry submitted as under:

"As per the prescribed pre-legislative consultation policy, the draft of the Code on Wage Bill 2017 was extensively consulted with the stakeholders, as under:

- (i). Draft Bill was placed on the Website of the Ministry of Labour & Employment on 26.03.2015 for 30 days inviting comments from public/stakeholders. Suggestions received from the public were appropriately considered by the drafting Group. Suggestions received are tabulated at **Annexure II.**
- (ii). Two Tripartite Consultation Meetings were held under the chairmanship of the Hon'ble Labour Minister with representatives from Central Trade Unions, Employers' Associations and Central Ministries/State Governments participating in it. Summary record of discussions held during these Meetings are enclosed at **Annexure III.**
- (iii). Draft Cabinet Note on the Code on wages Bill was circulated to Central Ministries/Departments for Inter-Ministerial Consultations. Comments of the Ministries/Departments alongwith response of this Ministry is enclosed at **Annexure IV."**

2.2 In spite of the promise by the Constitution of a living wage and a socialist framework to enable the working persons a decent standard of life, as well as a law on payment of minimum wages, which is restricted to 45 scheduled employments only, a universal right of sustenance was not available to every working person in the country till date. As the time has now come to give every such person a legitimate right of sustenance, the Code on Wages Bill was introduced in Lok Sabha

with the aim to universalise the coverage of statutory, mandatory provision of payment of wages to nearly 48 crore working persons throughout the country, out of which around 82.7% work force is in the unorganized sector. The fixation of minimum wages is justified as with sustained economic development, more employment avenues are being added, hence, it is essential that minimum rates of wages are fixed for working persons in industries where no arrangement exists for effective regulation of wages and where wages are exceptionally low. The Committee feel extremely concerned over various malpractices that have particularly crept in the unorganized sector where despite putting years of experience, a working person is denied any benefit and is treated at par with a newly employed person in so far as wages are concerned. As the Code on Wages Bill, 2017 has been referred to the Parliamentary Standing Committee on Labour for examination, first and foremost they feel that the Statement of Reasons pertaining to the Code need to be suitably modified to clearly bring out the noble intention to ensure the protection of the interests of working persons, particularly those working in employments hitherto not covered under the scheduled list as well as those in the unorganized sector, while not in any way infringing upon the power of the State Governments on the matter concerning labour security, welfare and fixing of minimum wages in their area. In fact, the Committee are of the view that a concept of 'Right to Sustenance' should be introduced for the

crores of workers in the unorganised sector throughout the country.

2.3 The Committee further recall that reducing inequality and promoting decent work for all women and men have been identified as key objectives in the 2030 Sustainable Development Goals (SDG) Agenda, adopted at the United Nations in 2015. The 17 SDGs seek to balance the three dimensions of sustainable development: economic, social and environmental. Goal 1 and 2 aim at reduction in poverty and hunger, Goal 8 calls for “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, and highlights the importance of achieving equal pay for work of equal value, and protecting labour rights. Goal 5 calls for Gender equality and Goal 10 seeks to “reduce inequality within and among countries”, emphasizing income growth of the bottom 40 per cent of the population, the elimination of discrimination, as well as the adoption of policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality. A Well-designed and effective minimum wages mechanism applicable to all may contribute effectively in achieving these Sustainable Development Goals. In this connection, the Committee hope that the Code on Wages Bill which aims to provide right to sustenance to all employces by extending the coverage of the Minimum Wages provision to all employees, instead of to those working in scheduled employments only, can

be a powerful tool for supporting decent work goals, reducing poverty, hunger and inequality. The Committee trust that the Code on Wages Bill, 2017 would also ensure "a just and equitable share of the fruits of progress to all" and can be a crucial component in strengthening of social protection floors and poverty alleviation efforts.

III. CLAUSE BY CLAUSE ANALYSIS

Definition of "Employee" and "Worker"

Clause 2(j) of the Bill defines "employee" as under:

"employee" means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or 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, but does not include any member of the Armed Forces of the Union;"

3.2 Clause 2(y) of the Bill defines "worker" as under:

"worker" means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a supervisory or managerial or administrative capacity.

3.3 Suggestions Received by the Committee:

- Shri Tapan Sen, the then MP (RS) and Member of the Committee, with regard to the definition of employee suggested:

"Section 2 of the Bill deals with definitions and there are definitions of 'workers' as well as 'employees' both almost being the same with the exception that supervisory, managerial, administrative personnel are treated as 'employee' only while the skilled, semi-skilled or unskilled, manual, operational, technical or clerical personnel are treated as 'worker' as well as 'employee'. The hidden motive behind this is to open avenue for the employers to misinterpret and also to discriminate between the workers and employees.

This apprehension becomes more evident, when it is noted that in the definition of employees as per section 2 (j) "working journalists and other newspaper employees" and "sales promotion employees" are excluded: whereas in the definition of workers as per section 2(y), these two categories have been mentioned specifically, meaning thereby that the 'working journalist and other newspaper employees' and 'sale promotion employees' will not be treated as employees as per the Bill. In this definitional context, subsequent chapters of the Code on Wages Bill 2017 dealing with "Minimum Wages" and other wage related matters, mentioned only about their applicability for the employees and nowhere, "worker" has been mentioned. This may lead to exclusion of the sales promotion employees and working journalists and other newspaper employees from the coverage of the proposed Bill."

- All India Trade Union Congress (AITUC), Mormugao Port and Railway Workers' Union (MPRWU) in their written communication submitted as under:

"The differences in definition of "employee" and "worker", "employee" includes the supervisory, managerial and administrative staff over and above a "worker", would lead to discrimination between workers and employees."

- AITUC further submitted that definition of "workers" should be same as contained in the Industrial Dispute Act 1947.
- PHD Chamber of Commerce and Industry (PHDCCI) vide their written submission stated that the definition of employee should specifically exclude people engaged in managerial, administrative and supervisory nature of jobs. There should also be a defined wage limit as to who would be covered under the provisions of the proposed Act.
- Federation of Indian Micro and Small & Medium Entreprises (FISME), submitted that merging of definitions of 'worker and employee' brings even managerial staff under the purview of the Code.
- Shri Saurabh Bhattacharjee, Assistant Professor, National University of Juridical Sciences, Kolkata in his written memoranda stated that the Code on Wages Bill lacked consistency in the use of the terms employee and worker. Section 5 of the code which deals with minimum wages uses the term 'employee', section 6(6) and section 7(1) in the same chapter use the term 'worker'. Use of different terms for the same chapters may lead to confusion, especially since the definition of terms vary.

He accordingly suggested that the definition provided in Payment of Gratuity Act, 1972 be adopted in its substance. Therefore, section 2 (y) should be modified as *'worker' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of an establishment.*

Similarly, the term "employee" under section 2 (j) be modified as *'Employee' means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any kind of work, skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or otherwise, 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, but does not include any member of the Armed forces of the Union.

- The State Government of Karnataka, in their written note to the Committee suggested that the clause's definition of Employee enlarges the scope of definition by including Operational, Supervisory, Managerial and Technical work. However clause 2(y) which defines "Worker" speaks only of Manual, Unskilled, Skilled, Technical, Operational or clerical work and includes working journalists and other newspaper employees and sales promotion employees. The two definitions with varying scope may lead to confusion with regard to the applicability of the provision. A common and comprehensive definition of Employee/worker may be given for clarity at implementation level.
- They also suggested that the definition of the term "Employee" enlarges the scope of definition by including Operational, Supervisory, Managerial and Technical work. However clause 2(y) which defines "Worker" speaks only of Manual, Unskilled, Skilled, Technical, Operational or clerical work and includes working journalists and other news paper employees and sales promotion employees. The two definitions with varying scope may lead to confusion with regard to the applicability of the provision. A common and comprehensive definition of Employee/worker may be given for clarity at implementation level.

3.4 Response of MoL&E on the above mentioned issues:

- Responding to the concern raised by Shri Tapan Sen, the then MP(RS) and Member of the Committee, it was stated that the term "employee" includes "worker" and 'worker' is a sub-set of an employee under the Code on Wages Bill. The scope of definition of employee has been expanded to include the persons employed in supervisory, managerial, administrative, technical or operational capacity. The reason for having two definitions is that the workers under Section 2(q) of the Bill have been covered under the Industrial Dispute whereas all the employees are not covered under the Industrial Disputes Act as is the scheme today. It is confirmed that the 'working journalist

and other newspaper employees' and 'sale promotion employees' are covered under the definition of the employees as "they are the persons employed on wages by an establishment....." Section 2(j) of the Code.

- On the apprehensions of AITUC and MPRWU, the MoL&E stated that the use of term worker and employee has been used for different purposes in the Code. The word employee has been used where the right for minimum wages, payment of wages and payment of bonus is concerned. Thus, implying that all persons employed in whatever capacity are eligible for these statutory benefits. The word worker is used in definition of industrial dispute implying, dispute on these matters cannot be raised by persons in supervisory, managerial and administrative capacity. Presently also all employee is not covered under Industrial Dispute Act.
- On the suggestion of AITUC, MoL&E responded that The only difference in the definition of "worker" as provided in ID Act and that provided in Wage Code is the exclusion of persons employed mainly in supervisory capacity. A wage ceiling for supervisory capacity of Rs 10,000 per month is provided presently in the ID Act. Providing a wage ceiling for the persons employed in supervisory capacity in the definition of worker may be considered.
- Responding to the query raised by PHDCCI, the MoL&E stated that the provision of Minimum Wage and timely payment of wage is proposed to be universalized irrespective of nature of job and wage ceiling.
- With regard to the concern raised by FISME, the MoL&E submitted that the use of term worker and employee has been used for different purposes in the Code. The word employee has been used where the right for minimum wages, payment of wages and payment of bonus is concerned. Thus, implying that all persons employed in whatever capacity are eligible for these statutory benefits. The word worker is used in definition of industrial dispute implying, dispute on these matters cannot be raised by persons in supervisory, managerial and administrative capacity. Presently also all employees are not covered under Industrial Dispute Act. The present legislation

also uses the word employee instead of worker for the purpose of minimum wages, payment of wages and grant of bonus.

- The suggestions from Shri Saurabh Bhattacharjee did not elicit any response from MoL&E.
- Responding to the suggestion of the Government of Karnataka, MoL&E stated that from the definition of "employee" in clause 2(j) of the Code and the definition of the "worker" in clause 2(y) of the Code, it is evident that "employee" is a broader term while "worker" is a limited term. The term "worker" is a sub-set of the set "employee". Employee covers worker but not vice-versa. The use of term worker and employee has been used for different purposes in the Code. The word employee has been used where the right for minimum wages, payment of wages and payment of bonus is concerned. Thus, implying that all persons employed in whatever capacity are eligible for these statutory benefits. The word worker is used in definition of industrial dispute implying, dispute on these matters cannot be raised by persons in supervisory, managerial and administrative capacity. Presently also all employee is not covered under Industrial Dispute Act.

3.5 The Committee note that the definitions of the term 'Worker' and 'Employee', both have been provided under Clause 2 Sub-sections (j) and (y) in the Code. While the definition of 'Worker' is similar to the definition of 'Workmen' under the Industrial Disputes Act 1947, the definition of 'Employee' under Clause 2 (j) has been made broader since it includes managerial and administrative functions under its scope. The Ministry of Labour and Welfare has justified it by stating that the use of the term 'Worker' and 'Employee' has been used for different purposes in the Code. While the word 'Worker' implies that industrial disputes cannot be raised by persons in supervisory, managerial and administrative capacity presently

under the Industrial Disputes Act, the work 'Employee' has been used where the right for minimum wages, payment of wages and payment of bonus is concerned. The Committee feel that the Code lacks consistency in use of both terms at various clauses which may lead to confusion. They apprehend that the confusion may lead to employers misinterpreting these terms and perhaps also discriminate between the workers and employees. The Committee also find merit in the suggestion received by them during the course of examination that since the Equal Remuneration Act, 1976, as it stands now, applies to every employee of an establishment, the transition to the Code would result in exclusion of workers based on their nature of work. The Committee, therefore, are of the opinion that since minimum wage is a matter of right for every working person, a common and comprehensive definition of employee/worker needs to be given in the Code for better clarity at the implementation level and relevant clauses amended suitably.

3.6 Clause 2(k) of the Bill defines "employer" as under:

"employer" means a person who employs one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory

under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;

- (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director; and
- (iii) contractor."

3.7 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP (RS) and Member of the Committee, with regard to the definition of employer suggested:

"The definition of 'employer' [Sec 2(k)] has also been so formulated that it makes difficult to identify the Principal Employer. As per the earlier provision in Sec 2(e) of the Minimum Wages Act 1948 'Employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees....' This has now been changed to 'Employer' means a person who employs one or more employees in his establishment....' In the new Bill. This changed provision totally ignores the reality of contract-working in any establishment, which has today become the general phenomenon everywhere. Through this it seeks to relieve or bail-out the principal employer of the establishment from its responsibility and obligation on contract workers. At the same time, definition of 'Contractor' as prevalent in the Contract Labour (Regulation & Abolition) Act 1970 has been inserted in such manner in Sec 2 (f) of the Bill as to suit the employers' interests in respect of outsourcing requirement and legalise and legitimise employment of contract workers in perennial jobs. There may be some other hidden agenda behind this."

- MPRWU, HMS and CITU in their written communication submitted as under:

"Definition of "employer" makes it difficult to identify "Principal Employer". New definition not sensitive to reality of contract working. Seeks to relieve principal employer from responsibility towards contract workers."

- CII in their written submission submitted as under:
 - "Employer": Unorganized small establishments employing more than one employee should be kept out of purview of this Code and be dealt with separately. It is difficult to monitor application of this Code to every establishment."
- HMS in their written communication submitted as under:
 - "The legal representative of a deceased employer was treated as employer under Payment of Wages Act, 1936 but the proposed Code does not figure in this provision."

3.8 Response of MoL&E on the above mentioned issues:

- In response to the suggestions of Shri Tapan Sen, the then MP(RS) and Member of the Committee, MoL&E submitted that "Contract worker" is also included in the definition of "employee" under the Code on Wages Bill. The definition of 'employer' clearly mentions that the 'employers' includes 'contractor' and thus the responsibility of payment of dues for the 'contract workers' lies with the 'contractor'. Further, the Section 43 of the Code on wages Bill stipulates that in case the employer fails to make the payment due to the employee, the proprietor of the establishment where the employee is employed is responsible for payment of dues.
- Responding to the queries raised by MPRWU, HMS and CITU the Ministry stated that "Contract worker" is also included in the definition of "employee" under the Code on Wages Bill. The definition of 'employer' clearly mentions that the 'employers' includes 'contractor' and thus the responsibility of payment of dues for the 'contract workers' lies with the 'contractor'. Further, the Section 43 of the Code on wages Bill stipulates that in case the employer fails to make the payment due to the employee, the proprietor of the establishment where the employee is employed is responsible for payment of dues. It is also mentioned that the concept of Principal Employer and his responsibility for payment of wages would be again covered in the Code subsuming Contract Labour Act.
- Responding to the suggestions of CII MoL&E stated that it is envisaged to pay all employed not less than the minimum wages.

- Responding to the queries of HMS the MoL&E stated that The inclusion of the legal representative of a deceased employer as employer in the definition of employer may be considered.
- Further responding to the Committee's doubt that definition of employer in Wages Code makes it difficult to identify "principal employer", MoLE stated that:

"As per the present definition of employer in the Minimum Wages Act "employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act". As per this definition the term principal employer has not been explicitly used however is inbuilt in the definition by using the phrase "whether directly or through another person".

As per the definition of employer in the Wage Code, this phrase has not been used as clearly the contractor has been given the status of employer as provided clearly in section 2(k)(iii). The definition has used the word contractor specifically to fix the responsibility of payment of wages not less than minimum wages and timely payment on the contractor. If the definition is changed according to the existing definition, the accountability of the contractor will alter. It is reasonable if the contractor is the employer of the contract employees and is held specifically responsible for the timely payment of wages. Further, to protect the interest of contract workers if the contractor fails to pay the wages on time section 43 of the Code provides obligation to the principal employer. By this mechanism initially the contractor is held accountable and if he fails, principal employer would be accountable. In view of this it may not be appropriate to change the definition of employer."

3.9 As regards definition of 'Employer' under Clause 2 Sub-section (k) the Committee are in agreement with the apprehension that the same makes it rather difficult to identify 'principal' employer hence they recommend that in the said sub-section (k) in the phrase '-employer' means a person who employs'- following line may be added after the word 'employs'-

'whether directly or through any person or whether on its behalf or on behalf of any other person'. The Committee further recommend that Clause 2 Sub-section (k) (i) (ii) (iii) may be added with one more point as point (iv) -'legal representative of a deceased employer'.

Same Work or Work of Similar Nature

3.10 Clause 2(u) of the Bill states as under:

"same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment."

3.11 Suggestions received by the Committee:

- HMS in their written communication stated that in Clause 2(u) the word "responsibility" be deleted as it may give scope for subjectivity.
- AITUC in their written communication stated that in Clause 2(u) the word "responsibility" be deleted as the same is open in different interpretations based on subjective considerations.
- Confederation of Indian Industry (CII) stated that the terminology used in Clause 2(u) with regard to 'same work' is extremely confusing. It would undermine skills and competencies on the part of the employee. For example, the requirement of competencies and skill set for a worker in an auto industry will be different than a worker in the construction brick kiln industry.

- PHD Chambers of Commerce and Industry (PHDCCI) suggested that in Clause 2(u) after the word 'effort', the word 'experience' needs to be added to give importance to experience.
- Employers' Federation of India (EFI) submitted that the term same work is retrograde as it disregards skills and competencies.
- Bharatiya Mazdoor Sangh (BMS) submitted that in Clause 2(u) contract labour should also be included.

3.12 Response of MoL&E on the above mentioned issue:

- In response to the suggestions of HMS & AITUC, MoL&E stated that the definition of "same work or work of a similar nature" is same as defined in Section 2(h) of the Equal Remuneration Act, 1976. In comparison of two works, the component of "responsibility" is crucial besides skill and effort.
- Responding to the concern raised by CII, MoL&E stated that the definition of "same work or work of a similar nature" is same as defined in Section 2(h) of the Equal Remuneration Act, 1976. Section 2(u) takes into account skill, effort and responsibility required.
- The MoL&E, while addressing the concern raised by PHDCCI submitted that It is as per existing definition in Section 2(h) of Equal Remuneration Act. Adding any other criteria would make it difficult for implementation.
- Responding to the query raised by EFI, the MoL&E stated that "Section 2(u) takes into account skill, effort and responsibility required. Thus, the issue of competency has been taken into account".
- Addressing the issue raised by BMS, the MoL&E stated that contract labour was also included.

3.13 In response to the Committee's query whether experience should also be considered while considering minimum wage, the Ministry clarified as under:

"It has been desired by the committee that the provision should be included in the Code to ensure incremental increase of wages of the workers from time to time besides providing for wages not less than the minimum wages. It is to be mentioned here that there have been demands from employers associations that periodic increase should be linked with the productivity of the worker. This demand has not been accepted as minimum wage is the wage which is essential for sustenance of the worker and can not be linked with productivity."

3.14 Further clarifying the Ministry's position, the representative of the Ministry during the course of oral evidence stated as under:

"...“The definition of same work or work of similar nature needs a relook.” Basically, we had put this for ‘The Equal Remuneration Act’, wherever it is same work or work of similar nature, equal remuneration has to be paid. Now, the comments that we have received says that we should have a relook at it because when we wanted to explain what is similar nature of work, we said, we should take into account the responsibility, skill and effort. Now, the view of the employer side is that we should take experience also into account. Sir, if you can see the right side, it is written: ‘work has been compared in terms of skill, effort and responsibility’ which is reasonable. The employer side says that experience should also be included. So, we will try and include this also.”

3.15 The Committee are of the firm opinion that experience of a worker in any establishment in the unorganized sector has largely not been recognized by the employers for payment of wages and therefore it needs to be considered as one component while comparing work of same and similar nature. They feel that a clarification may be required to be given in the

Code that the concept of minimum wage is actually 'the minimum wage at the time of entry/initial wage' and that experience/loyalty/years of service are to be taken into account over and above the minimum wage. During their interaction with the Ministry of Labour and Employment, the Committee gathered the impression that it is willing to explore the possibility of including the same. Hence, the Committee recommend that Clause 2 (u) may be modified as under:

“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 whether regular or on contract 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.’

3.16 Further, they recommend that Clause 6 Sub-section (6) may be modified as under:

“For the purpose of fixation of factors referred to in Sub-section (5), the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, experience, length of service in an organization, geographical location of the

place of the work and other factors which the appropriate Government considers necessary”.

Definition of Wages

3.17 Clause 2(x) of the Bill defines wages as under:

“wages” means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

- (i) any remuneration payable under any award or settlement between the parties or order of a court;
- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;
- (iii) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;
- (iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;
- (vi) any house rent allowance, but does not include—
 - (A) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal;
 - (B) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
 - (C) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
 - (D) any travelling allowance or the value of any travelling concession;

- (E) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (F) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv)"

3.18 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP (RS) and Member of the Committee, in his written submission stated that the definition of 'wages' is quite confusing. It is lengthy enough consisting of some 61 lines. It is difficult to determine what wage is as per the definition. Somewhere it has been told that wage includes overtime wage, house rent allowance etc. But for bonus calculation it is not so."
- HMS in the written submission stated that the definition of "wages" is confusing as in some places overtime wage, house rent allowance, etc. have been treated as wage but for Bonus calculation these are not part of wage. They suggested that the eligibility criteria should be treated for payment of Bonus also.
- MPRWU in their written submission stated that the definition of wages is quite confusing and lengthy as it consist of some 61 lines. It is difficult to determine what wage is as per the definition. Somewhere it has been told that wage includes overtime wage, house rent allowance, etc., but for bonus calculation it is not so.
- CITU stated that definition of wages is confusing. Its length itself makes it difficult to determine what 'wage' is as per the definition. It says that 'wage' includes overtime wage, house rent allowance, etc. But this does not holds good for calculation of bonus.
- BMS in the written memoranda stated that proviso 'commission' should also be included in the of definition of wages.

- CII suggested that proviso 2 under the definition of wages for the purpose of Chapter IV may be omitted as the employer provides various allowances and contributes towards various social security / statutory funds such as PF, ESI, Gratuity, Bonus etc.
- PHD Chamber of Commerce and Industry (PHDCCI) suggested that in the definition of wages in Section 2(x) (iii) bonus is part of wages whereas in 2(x) (A) bonus is part of wages. It may create an unnecessary confusion.
- PHDCCI in their written submission sought a clarification regarding bonus being part of wages or no.
- The Government of Karnataka suggested that the proviso after clause 2(x)(vii) and Explanation thereafter needs further clarification and simplification.

3.19. Response of MoL&E on the above mentioned issue:

- In response to the concerns raised by Shri Tapan Sen the then MP(RS) and Member of the Committee, MoL&E submitted that the definition of "wages" in the Code consists of 2 parts, One for the purpose of calculation of bonus. (It has been taken from the Payment of Bonus Act) and; second for the purposes such as minimum wages, payment of wages, etc.
- Responding to the queries of MPRWU, HMS and CITU, MoL&E informed that the definition of wages in the existing statutes varies with the objective of Statute. The inclusions and exclusions in the definition also vary with the objective. Accordingly, the definition of wages for minimum wages and payment of wages is different than the definition of wages for the purpose of payment of bonus.
- Responding to the query of BMS, the MoL&E submitted that the commission has been excluded by clause 2(x) proviso (vii) which reads as under "(vii) any commission payable to the employee:" such provision is a time-tested provision already existing in section 2(21) (vii) of the Payment of Bonus Act, 1965 and any alteration from such time tested may cause unexpected difficulty.

- Responding to the query raised by CII and PHDCC, the MoL&E in their written submission stated that this provisio has been provided to deter the employer from adding most part of the wages in allowances and thus reduce the quantum of bonus. This would protect employees from exploitation.
- Clarifying the concerned raised by PHDCCI regarding bonus being part of the wages, the MoL&E stated that the bonus given as per Payment of Bonus Act i.e. statutory bonus has been excluded from the Wages. However, any other payment in the name of bonus is included. It is as per existing definition of wages in existing legislation.
- The MoL&E responded in the affirmative to the suggestion of the Government of Karnataka.

3.20 During the course of the evidence when this matter was raised by the Committee, the representative of the Ministry responded as under:

"...Definition of wages is confusing. The comment that we have received is lengthy. We will try and address this..."

3.21 The Committee are of the opinion that the definition of 'Wages' given in the Code is very lengthy and needs further clarification and simplification. The Ministry have justified the same by stating that the said definition consists of two parts, one for the purpose of calculation of bonus, as taken from the Payment of Bonus Act and second, for the purposes such as minimum wages, payment of wages etc. The Committee find it confusing that in Clause 2 Section (x-iii) bonus is part of wages whereas in Clause 2 Section (x-A) bonus is not part of wages, though the Ministry have clarified that statutory bonus has been excluded from the wages, however, any other payment

in the name of bonus is included. The Committee, therefore, recommend that the Ministry should try to address this issue through simplification of relevant Clause and explanations given therein. The Committee would also like the Ministry to consider a suggestion received from them by the employers that inclusion of bonus should be allowed to be taken over in case the Establishment concerned does not earn profit.

The Committee, therefore, recommend that Clause 2 Sub-section (x) of the Code may be substituted with the following Sub-section as under:

“(x) “wages” means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes any, -

- (i) dearness allowances;
- (ii) house rent allowance;
- (iii) remuneration payable under any award or settlement between the parties or order of a court; and
- (iv) additional remuneration payable under the terms of employment, with whatsoever name it is called,

but does not include -

- (a) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or

which is not payable under any award or settlement between the parties or order of a court or Tribunal;

- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any travelling allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (f) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment;
- (g) any overtime allowance; and
- (h) any commission payable to the employee:
Provided that for calculating the wage under this clause, if any payments made by the employer to the employee under clauses (a) to (h) exceeds one half of the all remuneration calculated under this clause, the amount which exceeds such one-half

shall be deemed as remuneration and shall be accordingly added in all remuneration under this clause.

Explanation - 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 fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee.

Prohibition of Discrimination on Ground of Gender:

3.22 Clause 3(1) of the Bill states as under:

"There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee."

3.23 Suggestions received by the Committee

- The Government of Karnataka suggested that "in any one unit of Establishment" may be included at the end of clause 3(1).

3.24 Response of MoL&E on the above mentioned issue:

- The MoL&E responded in the affirmative to the suggestion of the Government of Karnataka.

3.25 When queried by the Committee as to whether the Equal Remuneration Act has been diluted by restricting it to gender discrimination only in respect of payment of wages, the Ministry submitted that sub-clause 2 of clause 3 needed to be modified as under:

"In clause 3, for sub-clause (2), substitute the following sub-clause, namely: -

No employer shall, -

- (i) for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and
- (ii) Make any discrimination between men and women while recruiting them for the same work or work of similar nature and thereafter 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."

3.26 Clause 3 Sub-section (1) and (2) of the Code deal with prohibition of discrimination on account of Gender. For better clarity in the same, the Committee recommend that at the end of Clause 3 Sub-section (1) the following phrase may be included: 'In any one unit of Establishment'. In so far as the matter related to prohibition of discrimination in recruitment and employment conditions, the Ministry have argued that the same will be addressed in the Occupational Safety, Health & Working Conditions Code, which is due to come in future. However, the Committee desire this Code to be a progressive measure guaranteeing non-discrimination. Hence, the Committee desire that Clause 3, Sub-section 2 may be substituted with the following:

"No employer shall, -

- (i) for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and**
- (ii) Make any discrimination between men and women while recruiting them for the same**

work or work of similar nature and thereafter 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."

Procedure for Fixing and Revising Minimum Wages.

3.27 Clause 8(1) of the bill stated as under:

"In fixing minimum rates of wages in respect of any employment for the first time under this Code or in revising minimum rates of wages so fixed, the appropriate Government shall either—

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be;"

3.28 The State Government of Karnataka has suggested that in Clause 8(i)(a) the following may be added - 'based on the norms/parameter prescribed by the appropriate Government from time to time'.

3.29 Response of MoL&E on the above mentioned issue:

- Responding to the query raised by the Committee, the MoL&E has stated as follows "provides flexibility to the appropriate Government to include any factors for fixation of minimum wages as it considers necessary has been provided in section 6(6).

3.30 During the course of oral evidence held on 18th January, 2018, when queried by the Committee as to how the Central Government fix the floor levels for the entire country or hundreds of cities, the representative of the Ministry responded as under:

"Sir, it need not be only one. It can be more than one. The floor level need not be one for the entire country".

3.31 When the Committee enquired further about the procedure for fixing minimum wages and as to whether the Ministry intends to take power, authority and responsibility to fix minimum wages for hundreds of cities in the country, the representative of MoL&E stated that it was not necessarily to fix wages city-wise.

3.32 When the Committee sought to know whether the minimum wage is same in all industries or not, it was submitted that there is a single minimum wage for all the industries under Central Government. The Secretary, MoL&E further clarified that the wages are fixed according to unskilled, semi-skilled and skilled categories.

3.33 On being enquired further as to whether, the Ministry were dealing with only three categories of minimum wages and same wage for the workers of particular industries in villages and cities. The representative of the Ministry stated as under:

'महोदय, मान लीजिए कि कोई माइन्स है, अगर कोई माइन्स सिटी में है, वहाँ सेम रेट होगा, अगर कोई माइन्स गाँव में है तो वहाँ भी सेम रेट होगा।'

3.34 During the course of the oral evidence held on 11th January, 2018 when pointed out by the Committee that the concept of minimum wages was not being implemented in letter and spirit even after the lapse of so many years which was resulting in the important factor of experience being ignored while determining the salary of a worker, the representative of Council of Indian Employers, SCOPE stated as under:

"What you are telling is the fundamental. In the industry, what is happening is, man, material and machine. In the three elements, it is only the man which is exploited. Even the producer, manufacturer and the employer don't have the capacity to exploit. As soon as it comes to exploitation it is the man who gets exploited in whatever term it may be. As far as minimum wages is concerned, I even expressed in the tripartite agreement also, while framing this Wage Code Bill, we are still going with the philosophy

of protectionism. When the Minimum Wages Act was enacted in 1947-48, the country required protective environment from the Government. Later, the whole sector has changed. It has to be a progressive kind of enactment. The whole basic fundamentals has to change. The whole draft has to change, if you permit me to say that with our Government background, that is the reason I started saying that we don't have any problem with any wage. In the earlier Act also, and with the present Act also. But if you want to become progressive, the whole fundamentals of drafting has to change".

3.35 When asked by the Committee to furnish a detailed note on methodology of fixation of National Minimum Wage and Minimum Wage, the Ministry stated that presently, section 6, 7 and 8 of the Code on Wages Bill provides for the method, components and procedure for fixation of minimum wages. Section 6(6) provides that 'for the purpose of fixation of factors for determining minimum wages, the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary".

3.36 It was further stated that "as per the present practice, any specific formula is not provided in the Minimum Wages Act to determine the minimum wages. However, the calculation for minimum wages is based on the recommendation of 15th ILC and Judgement of Hon'ble Supreme Court in the Reptakos & Co. Vs. its Workers. The factors presently considered while fixing the minimum wage are as follows:

- (i) 3 consumptions units for one wage earner.
- (ii) Minimum food requirement of 2700 calories per average Indian adult.
- (iii) Clothing requirement of 72 yards per annum per family.
- (iv) Rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme.

- (v) Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total minimum wage.

3.37 In 1992 the Hon'ble Supreme Court delivered a historic judgment and directed that children's education, medical requirement, minimum recreation including festivals/ ceremonies, provision for old age, marriage etc. should further constitute 25% of the minimum wage and be used as a guide in fixation of minimum wage. In view of the present practice and to provide more specificity section 6(6) of the Code may be modified to include other factors like calorific requirement, clothing, House Rent, Children's Education, Medical requirement or any other factor as may be prescribed by the appropriate Government.

"Review or Revising Minimum Rates of Wages"

3.38 Clause 8 (4) of the Bill states as under:

"The appropriate Government shall review or revise minimum rates of wages at an interval of five years".

3.39 Suggestions received by the Committee:

- In their written suggestion, PRS Legislative studies suggested as under:

The Code fixes the time period for States to revise minimum wages will be fixed at 5 years. This should be made flexible. There is no time period specified for the Central Government to revise the National Minimum Wage. If revision does not take place at fixed periods, businesses may be affected as employers will not know when they might suddenly face an increase in labour costs.

3.40 Response of MoL&E on the above mentioned issue:

- Responding to the suggestion given by PRS Legislative Studies the MoL&E state that 'providing flexibility in reviewing minimum wages may be considered'.

3.41 Under clause 8 Sub-section (1-A), it has been prescribed that 'in fixing minimum rates of wages in respect of any employment for the first time under this Code or in revising minimum rates of wages so fixed, the appropriate Government shall either appoint as many Committees and Sub-Committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be'. The Committee recommend that the following phrase may be inserted after the words 'so fixed' in Clause 8(1) (a) "based on the norms/parameters prescribed by the appropriate Government from time to time". Further, under Sub-section (4) of the same Clause, it has been provided that 'the appropriate Government shall review or revise minimum rates of wages at an interval of five years'. The Committee note that the Minimum Wages Act 1948 gives the State Governments flexibility in deciding when to revise minimum wages as long as it is not more than five years. In order to maintain that flexibility, the Committee recommend that in Clause 8 Sub-section (4), the words 'at an interval of five years' may be substituted with 'ordinarily at an interval not exceeding five years'.

Power of Central Government to fix National Minimum Wage:

3.42 Clause 9 of the Bill states as under:

"(1) The Central Government may, by notification, fix the National Minimum Wage:—

Provided that different National Minimum Wage may be fixed for different States or different geographical areas.

(2) The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the National Minimum Wage and if the minimum rates of wages fixed by the appropriate Government earlier is more than the National Minimum Wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

(3) The Central Government, before fixing the National Minimum Wage under sub-section (1), may obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42."

3.43 Suggestions received by the Committee

- Shri Tapan Sen, the then MP(RS) and Member of the Committee, in his written submission highlighted as under:

"While reformulating the wage related Bill in the form of present Code on Wages Bill, 2017, the Labour Ministry talks loudly in the media about the intention of the government to improve that Minimum Wage level by making provision for 'National Minimum Wage' below which no state government can decide the minimum wage. But, in reality, the Bill does not provide for a uniform National Minimum Wage for the entire country. Section 9(1) of the Bill clearly stipulates that different National Minimum Wage may be fixed for different states or different geographical areas'. Hence such 'National Minimum Wage' as stipulated in the Bill ceases to be a 'National Minimum' but is made a 'state level minimum wage', making the whole concept of 'National Minimum Wage' a deceptive ploy to mislead the people. Even if the difference in price level in different states/geographical areas is taken into account. It can well be reflected in the rates of variable dearness allowances, as it exists now. There is no justification of making 'national minimum' of the basic minimum wage different for different states. Hence the provision of 'National Minimum Wage' being projected by the government as an improvement in the present Bill is rendered meaningless for the workers by the provision of the Bill itself."

- AITUC in their written submission suggested:

"A National Minimum Wage should be fixed based on criteria set by the 15th Indian Labour Conference. No State shall then set minimum wage below the national level. Criteria for fixation of minimum wages should be included as a Schedule to the Act (Code); Appropriate

government should be made statutorily bound to revise Minimum Wages every 2 years."

- MPRWU and HMS in their written communication suggested:
Fixation of minimum wages and power of central government to fix National Minimum Wage is under discretion of government. Employers are empowered to suppress wages in establishments in erstwhile schedules where wage level was higher than others.
- BMS in their written submission suggested that as in the new laws, the Code which is trying to shift the burden of all social sector issues to State Government, is highly objectionable. Otherwise there will be different rates of minimum wages in different states.
- Self Employed Women's Association (SEWA) in their written communication suggested that the minimum wages should be fixed for Unorganised sector trades. They further suggested that for the homebased workers the minimum wages should be fixed on the piece rate basis. A detailed time motion study should be conducted for inclusion of the home based trades in the minimum wages and fixation of piece rate for them. They further suggested that Government should fix the Rates of Commodities for self-employed/own account workers and it should be covered in the Labour Code on Wages. Finally, they suggested that same rates of minimum wages should be fixed in all the States i.e. Minimum wages should not be different in different States.
- PRS Legislative Studies in their written submission suggested that the Code allows the Central Government to set a national minimum standard of living. This could be a single National Minimum Wage or different National Minimum Wages for different states and regions. There arises a question whether Central Government should set a single National Minimum Wage or multiple National Minimum Wages. Single National Minimum Wage would bring uniformity and ease of implementation and compliance with minimum wage law. But large regional variations in socio-economic factors across states might mean that a single National Minimum Wage is not feasible.

- Further it was suggested that:

"Ability of States to reduce minimum wages: Minimum wages set by the State Governments will not be lower than the National Minimum Wage set by the Central Government. If existing minimum wage set by the State Government is higher than the National Minimum Wage, the State Government cannot reduce its minimum wage. This may affect the ability of States to reduce their minimum wages if the Central Government decides to reduce the National Minimum Wage. A downward revision of minimum wage might lead the Central Government to lower the minimum wage."

3.44 Response of MoL&E on the above mentioned issues:

- Responding to the suggestion of Shri Tapan Sen, the then MP(RS), Member of the Committee, MoL&E stated that National Minimum Wage has to be fixed by the Central Government for the country as a whole. However, keeping in the regional disparities and cost of living, the provision for different National Minimum Wage for different geographical areas has been provided. Further, the National Minimum Wage would be fixed on the basis of recommendation of the Central Advisory Board, which is tripartite in nature and this amount will be fixed after due consultation with all stakeholders.
- Responding to suggestion of AITUC, MoL&E stated that as per Section 9(2) the State Government cannot fix the minimum wages less than the National Minimum Wage. Further, if the minimum wage fixed by a State Government is already more than the National Minimum Wage, then the State Govts. cannot reduce such minimum wages fixed by it earlier. As regards method of fixation of National Minimum Wage, the Section 9(3) provides for obtaining the advice of the Central Advisory Board constituted under Section 42(1) which is a tripartite body. The criteria of fixing National Minimum Wage or Minimum Wage has not been provided in the Code as the criteria are liable to change with time and various factors like changing socio-economic conditions, various Court pronouncements etc, and hence adding a Schedule for this purpose would restrict the flexibility. However, the interest of the workers would be taken care of as the nature of Central Advisory Board is tripartite. The revision of minimum wage after every 2 years would not be feasible. Further provision for revision of

special allowance (cost of living allowance which varies with inflation) at such intervals and in such manner as the appropriate government may direct has been provided in Section 7(i),(ii) and (iii):

- Responding to suggestions of MPRWU and HMS, the MoL&E stated that Central Government will take the advice of Central Advisory Board before fixing the National Minimum Wage. Further appropriate Government shall appoint as many committees and sub-committees as it considers necessary in respect of fixation of minimum wage. As per prevalent practice and Section 42 of the Code, these committees and boards are of tripartite nature to take care of the interests of both workers and employers.
- Responding to suggestion of BMS, MoL&E submitted that at present also, the responsibility of fixing minimum wage is distributed for Central and State sphere. the proposed distribution would allow to continue same mechanism which honours the geographical conditions and circumstances of each State.
- Responding to suggestion of SEWA, MoL&E stated that it is not feasible or practical in view of differing conditions and situations.
- Responding to the suggestions of PRS Legislative Studies and Shri Saurabh Bhattacharjee, Assistant Professor, NUJS, Kokata, MoL&E stated that the role of State Government in consultations would be considered/ addressed.
- Responding to the suggestions of PRS Legislative Studies, MoL&E stated that the proposed Code provides flexibility of either fixing one National Minimum Wage or different for different States and geographical situations under clause 9(1). The final decision would be taken after detail analysis and recommendation of the Central Advisory Board.
- Responding to the suggestions of PRS Legislative Studies, MoL&E submitted that the concerns raised will be considered/addressed.

3.45 During the course of evidence, clarifying on the issue further, the Secretary of the Ministry stated as under:

"... Now, what is the existing is that the appropriate Government has to fix the minimum wage. The appropriate Government, as far as certain areas are concerned, say for example, mines, oil sector, airport, railways, Central PSUs, for this the Central Government fixes the minimum rate. At the present moment, the Central Government also has an advisory minimum wage, which is not statutorily backed by any Act. The State Government fix for their particular area. That is why, this difference comes whereas in the new wage code where we have a national minimum wage, the Central Government will fix one or several minimum wages depending on the local conditions which will act as the floor level. The increase in minimum wages should be linked.

What we have said, the State Government, even though they are empowered to fix the minimum wage, that cannot be less than what the Central Government fixes as floor level. Whatever they fix can only be above that. So, the intention of Code is to ensure that the payment of wages is not less than that floor level, at least. So, the states, under this Act, are bound to fix minimum wage which is above what the Central Government suggests. That is why, we are bringing in that provision."

3.46 During the course of sitting, the Committee observed as under:

"...एक्ट के अंदर जो मंशा जाहिर होती है कि कंट्री में एक यूनिवर्सल वेज होना चाहिए लेकिन उसको क्षेत्र के साथ इसलिए किया है कि सभी क्षेत्र की अलग-अलग परिस्थिति होती है, वर्किंग कन्डीशन अलग होती है। अगर हम यूनिवर्सल वेज पूरे देश में लागू करते हैं, कामगार के काम करने की वह वेरिफेशन नहीं ला पाएंगे।"

3.47 The Committee further observed that:

"इस देश में कुछ राज्य बहुत ही बैकवर्ड हैं, कुछ डेवलपड स्टेट्स भी हैं, जो बजट बनाते हैं, जम्मू कश्मीर की जो इकोनॉमिक कन्डीशन है वह बहुत ही पुजर है। आप कैसे बता रहे हैं कि पूरे मुल्क में एक वेज पॉलिसी बनाना चाहते हैं। जो वेज हम देना

चाहते हैं चाहे महाराष्ट्र या जम्मू-कश्मीर में इसको हम एक साथ कैसे मिला सकते हैं?"

3.48 Under Clause 9 Sub-section (1) it has been provided that the 'Central Government may, by notification, fix the National Minimum Wage: Provided that different National Minimum Wage may be fixed for different States or different geographical areas'. The Committee recommend that the said Sub-section may be substituted with the following:

'The Central Government shall by notification, fix the National Minimum Wage in the manner as may be prescribed from time to time.'

3.49 The Committee further recommend that the State Governments must be consulted before finalization of the National Minimum Wage by the Central Government. They observe that Clause 9 Sub-section (3), which though provides that the Central Government may obtain the advice of the Central Advisory Board, does not reflect a positive obligation to consult the State Governments. The Committee desire that the Code must underline the fact that the power to fix minimum wage shall continue to be vested in the Central Government as well as the State Governments in their respective spheres. Hence, the Committee recommend that Clause 9 Sub-Section (3) of the Code may be amended in the following manner: "The Central Government, before fixing the National Minimum Wage

under Sub-section (1), shall obtain the advice of the Central Advisory Board constituted under Sub-section (1) of section 42 and State Advisory Boards constituted under Sub-section (4) of section 42." This wage fixation would also be in accordance with the recommendation of the 44th Indian Labour Conference, 2012 and reiterated at the 46th Indian Labour Conference, 2015 to remove arbitrariness and unwarranted discretion in the fixation of minimum wage. The Committee also are of the opinion that the Code must convey the message that the workers, who are getting minimum wages as per the present Act shall not get less than what they are getting now, once the Code on Wages Bill, 2017 is enacted and the same shall continue to be revised as per past practice.

Fixing hours of work for normal working day

3.50 Clause 13(2) of the bill states as under:

"The provisions of sub-section (1) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:—

(a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

3.51 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP (RS) and Member of the Committee, with regard to the Fixing hours of work for normal working day suggested as under:
 - "Section 13 of Minimum Wages Act and also section 13 of the code on Wages Bill 2017 stipulate working day and working hour. Under this provision, pursued by the organization of Sales Promotion Employees for years, 8 State Governments notified 8 hours working day with timing for the Sales Promotion Employees which the employers' organisations challenged in different High Courts. Adoption of this Bill is brought with making these notifications irrelevant unless the Sales Promotion Employees as also the Working Journalists and other Newspaper Employees are brought under the definition of "employees".
- HMS *vide* their written submission stated that the words "on urgent work" should be deleted from Clause 13(2) (a).

3.52 Response of MoL&E on the above mentioned issue:

- Responding to the concern raised by Shri Tapan Sen, the then MP(RS) and Member of the Committee, the MoL&E stated that it is confirmed that the 'working journalist and other newspaper employees' and 'sales promotion employees' are covered under the definition of the employees as "they are the persons employed on wages by an establishment....." Section 2(j) of the Code.
- Responding to the concern raised by HMS, the MoL&E has stated as follows:
 - "The issue raised will be considered/ addressed.

3.53 The existing provision under Clause 13 Sub-section (1)(a) of the Code, it is stated as: 'Where the minimum rates of wages have been fixed under this Code, the appropriate Government may (a) fix the number of hours of work which shall constitute a

normal working day inclusive of one or more specified intervals'. The Committee feel that the working hours should not be beyond eight hours a day, hence, they recommend that the following phrase may be added at the end of the above said Sub-section: 'not exceeding eight hours per day'.

3.54 The Committee further recommend that under Clause 13 Sub-section (2) (a), the words 'on urgent work or' may be deleted.

Deductions which may be made from wages:

3.55 Clause 18 of the Bill states as under:

(1) Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code.

Explanation.—For the purposes of this sub-section,—

- (a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;
- (b) any loss of wages to an employee, for a good and sufficient cause, resulting from—
 - (i) the withholding of increment or promotion, including the stoppage of an increment; or
 - (ii) the reduction to a lower post or time-scale; or
 - (iii) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

(2) Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be only for the following purposes, namely:—

- (a) fines imposed on him;
- (b) deductions for his absence from duty;

- (c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer or by the appropriate Government or any housing board set-up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services.

Explanation.—For the purposes of this clause, the expression “services” does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of—
 - (i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;
 - (ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
- (g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
- (h) deductions of income-tax or any other tax levied by the Central Government or the State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
- (i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;

- (k) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;
 - (l) deductions for recovery of losses sustained by an employer on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;
 - (m) deductions for recovery of losses sustained by an employer on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the employer whether in respect of fares, freight, demurrage, wharfage and crange or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
 - (n) deductions for recovery of losses sustained by an employer on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;
 - (o) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.
- (3) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.
- (4) Where the total deductions authorised under sub-section (2) exceed fifty per cent of the wages, the excess may be recovered in such manner, as may be prescribed.

3.56 Suggestions Received by the Committee:

- Shri Tapan Sen, the then MP (RS) and Member of the Committee, in his written submission suggested:

"In Sec 18 dealing with deductions which may be made from wages, there is a mention that deduction of income-tax or 'any other tax' levied by the central or the state government can be made. Mention of 'any other tax' is a new one and it can be apprehended that such attack i.e imposition of some other taxes on the workers is forthcoming. Provision of salary deduction for payments to co-

operative societies approved by the state government or of premium of any insurance as authorized by the employee as provided in Sec 7(2) (j) & (k) of the Payment of Wages Act, 1936 has been done away with."

- In his written submission he further suggested:

"Recovery of losses sustained by employer from the wages was so far restricted to railways only which have now been generalized. While in the Payment of Wages Act, 1936, provision for recovery of losses sustained by a railway administration on account of acceptance of the employed person of counterfeit or base coins or mutilated or forged currency notes [Sec 7(4) (m)] or losses sustained on account of the failure of the employed person to invoice, to bill, to collect [Sec 7(4)(n)] or to account for the appropriate charges or the losses on account of any rebates or refunds incorrectly granted by the employed person [Sec 7(4)(o)] were there, the same has now been generalized by replacing the word, 'railway administration' by 'an employer' in Section 18 (l), (m) & (n) respectively of the proposed Bill, thereby authorizing all classes of employers to effect such deductions from the salary of an employee/worker. The tyranny of the employer's class is well known and this is yet an attempt to further empower the already powerful employers to do anything they like to suppress and harass the workers."

- MPRWU in their written submission suggested that in clause 18 "Any other tax" is apprehended in a way to see that some other taxes will be imposed on workers in future.
- MPRWU, HMS and CITU in their written communication suggested that replacing "a railway administration" by "an employer" is authorizing all classes of employers to make such deductions from the salary of an employer/worker, this is not acceptable.
- MPRWU and HMS in their submission stated that provision of salary deduction for payments to co-operative societies approved by the state government or of premium of any insurance as authorized by the employee as provided in Section 7(2) (j) (k) of the Payment of Wages Act has been removed.
- BMS in their written communication stated that where the total deductions authorised under sub-section (2) exceed 50% of the

wages, the excess may be recovered in such manner, as may be prescribed.

3.57 Response of MoL&E on the above mentioned issues:

- Responding to the suggestions of Shri Tapan Sen, the then MP(RS), Member of the Committee, MoL&E submitted that the Government is open to any suggestion for making changes in the relevant Section, if required.
- Responding to the suggestions of MPRWU, MoL&E submitted that The Phrase of 'any other tax' may be substituted by "any other statutory levy". Mention of such term does not indicate future levy of taxes.
- Responding to the suggestions of MPRWU, HMS and CITU, MoL&E submitted that the Government is open to any suggestion for making changes in the relevant Section, if required.
- Responding to the suggestions of MPRWU and HMS, MoL&E submitted that So far as is concerned with the salary deduction for payments to co-operative societies clause 17(2)(j) of the Bill provides as under:- "(j) deduction for payment of co-operative society subject to such conditions as the appropriate Government may impose;" and so far as is concerned with the premium of insurance, the same has not expressly mentioned, however the words "any social security fund or scheme constituted by law" used in clause 17(2)(i) are of wide scope and may take care of the insurance policy to the Life Insurance Corporation as the life insurance is a scheme constituted under the law.
- Responding to the suggestions of MPRWU and HMS, MoL&E submitted that the issue raised is not clear.

3.58 In Clause 18 dealing with deductions which may be made from wages, Sub-section (h) mentions

'deduction of income tax or any other tax levied by the Central Government or the State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order.' In order to counter the apprehension among workers which may arise due to the phrase 'any other tax' that imposition of some other taxes may be forthcoming, the Committee recommend that the said phrase 'any other tax' under Clause 18 Sub-section (h) may be substituted by the phrase 'any other statutory levy'.

3.59 Further, the Committee observe that under Clause 18 Sub-section (2) (i) (m) (n), recovery of losses sustain by employer from the wages, which was so far restricted to railways only, has now been generalised. Hence, to correct this anomaly the Committee recommend the following in Clause 18 in Sub-section (2):

- '(i) in item (l), for the "an employer", substitute the words "a railway administration",
- (ii) in item (m), for the word "an employer", substitute the words "a railway administration" and for the word occurring in third line substitute the word "the employer" with "that administration",
- (iii) in item (n), for the word "an employer", substitute the words "a railway administration".

3.60 The Committee express serious concern over the fact that some employers make deductions like EPF/ESI contribution, TDS etc. from the wages/salaries of a worker/employee but wilfully default in depositing the same or resort to undue delay in depositing it with the trust/authority, for which the employee is penalised. While the workers/employees trust that the employer is doing the same and they can get it on resigning/retirement or avail of the schemes funded by their contribution, it comes at a rude shock when they are penalised for default by the employer on this account. Most of the time, the employees remain clueless as to how to deal with a defaulting employer. Such cases cause undue sufferings to the workers, therefore, the Committee are of the strong opinion that an employer, who acts as an 'agent' of the Government, authorised to make deductions from the wages and deposit it so as to make the worker eligible for social security schemes, is legally bound to deposit the same and in this capacity, has to be made accountable for any default on his part.

Hence, the Committee recommend that another sub-section namely Clause 18(5) be added in the Code as under:

"Where the deductions are made by an employer but not deposited in the trust/Government fund, as required under the provisions of law for the time being in force, the workers/ employees shall not be held responsible and under no circumstances, shall be asked/forced to again deposit the same amount and

the employer shall be made accountable for default and penalised in such manner, as may be prescribed."

Deductions for Absence from Duty

3.61 Clause 20 of the Bill states as follows:

"(1) Deductions may be made under clause (b) of sub-section (2) of section 18 only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage period during which by the terms of his employment he was required to work:

Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation.—For the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work."

3.62 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP(RS) and Member of the Committee, in his written suggestion stated that:

"The draconian provision for deducting eight days wages for one-day strike has been retained in the proposed bill [Sec 20(2)], if the strike is declared illegal by the government. And, no strike can ever be legal, if

the proposals made in the Labour Code on Industrial Relations are enacted."

- MPRWU, HMS and CITU in their written memoranda stated that deduction of 8 days wages for 1 - day strike is dangerous. Eight days' wages for one strike if the strike is declared illegal is a draconian provision.
- BMS in their written memoranda stated that Section 20(2) is against the freedom of trade unions.

3.63 Response of the MoL&E on the above mentioned issues:

- Responding to the issue raised by Shri Tapan Sen, the then MP(RS) and Member of the Committee, MoL&E stated that this provision is similar to the existing provision in the section 9 of the Payment of Wages Act 1936. Further in the Industrial Relations Code, strike is being regulated only with provision of previous notice of 14 days.
- Responding to the queries raised by MPRWU, HMS and CITU, MoL&E stated that it is as per existing Section 9 of Payment of Wages Act. Further the Section provides for deduction of up to 8 days and not mandatorily 8 days.
- Responding to the issue raised by MPRWU, HMS and CITU, MoL&E stated that it is as per existing Section 9 of Payment of Wages Act and is not against the freedom of trade unions.

3.64 During the course of oral evidence, Secretary, MoL&E submitted as under:

"...Code sees workers participating in a strike to be absent. Deduction of eight days' wages for one-day strike is dangerous. Sir, it is not like that. It is already existing in Section 9 of the Payment of Wages Act. What we have proposed is that a maximum of 8 days deduction can be made for the strike indulged in by the worker. It is the maximum. It is not that for every one-day strike 8 days' wages deduction will be done."

3.65 The Committee are aggrieved to be informed by the stakeholders particularly Labour Unions that

there have been instances when the employer sometimes misuses the provisions under Section 20(2) and withholds/deducts the salary of employee for couple of days as a punishment in an illegal manner. They, therefore, would like to suggest that the Government may include an explanation or issue a separate circular or instructions to stop such misuse.

Disqualification for Bonus

3.66 Clause 29 of the Bill states as follows:

"Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment; or
- (d) conviction for sexual harassment".

3.67 Suggestions received by the Committee:

- All India Trade Union Congress (AITUC) suggested to "delete the clause as these acts don't deal with Payment of Bonus".
- State Government of Karnataka *vide* their O.M dated 5th February, 2018 expressed their views as under:

"This clause may be made more clear by rephrasing in the following way:

Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service on conviction for-

- (a) Fraud related to the establishment or its employees.
- (b) Riotous or violent behaviour while on the premises of the establishment or directed at the establishment.

(c) Sexual Harassment at the work place as per The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013.

3.68 Response of the MoL&E on the above mentioned suggestion:

- Responding to the suggestion made by the State Government of Karnataka and AITUC, the MoL&E stated that it is as per Section 9 of the payment of Bonus Act, 1965. Deleting this would not be justifiable as it would promote indiscipline and would not be good for industrial harmony.

3.69 Concurring with the suggestion received from the State Government of Karnataka, the Committee recommend that Clause 29 of the Bill providing disqualification of an employee from receiving bonus may be made more clear by substituting the same with the following:

'Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service on conviction for-

- (a) Fraud related to the establishment or its employees.**
- (b) Riotous or violent behaviour while on the premises of the establishment or directed at the establishment.**
- (c) Theft, misappropriation or sabotage of any property of the establishment.**
- (d) Sexual Harassment at the work place as per The Sexual Harassment of Women at**

Workplace (Prevention, Prohibition and Redressal) Act, 2013.'

Calculation of Direct Tax payable by employer

3.70 Clause 35 of the Bill states as under:

"Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

- (a) in calculating such tax no account shall be taken of,—
 - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
 - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
 - (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;
- (b) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes,

then, no account shall be taken of such rebate; (e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry".

3.71 Suggestions received by the Committee:

- When the Committee enquired as to whether the calculation of Direct Tax applicable to employer is unfair and deprives him of his lawful entitlements, MoL&E, while agreeing to the same, further submitted that at page 15, in clause 35 in opening portion, for the words "Any direct tax" substitute the words "For the purposes of this Code, any direct tax".

3.72 In order to allay the apprehensions expressed before the Committee that calculation of direct tax applicable to employer under Clause 35 is unfair and deprives him of his lawful entitlements, the Committee recommend that in Clause 35, in opening portion, the words "Any direct tax" may be substituted with the words "For the purpose of this Code, any direct tax".

Non-applicability of Chapter 4 on payment of Bonus

3.73 Clause 41 of the Bill states as under:

(1) Nothing in this Chapter shall apply to—

(a) employees employed by the Life Insurance Corporation of India; (b) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;

(c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

(d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;

(e) employees employed by—

(i) the Indian Red Cross Society or any other institution of a like nature including its branches;

(ii) universities and other educational institutions;

(iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

(f) employees employed by the Reserve Bank of India;

(g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to—

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

(h) employees employed by inland water transport establishments operating on routes passing through any other country; and

(i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

(2) Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

3.74 Suggestions received by the Committee:

- Government of Karnataka in their written communication suggested that in State of Karnataka, establishments employing 10 or more workers are already covered under the ambit of Act. Due to proposed amendment, establishment already covered

- under Act, will be out of the ambit of Act and employees will be deprived of monetary benefits. In the larger interest of Workers, the criteria for applicability may be fixed at 10 or more employees
- AITUC in their written submission suggested deletion of non-applicability of this chapter.
 - BMS in their written communication suggested that exemptions are objectionable.
 - PRS Legislative Studies and Shri Saurabh Bhattacharjee, Assistant Professor, National University of Juridical Sciences, Kolkata in their written submission suggested that rationale for a National Minimum Wage set by the Central Government. Labour being in the concurrent list, both Centre and State decide, revise and enforce minimum wages in different regions and sectors. State Governments are responsible for policy decisions to improve their economic growth and ensure welfare of citizens. The ability of the State Government to determine its economy may be affected if the Central Government sets a National Minimum Wage that is not corresponding with the state's economic conditions. The code does not allow for consultations between Central and State Governments while determining National Minimum Wage.
 - BMS in their written communication further suggested that benefit of bonus should not be denied to workers in establishments employing less than 20 workers.

3.75 Response of MoL&E on the above mentioned issues:

- Responding to the suggestions of Government of Karnataka, MoL&E stated that as per the existing Payment of Bonus Act, 1965, the provisions of Bonus are applicable in the establishment in which 20 or more persons are employed (section 1(3)(b)). The same has been retained in the Code.
- Responding to the suggestions of AITUC, MoL&E stated that presently also the Payment of Bonus Act does not apply to certain establishments as provided in Section 32 of Payment of

Bonus Act. The same exemption has been continued as it is under Section 41 of the Wage Code.

- Responding to the suggestions of BMS, MoL&E stated that presently also the Payment of Bonus Act does not apply to certain establishments as provided in Section 32 of Payment of Bonus Act. The same exemption has been continued as it is under Section 41 of the Wage Code.
- Responding to the suggestions of BMS, MoL&E stated that this exemption is as per existing provision and small establishments having less than 20 employees should not be burdened with bonus.

3.76 Under Clause 41 regarding Non-applicability of this Chapter, the Committee agree with the suggestion made by the Government of Karnataka that in the larger interest of the workers, the criteria for applicability may be fixed at ten or more persons. Accordingly, the Committee recommend that in Clause 41 (2) the phrase 'twenty or more persons' may be substituted by 'ten or more persons'.

Central and State Advisory Boards

3.77 Clause 42 of the Bill states as under:

(1) The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

- (a) representing employers;
- (b) representing employees which shall be equal in number of the members specified in clause (a); and
- (c) independent persons, not exceeding one-third of the total members of the Board.

(2) One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.

(3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to—

(a) fixation or revision of minimum wages and other connected matters;

(b) providing increasing employment opportunities for women;

(c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and

(d) any other matter relating to this Code, and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

(4) Every State Government shall constitute a State Advisory Board for advising the State Government—

(a) in fixation or revision of minimum wages and other connected matters;

(b) for the purpose of providing increasing employment opportunities for women;

(c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and

(d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

(5) The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (a) to (d) of sub-section (4).

(6) The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons—

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.

(7) One-third of the members referred to in sub-section (6) shall be women and one among the members specified in clause (c) of the said sub-section shall—

(a) be appointed by the State Government as the Chairperson of the Board;

(b) be appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.

(8) In tendering its advice in the matters specified in clause (b) or clause (c) of subsection (4), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.

(9) The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary.

3.78. Suggestions received by the Committee:

- Shri Tapan Sen, the then MP(RS) and Member of the Committee, in his written suggestion highlighted as under:

"The Equal Remuneration Act has been totally diluted by restricting it to gender discrimination only in respect of payment of wages, doing away with other types of discrimination related to

recruitment, conditions of service such as promotion, vocational training, transfer etc. While there was legal binding on the duty of the employer to stop gender discrimination on the question of recruitment, promotions, training or transfer vide Sec 5 of the existing Equal Remuneration Act, 1976. Providing increasing employment opportunity for women has however been made a point for consideration for the Central Advisory Board [Sec 42 (3) (b) & (c)] and State Advisory Board [Sec 42 (4)(b) & (c)], but purposefully restricting their powers only to advise the central and state governments only."

- MPRWU, HMS, SEWA and PRS Legislative Studies in their written communication suggested that equal Remuneration Act has been diluted by restricting it to gender discrimination only in respect of payment of wages. Though the Central and State Advisory Boards can consider increasing employment opportunities for women, the powers of these Boards are restricted to be advisory only.
- All India Manufacturers Organisation (AIMO) in their written submission suggested that the Code weakens Equal Remuneration Act by restricting it to gender discrimination only and doing away with discrimination related to recruitment, conditions of service etc.
- SEWA in their written communication suggested that the Central and State Advisory Committees have majority representation from the organized sector and the committees will tend to fix wages keeping in mind the organized sector. They hence suggested a separate Advisory Committee/ Sub-Advisory Committee could be constituted specifically for the unorganized Sector.

3.79 Response of MoL&E on the above mentioned issues:

- Responding to suggestions of Shri Tapan Sen, the then MP(RS) and Member of the Committee, MoL&E stated that The Code on Wages is related to 'wages' only and matter related to working and employment conditions will be addressed in the Occupational safety Health & Working Conditions Code.

Further, under Section 42(3)(b) and (c) of the Code, the Central and State Advisory Boards have been mandated to give recommendations on **"increasing employment opportunities for women"**.

- While responding to the suggestions of MPRWU, HMS, SEWA and PRS Legislative Studies, MoL&E submitted that Clause 42(3)(b) and (c) of the Bill provides that the Central Advisory Board shall from time to time advise the Central Government on reference of issues relating to providing increasing employment opportunities of women and the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board. This provision effectively takes care of the gender discrimination relating to recruitment conditions of service, etc.
- While responding to the suggestions of AIMO, MoL&E stated that Clause 42(3)(b) and (c) of the Bill provides that the Central Advisory Board shall from time to time advise the Central Government on reference of issues relating to providing increasing employment opportunities of women and the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board. This provision effectively takes care of the gender discrimination relating to recruitment conditions of service, etc.
- While responding to the suggestions of SEWA, MoL&E stated that there is no such distinction in clause 42 of the proposed Code.

3.80 During the course of the oral evidence when the Committee pointed out that the code does not provide for consultations

between Central and State Governments while determining National Minimum Wage, the Secretary, MoLE responded as under:

"In the Advisory Committee, we had put employers' representative, employees' representative and independent members. The State Governments should also have representatives is what the comment is. We will accept that. That is not an issue."

3.81 The Committee are of the view that the Code need to envisage consultations between Central and State Governments while determining National Minimum Wage and therefore, recommend the following:

'in Clause 42, in Sub-section (1),-

- (i) in item (b), omit the word ";and",**
- (ii) after item (c), insert the word ";and",**
- (iii) after (c) insert the following item, namely:-**
 - "(d) five representatives of the State Governments to be nominated by the Central Government"**

Appointment of Facilitators and their powers

3.82 Clause 51 of the Bill states as under:

"(1) The appropriate Government may, by notification, appoint Facilitators who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be.

(2) The appropriate Government may, by notification, lay down an inspection scheme which shall also provide for generation of a web-based inspection schedule.

(3) Every Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

- (4) The Facilitator may, within the local limits of his jurisdiction—
- (a) supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this Code;
 - (b) inspect the establishment based on inspection scheme referred to in sub-section (2).
- (5) Subject to the provisions of sub-section (4), the Facilitator may,—
- (a) examine any person who is found in any premises of the establishment, whom the Facilitator has reasonable cause to believe, is a worker of the establishment;
 - (b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
 - (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Code and which the Facilitator has reason to believe has been committed by the employer;
 - (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
 - (e) exercise such other powers as may be prescribed.
- (6) Any person required to produce any document or to give any information required by a Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.
- (7) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code."

3.83 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP(RS) and Member of the Committee, in his written communication suggested:

"The concept of inspection for the purpose of enforcement has been given a go-bye as inspectors will be replaced by facilitators (Chapter VII). The facilitators shall conduct inspection only in accordance with the scheme notified by the appropriate

government from time to time in accordance with the web-based inspection schedule generated by such schemes."

- It was further suggested:

"The binding character of the provisions of inspection/enforcement mechanism is totally diluted making other provisions of the law practically meaningless to workers. The funniest part of this is, the facilitator who shall be a government appointee and shall be a public servant within the meaning of section 21 of the IPC and is authorized to search or seize documents from the employer as per various provisions of IPC & code of criminal procedure shall not have any power to take action against the defaulting employer. Rather he/she, like the aggrieved employee or trade union has to file application before the authority for fructifying the claim. Thus realization of any legitimate claim will not be encumbrance free at all."

- AITUC in their written communication suggested that appointment of Facilitator in lieu of Labour Inspector/ Enforcement Officer is against the principle of law, enforcement mechanism. It was further suggested that word 'facilitator' should be deleted and powers of enforcement officer/inspector should not be subject to inspection scheme prescribed by state.
- AITUC, MPRWU and BMS in their written communication suggested to replace "Facilitator" with "Enforcement Officer/ Inspector".
- Government of Karnataka in their written communication suggested the definition to be retained as "Inspector" and the roles, responsibilities and jurisdiction of inspectors as defined in the four Acts also to be retained.

3.84 Response of MoL&E on the above mentioned issues:

- Responding to suggestions of Shri Tapan Sen, the then MP(RS) and Member of the Committee, MoL&E stated that In order to remove arbitrariness and enhance transparency and accountability, the inspections are being regulated through an 'inspection scheme' at present. The aim is to undertake risk based inspection scheme rather than discretionary inspections by inspectors to remove possible malpractices and avoid

allegations of arbitrariness by inspecting persons. The Facilitator's power of enforcement has not been taken away at all. It is only that a system is sought to be put in place where risk based inspections are carried out. Also it is for the judicial authority to adjudicate the violation of provisions of the Code and impose penalties on the offenders. This authority is vested only in judiciary and Facilitators will only launch prosecution (This is the existing practice also).

- Responding to the suggestions of AITUC, MPRWU and BMS, MoL&E stated that the word inspector has been replaced by the word "Facilitator" as the officer discharging the duties of facilitator is also responsible for supply of information and advice to both employers and workers to enable effective compliance of the provisions of this Code, besides conducting inspections and monitoring the implementation violations. Hence the duties of inspector have been widened and now he has additional role to facilitate compliance in the interest of workers. The word facilitator has a positive connotation and would be more acceptable to both the employer and employees.
- Further responding to suggestions of AITUC, MoL&E stated that in order to remove arbitrariness and enhance transparency and accountability, the inspections are being regulated through an "inspection scheme" at present. The aim is to undertake risk based inspection scheme rather than discretionary inspections by inspectors to remove possible malpractices and avoid allegations of arbitrariness by inspecting persons. The Facilitator's power of enforcement has not been taken away at all. It is only that a system is sought to be put in place where risk based inspections are carried out.
- Responding to the suggestions of Government of Karnataka, MoL&E stated that the duties of Facilitator have been enhanced as compared to the duties of inspector. Now the officer discharging the duties of facilitator is also responsible for supply of information and advice to both employers and workers to enable effective compliance of the provisions of this Code, besides conducting inspections and monitoring the implementation violations. Hence the duties of inspector have been widened and now he has additional role to facilitate compliance in the interest of workers.

3.85 During the course of the sitting the Committee observed as under:

"Now, you are legitimising the internal wrong doings saying that facilitators can find out everything but they cannot take action on their own and cannot directly recommend any action. What they have to do? They have to do what an employee, who is not getting minimum wage, is authorised to do. Just like an aggrieved employee, they have to file an application before the authority. They cannot give a concrete recommendation. You have kept this provision in the Code on Wages Bill. The enforcement scenario will go bad to worst. Even the manner in which the existing enforcement provisions are being diluted in the present Bill will not leave anything."

3.86 The Committee have been informed that the Code on Wages Bill will benefit both the employers and employees due to simplification and ease of compliance as well as ensuring minimum wages and timely payment of wages for all employees irrespective of wage ceiling and sector. In this connection, as regards, the issue of using the term 'Facilitator' instead of 'Inspector' in the Code, the Ministry have sought to convince the Committee that the enforcement mechanism would be strengthened as the facilitator will also have the responsibility of preventing any violations of the provisions of the Code by way of providing guidance to both employers and workers. They have also stated that the inspection scheme is proposed to provide for risk based inspections and make it more effective and reduce arbitrariness. Notwithstanding the same, the Committee feel that the use of the term 'Facilitator' instead of 'Inspector' in

the Code gives the impression of diluting the enforcement mechanism and restricting the inspection which is the lifeline of enforcement.

Hence, the Committee express agreement with the various suggestions received by them on inclusion of the word 'Facilitator' instead of 'Inspector' in the Code on Wages Bill, 2017. They, therefore, recommend that under Clause 2 Sub-section (m) and Clause 51 the word 'Facilitator' be substituted by 'Inspector' in accordance with ILO norms.

3.87 In order to further strengthen the enforcement mechanism, the Committee desire that in Clause 51(2), the following may be inserted:

"It should also publish periodic reports on establishment-wise status of implementation of the provisions of the Bill in a manner as may be prescribed".

Offences and Penalties

3.88 Clause 53 of the Bill states as under:

(1) Any employer who—

(a) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to fifty thousand rupees;

(b) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;

(c) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;

(d) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

(2) Notwithstanding anything contained in sub-section (1), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.

(3) Notwithstanding anything contained in clause (c) of sub-section (1) or sub-section (2), the Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub-section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

3.89 Suggestions received by the Committee:

- Shri Tapan Sen, the then MP(RS) and Member of the Committee, in his written submission suggested as under:
"Chapter VIII deals with 'Offenses and Penalties'. Penalty for offenses by the employer vary from Rupees Ten Thousand to Rupees One lakh only. One can easily imagine how benevolent the government is towards offending employers."
- CII & ASSOCHAM in suggested that the penal amount of Rs. 50,000 was on higher side.

- CII further suggested that the definition of 'improper maintenance' needs to be clarified to avoid dispute and ambiguity.

3.90 Response of MoL&E on the above mentioned suggestion:

- Responding to the suggestions of Shri Tapan Sen, the then MP(RS) and Member of the Committee, Penalties have been increased manifold (existing penalties were up to Rs.500 only or imprisonment of six months or both in case of Minimum Wages Act). Penalties have been made commensurate with the gravity of offences. In case of non-maintenance of records will attract penalty of Rs. 10000 only, the non-payment of minimum wages, which is a serious offence, will attract the penalty of Rs. 50000/-. Further, provisions for imprisonment also been included in case of continuous default/violation.
- Responding to the query raised by CII & ASSOCHAM; MoL&E stated that the imprisonment has been removed from first offence, so the amount of fine has been increased to deter commission of offence.
- Responding to the suggestion made by CII, MoL&E stated that the expression "improper maintenance" is a well understood term which means not in accordance with the accepted standards of maintenance. The accepted standards may differ in accordance with the kind of maintenance or the requirement of maintenance. As such there is no ambiguity in the expression.

3.91 Under Chapter VIII dealing with Offences and Penalties in the Code, penalty for offences by the employer vary from rupees ten thousand to rupees one lakh only. In Clause 53 (1)(a) particularly, it has been stated that any employer who pays to any employee less than the amount due shall be punishable with fine which may be extended upto rupees fifty thousand. While the Ministry has claimed that the penalties have been increased manifold in the Code as compared to

the same in the existing Minimum Wages Act, the Committee still feel that in the present context the penalty amount proposed is not substantial enough to act as a deterrent. Hence, the Committee recommend that the Chapter VIII of the Code may be suitably modified to fix the penalty for offences by the employer from rupees fifty thousand to rupees ten lakh only.

New Delhi;
19th November 2018
9th Kartika ; 1940 (Saka)

DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

THE CODE ON WAGES, 2017

ARRANGEMENT OF CLAUSES

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THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

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THE FOURTH SCHEDULE.

Bill No. 163 of 2017

THE CODE ON WAGES, 2017

A

BILL

to consolidate and amend the laws relating to wages and bonus and matters connected therewith or incidental thereto.

Enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Code on Wages, 2017.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

Short title,
extent and
commencement.

Definitions

2. In this Code, unless the context otherwise requires,—

(a) "accounting year" means the year commencing on the 1st day of April;

(b) "Advisory Board" means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42;

(c) "agricultural income-tax law" means any law for the time being in force relating to the levy of tax on agricultural income;

(d) "appropriate Government" means,—

(i) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set-up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government;

(ii) in relation to any other establishment, the State Government;

(e) "company" means a company defined in clause (20) of section 2 of the Companies Act, 2013;

(f) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

(g) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies;

(h) "corporation" means anybody corporate established by or under any Central Act, or State Act but does not include a company or a co-operative society;

(i) "direct tax" means—

(I) any tax chargeable under the—

(A) Income-tax Act, 1961;

(B) Companies (Profits) Surtax Act, 1964;

(C) agricultural income-tax law; and

(II) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code;

(j) "employee" means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or 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, but does not include any member of the Armed Forces of the Union;

(k) "employer" means a person who employs one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of

such department, in this behalf or where no authority is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- 63 of 1948. 5 (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- 10 (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director; and
- (iii) contractor;
- (l) "establishment" means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;
- 15 (m) "Facilitator" means a person appointed by the appropriate Government under sub-section (1) of section 51;
- 63 of 1948. (n) "factory" means the factory as defined in clause (m) of section 2 of the Factories Act, 1948;
- 20 (o) "Government establishment" means any office or department of the Government or a local authority;
- 43 of 1961 (p) "Income-tax Act" means the Income-tax Act, 1961;
- (q) "industrial dispute" means,—
- 25 (i) any dispute or difference between employers and employees, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and
- (ii) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;
- 30 (r) "minimum wage" means the wage fixed under section 6;
- (s) "notification" means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly;
- (t) "prescribed" means prescribed by rules made by the appropriate Government;
- 35 (u) "same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;
- 40 (v) "State" includes a Union territory;
- (w) "Tribunal" shall have the same meaning assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947;
- 14 of 1947. (x) "wages" means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—
- 45 (i) any remuneration payable under any award or settlement between the parties or order of a court;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;

(iii) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

(iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made; 5

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; 10

(vi) any house rent allowance,

but does not include—

(A) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal; 15

(B) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(C) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon; 20

(D) any travelling allowance or the value of any travelling concession;

(E) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(F) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv); 25

Provided that, for the purposes of Chapter IV, "wages" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living, but does not include,— 30

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles; 35

(iii) any travelling concession;

(iv) any bonus including incentive, production and attendance bonus;

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force; 40

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him;

(vii) any commission payable to the employee;

Provided further that for calculating the wages under the first proviso for the purposes of payment of bonus, if the payments made by the employer to the employee under clauses (i) to (vii) exceeds one-half of the all remuneration 45

specified under the said proviso, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under that proviso.

5 *Explanation.*—Where an employee is given in lieu of the whole or part of the wages payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purposes of the first proviso, be deemed to form part of the wages of such employee;

52 of 1961 (v) "worker" means any person (except an apprentice as defined under clause (uu) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (j) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, but does not include any such person—

45 of 1950. (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

46 of 1950. (ii) who is employed in the police service or as an officer or other employee of a prison; or

62 of 1957. (iii) who is employed mainly in a supervisory or managerial or administrative capacity.

3. (1) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.

Prohibition of discrimination on ground of gender.

25 (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.

4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

Determination of disputes with regard to same or similar nature of work.

30 CHAPTER II
MINIMUM WAGES

5. No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in the notification.

Payment of minimum rate of wages.

35 6. (1) Subject to the provisions of section 9, the appropriate Government shall fix the minimum rate of wages payable to employees.

Fixation of minimum wages.

(2) For the purposes of sub-section (1), the appropriate Government shall fix—

(a) a minimum rate of wages for time work; or

(b) a minimum rate of wages for piece work; or

40 (c) a minimum rate of wages to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis.

(3) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—

45 (i) by the hour, or

(ii) by the day, or

(iii) by the month.

(4) Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

(5) The appropriate Government may, by notification, fix factors by which the minimum wages so fixed be multiplied for different types of work.

(6) For the purpose of fixation of factors referred to in sub-section (5), the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary.

Components
of minimum
wages.

7. (1) Any minimum rate of wages fixed or revised by the appropriate Government, in respect of employment, under section 8 may consist of— 10

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or 15

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time. 20

Procedure for
fixing and
revising
minimum
wages.

8. (1) In fixing minimum rates of wages in respect of any employment for the first time under this Code or in revising minimum rates of wages so fixed, the appropriate Government shall either— 25

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or 30

(b) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

(2) Every committee and sub-committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons— 35

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the committee or sub-committee, as the case may be. 40

(3) After considering the recommendation of the committee or sub-committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue. 45

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall also consult concerned Advisory Board constituted under section 42.

(4) The appropriate Government shall review or revise minimum rates of wages at an interval of five years.

9. (1) The Central Government may, by notification, fix the national minimum wage:—

Power of Central Government to fix national minimum wage.

5 Provided that different national minimum wage may be fixed for different States or different geographical areas.

(2) The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the national minimum wage and if the minimum rates of wages fixed by the appropriate Government earlier is more than the national minimum wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

10 (3) The Central Government, before fixing the national minimum wage under sub-section (1), may obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42.

15 10. If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:

Wages of employee who works for less than normal working day.

Provided that he shall not be entitled to receive wages for a full normal working day,—

20 (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and

(ii) in such other cases and circumstances, as may be prescribed.

25 11. Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Wages for two or more classes of work.

12. Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

Minimum time rate wages for piece work.

30 13. (1) Where the minimum rates of wages have been fixed under this Code, the appropriate Government may—

Fixing hours of work for normal working day.

(a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

35 (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

40 (2) The provisions of sub-section (1) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:—

(a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;

45 (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Wages for overtime work

14. Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

CHAPTER III PAYMENT OF WAGES

Mode of payment of wages.

15. All wages shall be paid in current coin or currency notes or by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or through digital or electronic mode or by crediting the wages in his bank account.

Fixation of wage period.

16. The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month:

Provided that different wage periods may be fixed for different establishments.

Time limit for payment of wages.

17. (1) The employer shall pay or cause to be paid wages to the employees, engaged on—

(i) daily basis, at the end of the shift;

(ii) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;

(iii) fortnightly basis, before the end of the second day after the end of the fortnight;

(iv) monthly basis, before the expiry of the seventh day of the succeeding month.

(2) Where an employee has been—

(i) removed or dismissed from service; or

(ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

(f) Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

18. (1) Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code.

Deductions which may be made from wages.

Explanation.—For the purposes of this sub-section,—

(a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;

(b) any loss of wages to an employee, for a good and sufficient cause, resulting from—

(i) the withholding of increment or promotion, including the stoppage of an increment; or

(ii) the reduction to a lower post or time-scale; or

(iii) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

(2) Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be only for the following purposes, namely:—

(a) fines imposed on him;

(b) deductions for his absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) deductions for house-accommodation supplied by the employer or by the appropriate Government or any housing board set-up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;

(e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services.

Explanation.—For the purposes of this clause, the expression “services” does not include the supply of tools and raw materials required for the purposes of employment;

(f) deductions for recovery of—

(i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;

(ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;

(g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

(h) deductions of income-tax or any other tax levied by the Central Government or the State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;

(i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name; 5

(j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;

(k) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926: 10

16 of 1926.

(l) deductions for recovery of losses sustained by an employer on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;

(m) deductions for recovery of losses sustained by an employer on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the employer whether in respect of fares, freight, demurrage, wharfage and crantage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise: 15

(n) deductions for recovery of losses sustained by an employer on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default; 20

(o) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify. 25

(3) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.

(4) Where the total deductions authorised under sub-section (2) exceed fifty per cent. of the wages, the excess may be recovered in such manner, as may be prescribed. 30

Fines

19. (1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2). 35

(2) A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines. 40

(4) The total amount of fine which may be imposed in any one wage period on any employee shall not exceed an amount equal to three per cent. of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any employee who is under the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed. 45

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

5 20. (1) Deductions may be made under clause (b) of sub-section (2) of section 18 only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

Deductions for absence from duty.

10 (2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage period during which by the terms of his employment he was required to work:

15 Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

20 *Explanation.*—For the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

25 21. (1) A deduction under clause (c) or clause (n) of sub-section (2) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

Deductions for damage or loss.

(2) A deduction shall not be made under sub-section (1) until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

30 (3) All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

35 22. A deduction under clause (d) or clause (e) of sub-section (2) of section 18 shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

Deductions for services rendered.

23. Deductions under clause (f) of sub-section (2) of section 18 for recovery of advances given to an employee shall be subject to the following conditions, namely:—

Deductions for recovery of advances.

40 (a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage period but no recovery shall be made of such advances given for travelling expenses:

(b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;

45 (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

24. Deductions under clause (g) of sub-section (2) of section 18 for recovery of loans granted to an employee, regulating the extent to which such loans may be granted and the rate of interest payable thereon, shall be such as may be prescribed.

Deductions for recovery of loans.

Chapter not
to apply to
Government
establishments

25. The provisions of this Chapter shall not apply to the Government establishments unless the appropriate Government, by notification, applies such provisions to the Government establishments specified in the said notification.

CHAPTER IV

PAYMENT OF BONUS

Eligibility for
bonus, etc.

26. (1) There shall be paid to every employee, drawing wages not exceeding such amount per mensem as determined by notification by the appropriate Government, by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one third per cent. of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year. 10

(2) For the purpose of calculation of the bonus where the wages of the employee exceeds such amount per mensem, as determined by notification, by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher. 15

(3) Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent. of such wages. 20

(4) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section. 25

(5) Any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (1) shall not exceed twenty per cent. of the wages earned by the employee in the accounting year. 30

(6) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36. 35

(7) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:— 40

(i) for the sixth accounting year set on or set off, as the case may be, shall be made in the manner illustrated in the First Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years; 45

(ii) for the seventh accounting year set on or set off, as the case may be, shall be made in the manner illustrated in the First Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(8) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

5 *Explanation 1.*—For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year, unless—

(a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and

10 (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

15 *Explanation 2.*—For the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

(9) The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new 20 departments or undertakings or branches set-up by existing establishments.

27. Where an employee has not worked for all the working days in an accounting year, the minimum bonus under sub-section (1) of section 26, if such bonus is higher than eight and one third per cent. of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

Proportionate reduction in bonus in certain cases.

25 28. For the purposes of section 27, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,—

Computation of number of working days.

20 of 1946.
14 of 1947.

(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

30 (b) he has been on leave with salary or wages;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wages, during the accounting year.

35 29. Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

Disqualification for bonus.

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment; or

40 (d) conviction for sexual harassment.

30. Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code:

Establishments to include departments, undertakings and branches.

45 Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking

or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Payment of bonus out of allocable surplus.

31. (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty per cent. in case of a banking company and sixty-seven per cent. in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.

(2) Audited accounts of companies shall not normally be questioned.

(3) Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance-sheet before it, but the authority shall not disclose any information contained in the balance-sheet unless agreed to by the employer.

Computation of gross profits.

32. The gross profits derived by an employer from an establishment in respect of the accounting year shall,—

(a) in the case of a banking company, be calculated in the manner specified in the Second Schedule;

(b) in any other case, be calculated in the manner specified in the Third Schedule.

Computation of available surplus.

33. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and

(b) an amount equal to the difference between—

(i) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

Sums deductible from gross profits.

34. The following sums shall be deducted from the gross profits as prior charges, namely:—

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income tax law, for the time being in force, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer, which is to be exercised once and within one year from that date, continue to be such notional normal depreciation;

(b) any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act;

5 (c) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(d) such further sums as are specified in respect of the employer in the Fourth Schedule.

10 35. Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

Calculation of direct tax payable by employer.

(a) in calculating such tax no account shall be taken of,—

15 (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;

20 (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;

10 of 1965.
25 (b) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

30 (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

35 (e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

40 36. (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year
45 to be utilised for the purpose of payment of bonus in the manner illustrated in the First Schedule.

Set on and set off of allocable surplus.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount

carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the First Schedule.

(3) The principle of set on and set off as illustrated in the First Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Code.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Adjustment of customary or interim bonus against bonus payable under this Code.

37. Where in any accounting year,—

(a) an employer has paid any puja bonus or other customary bonus to employee; or

(b) an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

Deduction of certain amounts from bonus payable

38. Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Time limit for payment of bonus.

39. (1) All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

(2) Notwithstanding anything contained in sub-section (1), where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute:

Provided that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one third per cent. of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

Application of this Chapter to establishments in public sector in certain cases.

40. (1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent. of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

41. (1) Nothing in this Chapter shall apply to—

Non-
applicability
of this
Chapter.

44 of 1958.

(a) employees employed by the Life Insurance Corporation of India;

(b) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;

9 of 1948.

(c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

(d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;

10

(e) employees employed by—

(i) the Indian Red Cross Society or any other institution of a like nature including its branches;

(ii) universities and other educational institutions;

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(iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

(f) employees employed by the Reserve Bank of India;

(g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to—

20

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

25

(h) employees employed by inland water transport establishments operating on routes passing through any other country; and

(i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

30

(2) Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

CHAPTER V

35

ADVISORY BOARD

42. (1) The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

Central
Advisory
Board and
State
Advisory
Boards.

(a) representing employers;

40

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the Board.

(2) One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section, shall be appointed by the Central Government as the Chairperson of the Board.

(3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to— 5

(a) fixation or revision of minimum wages and other connected matters;

(b) providing increasing employment opportunities for women;

(c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and 10

(d) any other matter relating to this Code,

and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

(4) Every State Government shall constitute a State Advisory Board for advising the State Government— 15

(a) in fixation or revision of minimum wages and other connected matters;

(b) for the purpose of providing increasing employment opportunities for women;

(c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and 20

(d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

(5) The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (a) to (d) of sub-section (4).

(6) The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons— 25

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be. 30

(7) One-third of the members referred to in sub-section (6) shall be women and one among the members specified in clause (c) of the said sub-section shall—

(a) be appointed by the State Government as the Chairperson of the Board;

(b) be appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be. 35

(8) In tendering its advice in the matters specified in clause (b) or clause (c) of sub-section (4), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit. 40

(9) The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary. 45

(10) The Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) shall respectively regulate their own procedure including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.

5 (11) The terms of office of the Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

CHAPTER VI

PAYMENT OF DUES, CLAIMS AND AUDIT

10 43. Every employer shall pay all amounts required to be paid under this Code to every employee employed by him:

Responsibility for payment of various dues.

15 Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

9 of 1932. *Explanation.*—For the purposes of this section the expression "firm" shall have the same meaning as assigned to it in the Indian Partnership Act, 1932.

20 44. (1) Subject to the other provisions of this Code, all amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,—

Payment of various undischarged dues in case of death of employee.

(a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or

25 (b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

(2) Where in accordance with the provisions of sub-section (1), all amounts payable to an employee under this Code—

30 (a) are paid by the employer to the person nominated by the employee; or

(b) are deposited by the employer with the authority referred to in clause (b) of sub-section (1),

then, the employer shall be discharged of his liability to pay those amounts.

35 45. (1) The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted officer, to hear and determine the claims which arises under the provisions of this Code.

Claims under Code and procedure thereof.

40 (2) The authority appointed under sub-section (1), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.

45 (3) If an employer fails to pay the claim determined and compensation ordered to be paid under sub-section (2), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

	(J) Any application before the authority for claim referred to in sub-section (I) may be filed by,—	
	(a) the employee concerned; or	
	(b) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or	5 16 of 1926.
	(c) the Facilitator.	
	(5) Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.	
	(6) The application under sub-section (4) may be filed within a period of three years from the date on which claims referred to in sub-section (I) arises:	10
	Provided that the authority referred to in sub-section (I) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.	
	(7) The authority appointed under sub-section (I) and the appellate authority appointed under sub-section (I) of section 49, shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.	15 5 of 1908. 2 of 1974.
Reference of disputes under this Code.	46. Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to—	20
	(a) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or	
	(b) the application of this Code, in respect of bonus, to an establishment in public sector,	
	then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947.	25 14 of 1947.
Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies.	47: (I) Where, during the course of proceedings before—	
	(a) the authority under section 45; or	
	(b) the appellate authority under section 49; or	
	(c) a Tribunal; or	30
	(d) an arbitrator referred to in clause (aa) of section 2 of the Industrial Disputes Act, 1947.	14 of 1947.
	in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance-sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode:	35 18 of 2013.
	Provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.	40 45

(2) When an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to in sub-section (1), by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance-sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

18 of 2013. 48. (1) Where any claim, dispute or appeal with respect to bonus payable under this Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate authority, Tribunal or arbitrator, as the case may be, as referred to in sub-section (1) of section 47 and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

Audit of accounts of employers, not being corporations or companies.

(2) When the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(3) Where an employer fails to get the accounts audited under sub-section (2) the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

(4) When the accounts are audited under sub-section (2) or sub-section (3), the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

(5) The expenses of, and incidental to, any audit under sub-section (3) including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

49. (1) Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days from the date of such order, in such form and manner as may be prescribed:

Appeal.

Provided that the appellate authority may entertain the appeal after ninety days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

(2) The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.

(3) The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of three months.

(4) The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.

Records,
returns and
notices.

50. (1) Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages, and such other details in such manner as may be prescribed.

(2) Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Facilitator having jurisdiction. 5

(3) Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.

(4) The provisions of sub-sections (1) to (3) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose: 10

Provided that such employer, when demanded, shall produce before the Facilitator, the reasonable proof of the payment of wages to the persons so employed.

Explanation.—For the purposes of this sub-section, the expression "domestic purpose" means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation. 15

CHAPTER VII

FACILITATOR

Appointment
of Facilitators
and their
powers.

51. (1) The appropriate Government may, by notification, appoint Facilitators who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be. 20

(2) The appropriate Government may, by notification, lay down an inspection scheme which shall also provide for generation of a web-based inspection schedule. 25

(3) Every Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

(4) The Facilitator may, within the local limits of his jurisdiction—

(a) supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this Code; 30

(b) inspect the establishment based on inspection scheme referred to in sub-section (2).

(5) Subject to the provisions of sub-section (4), the Facilitator may,—

(a) examine any person who is found in any premises of the establishment, whom the Facilitator has reasonable cause to believe, is a worker of the establishment; 35

(b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Code and which the Facilitator has reason to believe has been committed by the employer; 40

(d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and

(e) exercise such other powers as may be prescribed.

45 of 1860. (6) Any person required to produce any document or to give any information required by a Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

2 of 1974. (7) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

CHAPTER VIII
OFFENCES AND PENALTIES

10 52. (1) No court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or a Facilitator. Cognizance of offences.

16 of 1926. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under this Code.

2 of 1974. 53. (1) Any employer who— Penalties for offences.

(a) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to fifty thousand rupees;

20 (b) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;

25 (c) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;

30 (d) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

35 (2) Notwithstanding anything contained in sub-section (1), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.

40 (3) Notwithstanding anything contained in clause (c) of sub-section (1) or sub-section (2), the Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub-section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

45 54. (1) If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be Offences by companies.

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 5

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable 10 to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means anybody corporate and includes—

(i) a firm; or

(ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or 15

6 of 2009.

(iii) other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Composition of offences.

55. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded 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, in the manner as may be prescribed. 20

2 of 1974.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date— 25

(i) of commission of a similar offence which was earlier compounded;

(ii) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government. 30

(4) Every application for the compounding of an offence shall be made in such manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded. 35

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged. 40

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

(8) No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section. 45

CHAPTER IX
MISCELLANEOUS

56. No court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed— Bar of suits.
- 5 (a) forms the subject of claims under section 45;
(b) has formed the subject of a direction under this Code; or
(c) has been adjudged in any proceeding under this Code;
(d) could have been recovered under this Code.
57. No suit, prosecution or any other legal proceeding shall lie against the appropriate Protection of
action taken
in good faith
10 Government or any officer of that Government for anything which is in good faith done or intended to be done under this Code.
58. Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by Burden of
proof.
15 this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.
59. Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code. Contracting
out.
- 20 60. The provisions of this Code 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. Effect of
laws,
agreements,
etc.
inconsistent
with this
Code.
61. The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, Delegation of
powers.
25 as may be specified in the notification, be also exercisable—
(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
30 (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.
62. Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after Exemption of
employer
from liability
in certain
cases.
35 the commission of the offence has been proved, the employer proves to the satisfaction of the court—
(a) that he has used due diligence to enforce the execution of this Code; and
(b) that the said other person committed the offence in question without his knowledge, consent or connivance,
40 that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence:
Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination

by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

Protection against attachment of assets of employer with Government.

63. Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid. 5

Power of Central Government to give directions.

64. The Central Government may, for carrying into execution of the provisions of this Code in the State give directions to the State Government, and the State Government shall abide by such directions. 10

Savings.

65. Nothing contained in this Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Bonus Schemes Act, 1948, or of any scheme made thereunder. 42 of 2005. 46 of 1948.

Power of appropriate Government to make rules.

66. (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Code. 15

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of calculating the wages under sub-section (4) of section 6;

(b) the cases and circumstances in which an employee employed for a period of less than the requisite number of hours shall not be entitled to receive wages for a full normal working day, under section 10; 20

(c) the extent and conditions, which shall apply in relation to certain classes of employees under sub-section (2) of section 13;

(d) the longer wage period for fixation of minimum rate of wages as referred in section 14; 25

(e) the manner of deducting loans made from any fund constituted for the welfare of labour under sub-clause (ii) of clause (f) of sub-section (2) of section 18;

(f) the manner of recovery of excess of amount under sub-section (4) of section 18; 30

(g) the authority to provide approval for imposition of fine under sub-section (1) of section 19;

(h) the manner of exhibition of the acts and omissions to be specified in the notice under sub-section (2) of section 19;

(i) the procedure for the imposition of fines under sub-section (3) of section 19; 35

(j) the form of the register to record all fines and all realisations thereof under sub-section (8) of section 19;

(k) the procedure for making deductions for absence from duty under sub-section (2) of section 20;

(l) the procedure for making deductions for damage or loss under sub-section (2) of section 21; 40

(m) the form of the register to record all deductions and all realisations thereof under sub-section (3) of section 21;

(n) conditions for recovery of advance of money given to an employee after the employment began under clause (b) of section 23; 45

(o) conditions for recovery of advances of wages to an employee not already earned under clause (c) of section 23;

(p) deductions for recovery of loans and the rate of interest payable thereon under section 24;

5 (q) manner of regulating the procedure by the Central Advisory Board and the State Advisory Board, including that of the committees and sub-committees constituted by the State Advisory Board, under sub-section (10) of section 42;

10 (r) the terms of office of members of the Central Advisory Board, the State Advisory Board, including that the committees and sub-committees constitutes by the State Advisory Board, under sub-section (11) of section 42;

(s) the authority and manner of depositing with such authority, various undischursed dues under clause (b) of sub-section (1) of section 44;

(t) form of single application in respect of a number of employees under sub-section (5) of section 45;

15 (u) form for making an appeal to the appellate authority under sub-section (1) of section 49;

(v) the manner of maintenance of a register by the employer under sub-section (1) of section 50;

20 (w) the form and manner of issuing wage slips under sub-section (3) of section 50;

(x) the other powers to be exercised by the Facilitators under sub-section (5) of section 51;

(y) the manner of imposing fine under sub-section (1) of section 55;

25 (z) the manner of composition of offence by a Gazetted Officer specified under sub-section (4) of section 55;

(za) any other matter which is required to be, or may be, prescribed under the provisions of this Code.

30 (3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions as aforesaid, both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such
35 modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this section shall, as soon as possible after it is made, be laid before the State Legislature.

40 67. (1) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Code.

45 (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and savings.

68. (1) The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are hereby repealed.

4 of 1936.
11 of 1948.
21 of 1965.
25 of 1976.

(2) Notwithstanding such repeal, anything done or any action taken under the enactments so repealed including any notification, nomination, appointment, order or direction made thereunder or any amount of wages provided in any provision of such enactments for any purpose shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of this Code and shall be in force to the extent they are not contrary to the provisions of this Code till they are repealed under the corresponding provisions of this Code or by the notification to that effect by the Central Government.

5

(3) Without prejudice to the provisions of sub-section (2), the provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

10

10 of 1897.

THE FIRST SCHEDULE

[See sections 26 (7) and 36]

In this Schedule, the total amount of bonus equal to eight and one-third per cent. of the annual wages payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent. of the annual wages of all the employees) would be Rs. 2,50,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent. as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or set off of the year carried forward	Total set on or set off carried forward	Of (year)
	Rs.	Rs.	Rs.	Rs.	
1.	1,04,167	1,04,167#	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil ## 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167# (inclusive of 35,000 from year-6)	Set on 69,167	Set off 69,167	(8)
9.	10,000	1,04,167#	Set off 94,167	Set off 69,167 94,167	(8) (9)
10.	2,15,000	1,04,167# (after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

*Maximum amount admissible.

Minimum amount admissible.

##The Balance of Rs. 1,10,000 set on from year-2 lapses.

THE SECOND SCHEDULE

[See section 32(a)]

COMPUTATION OF GROSS PROFITS

Accounting year ending—

Item No.	Particulars	Amount of sub-items (in Rupees)	Amount of main items (in Rupees)	Remarks
1	2	3	4	5
*1.	<i>Net profit</i> as shown in the Profit and Loss account after making usual and necessary provisions.			
2.	<i>Add back</i> provision for: (a) Bonus to employees (b) Depreciation (c) Development rebate reserve (d) Any other reserves Total of Item No.2.....	Rs.		** **
3.	<i>Add back</i> also: (a) Bonus paid to employees in respect of previous accounting years. (b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of— (i) the amount, if any, paid to, or provided for payment to; an approved gratuity fund; and (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason. (c) Donations in excess of the amount admissible for income-tax. (d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax). (e) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949 (10 of 1949). (f) Losses of, or expenditure relating to, any business situated outside India. Total of Item No.3.....	Rs.		**
4.	<i>Add also</i> income, profits or gains (if any) credited directly to published or disclosed reserves, other than— (i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax);			

1	2	3	4	5
	(ii) profits of, and receipts relating to, any business situated outside India;			
	(iii) income of foreign banking companies from investment outside India.	Rs.		
	Net total of item No. 4.....			
5.	Total of item Nos.1, 2, 3 and 4...	Rs.		
6.	<i>Deduct:</i>			
	(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax).			***
	(b) Profits of, and receipts relating to, any business situated outside India.			***
	(c) Income of foreign banking companies from investments outside India.			***
	(d) Expenditure or losses (if any) debited directly to published or disclosed reserves, other than—			
	(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax);			
	(ii) losses of any business situated outside India.			***
	(e) In the case of foreign banking companies proportionate administrative (overhead) expenses of Head-Office allocable to Indian business.			***
	(f) Refund of any excess, direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation or development rebate, if written back.			***
	(g) Cash subsidy, if any, given by the government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.	Rs.		
	Total of Item No. 6			
7.	Gross profits for purposes of bonus (item No. 5 minus item No. 6)	Rs.		****

Explanation.—In sub-item (b) of item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

*Where the profit subject to taxation is shown in the Profit and Loss account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

**If, and to the extent, charged to profit and loss account.

***If, and to the extent, credited to profit and loss account.

****In the proportion of Indian Gross Profit (item No: 7) to Total World Gross Profit (as per consolidated profit and loss account adjusted as in item No. 2 above only).

THE THIRD SCHEDULE

[See section 32(b)]

COMPUTATION OF GROSS PROFITS

Accounting year ending—

Item No.	Particulars	Amount of sub-items (in Rupees)	Amount of main items (in Rupees)	Remarks
1	2	3	4	5
1.	<i>Net profit as per profit and loss account.</i>			
2.	<i>Add back provision for:</i>			
	(a) Bonus to employees.			
	(b) Depreciation.			
	(c) Direct taxes, including the provision (if any) for previous accounting years.			
	(d) Development rebate / investment allowance / Development allowance reserve.			
	(e) Any other reserves.....			
	Total of item No.2.....	Rs.		
3.	<i>Add back also:</i>			
	(a) Bonus paid to employees in respect of previous accounting years.			
	(aa) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—			
	(i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and			
	(ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.			
	(b) Donations in excess of the amount admissible for income-tax.			
	(c) Any annuity due, or commuted value of any annuity paid, under the provisions of section 280D of the Income-tax Act during the accounting year.			
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).			
	(e) Losses of, or expenditure relating to, any business situated outside India.	Rs.		
	Total of item No.3.....			

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1	2	3	4	5
4.	<p>Add also income, profits or gains (if any) credited directly to reserves, other than—</p> <p>(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);</p> <p>(ii) profits of, and receipts relating to, any business situated outside India;</p> <p>(iii) income of foreign concerns from investment outside India.</p> <p>Net total of item No. 4.....</p>	Rs.		
5.	Total of item Nos. 1, 2, 3 and 4...	Rs.		
6.	<p><i>Deduct:</i></p> <p>(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).</p> <p>(b) Profits of, and receipts relating to, any business situated outside India.</p> <p>(c) Income of foreign concerns from investments outside India.</p> <p>(d) Expenditure or losses (if any) debited directly to reserves, other than—</p> <p>(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);</p> <p>(ii) losses of any business situated outside India.</p> <p>(e) In the case of foreign concerns proportionate administrative (overhead) expenses of Head-Office allocable to Indian business.</p> <p>(f) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.</p> <p>(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.</p> <p>Total of item No. 6</p>	Rs.		<p>..</p> <p>..</p> <p>..</p> <p>..</p> <p>***</p> <p>..</p> <p>..</p>
7.	Gross profits for purposes of bonus (item No. 5 minus item No. 6)	Rs.		

Explanation.—In sub-item (ad) of item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

*If, and to the extent, charged to profit and loss account.

**If, and to the extent, credited to profit and loss account.

***In the proportion of Indian Gross Profit (item No. 7) to Total World Gross Profit (as per consolidated profit and loss account, adjusted as in item No. 2 above only).

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THE FOURTH SCHEDULE

[See section 34(d)]

Item No.	Category of employer	Further sums to be deducted
1	2	3
1.	Company, other than a banking company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;</p> <p>(ii) eight and a half per cent. of its paid-up equity share capital as at the commencement of the accounting year;</p> <p>(iii) six per cent. of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year:</p> <p>Provided that where the employer is a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 (18 of 2013), the total amount to be deducted under this item shall be eight and a half per cent. on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.</p>
2.	Banking Company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable;</p> <p>(ii) seven and a half per cent. of its paid-up equity share capital as at the commencement of the accounting year;</p> <p>(iii) five per cent. of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year;</p> <p>(iv) any sum which, in respect of the accounting year, is transferred by it—</p> <p>(a) to a reserve fund under sub-section (1) of section 17 of the Banking Regulation Act, 1949 (10 of 1949); or</p> <p>(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India,</p> <p>whichever is higher:</p> <p>Provided that where the banking company is a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 (18 of 2013), the amount to be deducted under this item shall be the aggregate of—</p> <p>(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds;</p> <p>(ii) seven and a half per cent. of such amount as bears the same proportion to its total paid-up equity share capital as its total working funds in India bear to its total world working funds;</p> <p>(iii) five per cent. of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;</p> <p>(iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (i) of clause (b) of sub-section (2) of section 11 of the Banking Regulation</p>

1	2	3
3.	Corporation	<p>Act, 1949 (10 of 1949), not exceeding the amount required under the aforesaid provision to be so deposited.</p> <p>(i) Eight and a half per cent of its paid-up capital as at the commencement of the accounting year;</p> <p>(ii) six per cent. of its reserves, if any, shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.</p>
4.	Co-operative society	<p>(i) Eight and a half per cent. of the capital invested by such society in its establishment as evidenced from its books of account at the commencement of the accounting year;</p> <p>(ii) such sums as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.</p>
5.	Any other employer not falling under any of the aforesaid categories	<p>Eight and a half per cent. of the capital invested by him in his establishment as evidenced from his books of account at the commencement of the accounting year:</p> <p>Provided that where such employer is a person to whom Chapter XXII-A of the Income-tax Act applies, the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted:</p> <p>Provided further that where such employer is a firm, an amount equal to twenty-five per cent. of the gross profits derived by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 34 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and—</p> <p>(i) the total remuneration payable to all such partners is less than the said twenty-five per cent. the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or</p> <p>(ii) the total remuneration payable to all such partners is higher than the said twenty-five per cent. such percentage, or a sum calculated at the rate of forty-eight thousand rupees to each such partner, whichever is less, shall be deducted under this proviso:</p> <p>Provided also that where such employer is an individual or a Hindu undivided family—</p> <p>(i) an amount equal to twenty-five per cent. of the gross profits derived by such employer from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 34; or</p> <p>(ii) forty-eight thousand rupees,</p> <p>whichever is less by way of remuneration to such employer, shall also be deducted.</p>
6.	Any employer falling under item No. 1 or item No. 3 or item No. 4 or item No. 5 and being a licensee defined in clause (39) of section 2 of the Electricity Act, 2003 (36 of 2003).	<p>In addition to the sums deductible under any of the aforesaid items such sums as are required to be appropriated by licensee in respect of the accounting year to a reserve, if any, shall also be deducted.</p>

Explanation.—The expression "reserves" occurring in column (3) against Item Nos. 1(iii), 2(iii) and 3(ii) shall not include any amount set apart for the purpose of—

(i) payment of any direct tax which, according to the balance-sheet, would be payable;

(ii) meeting any depreciation admissible in accordance with the provisions of clause (a) of section 34.

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(iii) payment of dividends which have been declared,
but shall include—

(a) any amount, over and above the amount referred to in clause (i) of this *Explanation*, set apart as specific reserve for the purpose of payment of any direct tax; and

(b) any amount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (a) of section 34.

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STATEMENT OF OBJECTS AND REASONS

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.

2. In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and industry representatives, it has been decided to bring the proposed legislation, namely, the Code on Wages, 2017. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely:—

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

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

4. The salient features of the Code on Wages, 2017, *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 spheres;

(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 upto eighteen 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;

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(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 national minimum wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the national minimum 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 Facilitators in the place of Inspectors, who would supply information and advice the employers and workers concerning the most effective means of complying with the provisions of the proposed legislation. It has also been provided that the inspections are carried out through a transparent/web based inspection scheme.

(i) it empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus, by notification, which will make it easier to revise ceilings;

(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 provisions of the proposed legislation;

(k) it enables the appropriate Government to appoint an appellate authority to hear appeals so as to ensure speedy, cheaper and efficient redressal of grievances and settlement of claims;

(l) it provides for graded penalty for different types of contraventions of the provisions of the proposed legislation;

(m) it provides that the Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention, so as to comply with the provisions of the proposed legislation. However, in case of repetition of the contravention within a period of five years such opportunity shall not be provided;

(n) it provides for compounding of those offences which are not punishable with imprisonment;

(o) it provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;

(p) it enables the appropriate Government to constitute Advisory Boards at Central and State levels to advise the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.;

(q) the period of limitation for filing of claims by a worker has been enhanced to 3 years as against existing time period varying from 6 months to 2 years, to provide a worker more time to settle his claims.

5. The notes on clauses explain in detail the various provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;

BANDARU DATTATREYA.

The 3rd August, 2017.

Notes on Clauses

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

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

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

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

Clause 6 of the Bill seeks to provide for fixation of minimum wages. Such fixation of minimum wages by the appropriate Government shall be subject to the powers of the Central Government to fix national minimum wages. The minimum wages shall be for time work, piece work, and for the period by hours or day or month.

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

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

Clause 9 of the Bill seeks to provide the power of Central Government to fix national minimum wages. Different national minimum wages may be fixed for different States or different geographical areas. The Central Government before fixing the national minimum wage may obtain the advice of the Central Advisory Board.

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

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

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

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

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

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

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

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

Clause 18 of the Bill provides for deductions which may be made from the wages of an employee. No deduction from the wages shall be made except those as are authorised under the proposed legislation. The upper ceiling of deduction is fifty per cent. of the wage in any wage period.

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

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

Clause 21 of the Bill seeks to provide deductions for damage or loss. The deductions for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee. The deductions shall not be met until the employee has been provided an opportunity of showing cause against the deductions or otherwise than in accordance with the procedure prescribed by rules.

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

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

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

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

Clause 26 of the Bill seeks to make provisions for eligibility for bonus. The threshold limit for payment of the bonus is the wages not exceeding such amount per mensem as determined by notification, by the appropriate Government. Where the wages of the employee exceeds such amount per mensem, as determined by notification, by the appropriate Government, the bonus payable to such employee shall be calculated as if the wages of such employee were such amount, so determined by the appropriate Government or the

minimum wages fixed by the appropriate Government, whichever is higher. The other details regarding the payment of bonus have also been provided in this clause.

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

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

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

Clause 30 of the Bill seeks to provide for the purposes of computation of bonus that the establishment shall include its departments, undertakings and branches, where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus for the accounting year, such department, undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

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

Clause 32 of the Bill seeks to provide for the computation of gross profit in the case of a banking company in accordance with the Second Schedule and in any other case in the manner specified in the Third Schedule.

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

Clause 34 of the Bill seeks to specify the sums which shall be deducted from the gross profits as prior charges which includes the sums specified in the Fourth Schedule.

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

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

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

Clause 38 of the Bill seeks to provide for deduction of the amount of loss caused by the employee on account of misconduct from the amount of bonus payable by the employer

to the employee in respect of the concerned accounting year only and the employee shall be entitled to receive the balance, if any.

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

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

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

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

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

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

Clause 45 of the Bill seeks to provide for appointment of Authority by the appropriate Government to decide the claim of employees which arises under the provisions of the proposed legislation. The said authority shall have powers to award payment of claim amount along with compensation which may extend up to ten times of the claim amount. Further, if an employer fails to pay the amount of claim and compensation awarded by the Authority, then, the said Authority shall issue a recovery certificate to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee. Any application before the authority for claim referred above may be filed by the employee concerned or Facilitator or by any Trade Union of which the employee is a member.

Clause 46 of the Bill provides that if a dispute arises between an employer and his employees with respect to the bonus payable under the proposed legislation or the application of this Code, in respect of bonus, to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute under the Industrial Disputes Act, 1947.

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

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

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

Clause 50 of the Bill seeks to provide for records, returns and notices. The said clause makes provisions for the maintenance of register by the employer containing the details with regard to persons employed, muster roll, wages, and such other details in the manner to be specified in the rules by the appropriate Government. It also provides for the display of a notice on the notice board at a prominent place at the establishment containing the abstract of the proposed legislation, category-wise wage rates of employees, wage period, day or date and time of payment of wages and the name and address of the Facilitator having jurisdiction. There is provision for issue of wage slip. The employer who employs not more than five persons for agriculture or domestic purpose is exempted from the provision but when demanded, he shall produce before the Facilitator the reasonable proof of the payment of wages to the persons employed.

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

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

Clause 53 of the Bill seeks to provide penalties for offences. Enhanced penalties shall be imposed on the offender who is again found guilty of similar offence already committed by him, for which he has been convicted. The Facilitator shall, before initiation of prosecution proceedings, give an opportunity to the employer to comply with the provisions of the proposed legislation. The prosecution proceedings shall not be initiated against the employer who complies with the said provisions within the period specified. Such opportunity shall not be accorded to an employer, if the violation of the same nature of the provisions of

proposed legislation is repeated within a period of five years from the date on which the first violation was committed.

Clause 54 of the Bill seeks to provide for offences by companies. If the offence is committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly. Protection has been provided where offence has been committed without the knowledge or where all due diligence to prevent the commission of the offence has been exercised. The director, manager, secretary or other officer of the company with the consent or connivance of whom the offence has been committed shall also be deemed to be guilty.

Clause 55 of the Bill seeks to provide for composition of offences. Only the offences for which there is no punishment with imprisonment shall be compounded. The compounding money shall be a sum of fifty per cent. of maximum fine. There is no compounding for a similar offence compounded earlier or for commission of which conviction was made committed for the second time or thereafter within a period of five years.

Clause 56 of the Bill seeks to provide bar of suits: The matters in which the court shall not entertain the suit, *inter alia*, relate to the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus.

Clause 57 of the Bill seeks to provide for protection of action taken in good faith by the appropriate Government or any officer of that Government under the provisions of the proposed legislation.

Clause 58 of the Bill seeks to provide regarding burden of proof. The burden of proving that the dues on account of remuneration or bonus, etc., have been paid shall be on the employer.

Clause 59 of the Bill seeks to provide that any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under the provisions of the proposed legislation shall be *null* and *void* in so far as it purports to remove or reduce the liability of any person to pay such amount.

Clause 60 of the Bill seeks to provide for overriding effect in respect of laws, agreements, etc., which are inconsistent with the provisions of the proposed legislation. Such laws, agreements, etc., shall not affect the provisions of the proposed legislation.

Clause 61 of the Bill seeks to provide for delegation of powers. The appropriate Government may, by notification, delegate the powers exercisable by it in the proposed Code with or without any condition to the officer or authority subordinate to that Government, etc., as may be specified in the notification.

Clause 62 of the Bill seeks to provide for exemption of employer from liability in certain cases. The employer who is charged with an offence under the provisions of the proposed legislation shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before of the court at the time appointed for hearing the charge and if used he proves that he has, after the commission of the offence has been proved, due diligence to enforce the execution of the provisions of the proposed legislation and the other person committed the offence without his knowledge, consent or connivance, then, that other person shall be convicted of the offence and the employer shall be discharged.

Clause 63 of the Bill seeks to provide for protection against attachment of assets of employer with Government.

Clause 64 of the Bill seeks to provide for the powers of the Central Government to give directions to the State Government for carrying into execution of the provisions of the proposed legislation and such directions shall be binding.

Clause 65 of the Bill seeks to provide that the provisions of the proposed legislation shall not effect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Bonus Schemes Act, 1948, or of any scheme made there under.

Clause 66 of the Bill seeks to confer power upon the appropriate Government to make rules. Such powers are of general nature for carrying out the provisions of the proposed legislation and also the matters on which such rules may be made have been specified. There is provision for laying the rules, as the case may be, before the Parliament or the State Legislature.

Clause 67 of the Bill seeks to confer power upon the Central Government to make provisions published in the Official Gazette and not inconsistent with the provisions of the proposed legislation for removing the difficulty. Such powers shall not be exercised after expiry of a period of two years from the commencement of the proposed legislation and every order published under this clause shall be laid before the each House of Parliament.

Clause 68 of the Bill seeks to provide for repeal of certain enactments, namely, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976, and saving of things done and action taken there under.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill provides that no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in the notification.

2. Sub-clause (5) of clause 6 of the Bill provides that the appropriate Government may, by notification, fix factors by which the minimum wages so fixed be multiplied for different types of work.

3. Sub-clause (1) of clause 9 of the Bill empowers the Central Government to fix the national minimum wage, by notification. Proviso to the said clause further provides that different national minimum wages may be fixed for different States or different geographical areas.

4. Clause 25 of the Bill exempts the application of the provisions of this Chapter III of the Bill to Government establishments unless the appropriate Government, by notification, applies such provisions to any Government establishment specified in the said notification.

5. Sub-clause (1) of clause 45 of the Bill empowers the appropriate Government to appoint by notification, one or more authorities, not below the rank of a Gazetted officer, to hear and determine the claims which arises under the provisions of this Bill.

6. Sub-clause (1) of clause 49 of the Bill empowers the appropriate Government to appoint appellate authority having jurisdiction to hear appeals preferred by any person aggrieved by an order passed by the authority under sub-clause (2) of clause 45.

7. Sub-clause (1) of clause 51 of the Bill empowers the appropriate Government to appoint Facilitators who shall exercise the powers conferred on them under sub-clause (4) of the said clause throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be.

8. Sub-clause (2) of clause 51 of the Bill empowers the appropriate Government to lay down an inspection scheme by notification, which shall also provide for generation of a web-based inspection schedule.

9. Sub-clause (1) of clause 55 of the Bill empowers the appropriate Government to specify a Gazetted Officer for the purpose of compounding offences in accordance with the provisions of the said clause.

10. Sub-clause (1) of clause 66 empowers the appropriate Government, subject to the condition of previous publication, to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include: (a) the manner of calculating the wages where such rates are fixed by the hour or by the day or by the month under sub-section (4) of section 6; (b) the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day under section 10; (c) the extent to which, and subject to such conditions, the provisions of sub-section (1) of section 13 shall apply in relation to certain classes of employees, under sub-section (2) of that section; (d) the manner of fixation of minimum rate of wages by the hour, by the day or by such a longer wage period under section 14; (e) manner of deducting loans made from any fund constituted for the welfare of labour under sub-clause (ii) of clause (f) of sub-section (2) of section 18; (f) the manner of recovery of excess of amount under sub-section (4) of section 18; (g) the authority to provide approval for imposition of fine under sub-section (1) of section 19; (h) the manner of exhibition of the acts and omissions to be specified in the notice under sub-section (2) of section 19; (i) the procedure for the imposition of fines

under sub-section (3) of section 19; (j) the form of the register to record all fines and all realisations thereof under sub-section (8) of section 19; (k) the procedure for making deductions for absence from duty under sub-section (2) of section 20; (l) the procedure for making deductions for damage or loss under sub-section (2) of section 21; (m) the form of the register to record all deductions and all realisations thereof under sub-section (3) of section 21; (n) conditions for recovery of advance of money given to an employee after the employment began under clause (b) of section 23; (o) conditions for recovery of advances of wages to an employee not already earned under clause (c) of section 23; (p) deductions for recovery of loans and the rate of interest payable thereon under section 24; (q) manner of regulating the procedure by the Central Advisory Board referred to in sub-section (1) of section 42 and the State Advisory Board referred to in sub-section (4) of the said section including that of the committees and sub-committees constituted by the State Advisory Board under sub-section (10) of section 42; (r) the term of members of the Central Advisory Board, the State Advisory Board including the committees and sub-committees constituted by the State Advisory Board under sub-section (11) of section 42; (s) the authority and manner of depositing with such authority various undisbursed dues in case of death of employed person under clause (b) of sub-section (1) of section 44; (t) form of a single application in respect of a number of employees under sub-section (5) of section 45; (u) the form for making an appeal to the appellate authority by the aggrieved person under sub-section (1) of section 49; (v) the manner of maintenance of a register by the employer to maintain the details of persons employed, muster roll, wages and such other details under sub-section (1) of section 50; (w) the manner of issuing wage slips under sub-section (3) of section 50; (x) the other powers to be exercised by the Facilitators under sub-section (5) of section 51; (y) the manner of composition of offence by a Gazetted Officer specified under sub-section (4) of section 55; and (z) any other matter which is required to be or may be specified under the proposed legislation.

11. Sub-clause (3) of clause 66 provides that every rule made by the Central Government is required to be laid before each House of Parliament.

12. Sub-clause (4) of clause 66 provides that every rule made under the said clause is required to be laid before State Legislature.

13. The matter in respect of which rules may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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BILL

to consolidate and amend the laws relating to wages and bonus and
matters connected therewith or incidental thereto.

(Shri Bandaru Dattatreya, Minister of State for Labour and Employment)

GMGIPMRND—1808LS(S3)—07-08-2017.

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Summary of suggestions received from various organisations / individuals and action taken thereon Labour Code on Wages.

Clause No.	Suggestion received from Organisation / Individual	Remark
2(k) 'employee'	H.U.L Definition of employee is wider and less restrictive, earlier it was covering only those employees who are covered in schedule employment and now it is for all employees. Hence earlier definition should remain as it is.	Considering merger of four Acts, it is necessary to have such definition.
	A.Rai LKO – Out worker should also be included in this definition.	Have been included
	C.I.I. – Definition should exclude supervisory, managerial, administrative tech cadres. Wage limit should be subject to current ceiling.	Considered.
2(l) 'employer'	H.U.L In the definition the word indirectly should not be there.	Accepted
2(t) 'list of defaulters'	H.U.L Provision for maintaining list of defaulters added in new law, the said period should be less than 5 years.	Not feasible
2(za) 'wages'	H.U.L 1. Suggested for consolidated wages concept which include basic + DA. 2. Allowance and wages should be enhanced based on C.P.I	Since the definition is as per existing provision, hence not feasible
	C.I.I. Separate definition of employee for each chapter be mentioned.	Has been done so in respect of Chapter IV
	Indian Tea Association 1. wages should include Bonus. 2. Wage should include in kind benefits 3. Separate wage definition for Bonus Chapter.	--do--
5. Payment of minimum wages	A.Rai LKO Existing position should remain intact because Central Govt. estt. / worker will	Not feasible

	get less wages now since State Govt. will only be fixing wages.	
	C.I.I. Its heading should be 'Payment of Minimum rates of Wages'	Accepted
7. Components of Minimum Wages	H.U.L Minimum wage shall also include productivity linked "variable pay"	Since not in the interest of workers
	Small Scale Industry Association:- In minimum wages. Components, the following should be considered:- (i) Productivity of employee (ii) Paying capacity of small emp. (iii) Geographical location & Mkt. forces	Not feasible
	COSIA (i) Area wise, Cat. Wise minimum wage should be fixed (ii) VDA should be based on C.P.I. (iii)	Suitable provision already made.
14. Wages for the overtime work	Chamber of Small Industry Association O.T rate should be 1.5 times instead twice the rate of wages.	Provision is made as per present position.
15. Minimum Wages Advisory Board	Women and Child Devp. Ministry Women member should also be there in minimum wages Advisory Board	Provision for women member has been made.
	Chamber of Small Industry Association (COSIA) MSME Asson. Rep. should also be a member of this Board.	Not feasible
	C.I.I. Provision may be made for equal no. of persons of employer & employees	Complied
16. Mode of payment of wages	COSIA Provision may be made for payment of Wages in cash upto Rs. 5000/-	Accepted.
18. Time limit for payment of wages	H.U.L Time limit in case of removed, dismissed and retrenched employee is 2 working	Earlier (Sec. 5 of PW Act) it was before the expiry of

	days which should be 7 days.	2 nd day, which has now been made 2 working days, which is correct since the payment will be made through bank usually.
	COSIA Provision for monthly payment should be 10 th day instead of 7 th day.	
	C.I.I. Provision may be made for payment of monthly wages should be 7 working days instead of 7 th day.	Not feasible
19. Deductions which may be made from wages	H.U.L (i) Provision for Deduction on A/c of 'go slow' should also be made. (ii) Provision for home loan recovery should be made.	Not feasible Accepted this suggestion included in Cl.19(3)(d)
	C.I.I. (i) Provision for deduction in the event of suspension should also be included. (ii) Deduction for payment of co-operative society should also been included. (iii) In place of total deduction amounting to 50% of wages, it should be 75% of total wages.	
20. Fines	C.I.I (i) In clause 20(1) the words "with the previous approval of app. Govt. should be removed" (ii) In clause 20(4) replace 3% with 10%.	
27. Eligibility for bonus	H.U.L Instead of minimum 30 days it should be increased to 180 days	Presently also it is 30 days, hence provision is correct.
	Small Scale Industry Association: Provisions of P.B. Act (Chapter IV now) are too complicated. Bonus should be paid @ 8.33% of wages simply. Hence, whole chapter should be amended.	

	COSIA Chapter of Bonus should not apply to workers of MSMED i.e. instead of 20 workers it should apply to 40 workers only.	Not feasible
	C.I.I The term 'Wages' should include only Basic + DA.	--do--
28. Disqualification for bonus	H.U.L Moral turpitude should also be a disqualification for bonus.	Not feasible since presently it is not there.
	COSIA The Chapter of Bonus should not apply to estt.employing 40 workers.	Not feasible since presently it is not there.
29. Establishments to include departments, undertakings and branches	C.I.I New branches, Deptt. should not be treated as part of main estt. 5 years infancy should be allowed for these Deptt.	Not feasible since presently it is not there.
40. Non- applicability of the Chapter	C.I.I :The chapter of bonus should not apply to sick companies declared under Sick Industrial Companies Act.	
42. Responsibility for payment of various dues	H.U.L Provision should also be made saying that if contractor fails to make payment of bonus, then PE should make and he can recover from the contractor.	Not feasible
	C.I.I 42(3)(4) relating to contractor should be deleted as these can be taken care of in CL Act.	
44. Claims under the Code and procedure thereof	H.U.L Provision for 'Grievance Redressal Officer' or 'Ombudsman' should be made in respect of claims.	Not feasible
47. Records, Returns and Notices	Category wise wage rates of employees are required to be displayed which is very wide. It should be specified.	
48. Appointment of Facilitators and their	H.U.L Suggested for generation of web based	This has already

powers	inspection schedule	been implemented & provision for this is also made in 48 (2).
	A.Rai 48(2) Web based info. Should have alternate mechanism for urgent exigencies & may not be successful as by the time work completes – may not come his number for inspection.	Self certification and web based inspection has been accepted.
	Small Scale Industry Association Only self-certification should be there. No Facilitator should visit small scale estt. for inspection purpose.	Self certification and web based inspection has been accepted.
	COSIA Facilitator should not visit MSME	Self certification and web based inspection has been accepted.
	C.I.I There should not be provision for Facilitator and only self certification should suffice.	Self certification and web based inspection has been accepted.
49. Cognizance of offences	A.Rai Powers of prosecution should not be given to the T.U.s, it may be a abuse of law.	
	C.I.I The Govt. should not give power of prosecution to non-governmental agencies.	
50. Penalties for offences	H.U.L. Suggested that in first time offence penalty should be increased from Rs. 50,000 to 1 lac and for subsequent offence imprisonment upto 3 months	Rs.50,000 fine is reasonable
	Small Scale Industry Association Fine should be Rs.20,000 instead of Rs.50,000	--do--
	C.I.I There should only be self - regulation	Not feasible

54. Burden of proof	H.U.L In the bill burden of proof is put on employer which should be deleted.	The provision is made for ensuring payment of minimum wages to workers who do not have access to information.
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Abbreviations used :-

H.U.L - Hindustan Unilever Ltd.
C.I.I - Confederation of Indian Industries
C.O.S.I.A. - Chamber of Small Industry Association
Provn. - Provision
Assocn- Association
sec. - Section

Record of discussions in the Tripartite Consultation Meeting on The Labour Code on Wages held on 10th March, 2015 at Hall No. 3, Vigyan Bhavan, New Delhi under the chairmanship of Hon'ble MOS(IC) for Labour & Employment

A tripartite consultation meeting to discuss the draft of the Labour Code on Wages Bill 2015 was held on 10.03.2015 at Hall No. 3, Vigyan Bhavan, New Delhi under the chairmanship of Hon'ble Minister of State (Independent Charge) for Labour & Employment. The meeting was attended by the representatives of Central Trade Unions, Employers' Associations, State Governments and Senior Officers from the Central Ministries (part of the Inter-Ministerial Group) and Ministry of Labour & Employment. List of participants is at Annexure.

2. Initiating the discussions, Shri Dheeraj Kumar, Joint Secretary welcomed all Participants to this tripartite meeting and highlighted the issues for discussion. In his opening remarks, Shri Shankar Aggarwal, Secretary (Labour & Employment) emphasized that amalgamation of various labour laws pertaining to wages into one code was the need of the industry and employers and it aimed at providing a legal framework conducive to growth of industry as well as protecting the interest of the employees. He further expressed that the ultimate objective of this exercise as well as similar other exercises to be made in future in consolidation and amalgamation of large number of labour laws into a smaller number, was to provide an atmosphere which would create sufficient jobs along with protecting the rights of workers.

3. Thereafter, the Hon'ble Minister Shri Bandaru Dattatreya addressed the gathering and said that the way for amalgamation and consolidation of labour enactments was paved by the report of the 2nd NCL. He further shared that the proposed Code will be amalgamating the provisions of the 4 Acts namely the Minimum Wages Act 1948, the Payment of Wages Act 1936, the Payment of Bonus Act 1965; and the Equal Remuneration Act 1976 and while amalgamating, important provisions of all the related enactments would be consolidated without in any way diluting the key features of the various enactments. He said that the Labour Code on Wages Bill has already undergone a process of soliciting the views and suggestions of the Inter-Ministerial Group (IMG) and all the key suggestions received from IMG have been incorporated in the Bill. Thereafter, the Hon'ble Minister Shri Bandaru Dattatreya invited the Participants from the stake holders Groups to offer their valuable suggestions for improving and strengthening the draft Labour Code on Wages Bill.

4. Thereafter, representatives of the Central Trade Unions, Employers' Associations and State Governments deliberated on the draft Labour Code on Wages Bill 2015, one by one. The observations put forth by the participants are summarised as under (grouped in stakeholders wise):

A. Observations of Central Trade Unions

- (1). **BMS:** The Representative of the Bharatiya Mazdoor Sangh (BMS) mentioned that the "Wage" is a complex subject. The Labour Code on Wages need to address all key issues, aspects and concerns and therefore decisions on such complex and important issue cannot be taken in one meeting. He mentioned about provisions regarding bonus, equal remuneration etc. and asked whether all the provisions of these 4 legislations have been included in the Wage Code. BMS cannot right now give its views as to whether bonus should form part of the labour code on wages. He requested that the issue should be deferred for some time so that all Central Trade Unions can sit together and submit a consolidated view on the labour code on wages.
- (2). **INTUC:** The Representative of Indian National Trade Union Congress (INTUC) welcomed the initiative of the Government of India and said that the Wage should include all employees. There should be a national level minimum wage, which should be the guiding principle for the States and the minimum wages fixed by the State Governments cannot be below that. There was a need to give due consideration to the concept of need based minimum wage as suggested by 15th ILC. The issue of non-implementation of minimum wage required immediate redressal by putting in place effective implementation machinery. The procedure for recovery of minimum wages requires simplification and the concept of appropriate government also require to be defined more clearly. There is a need of having uniform definitions for various sections/parts of the Code. The recommendations of Fair Wages Committee are required to be looked into for the purpose of finalising the Code. Bonus need not be clubbed with this Code.
- (3). **AITUC:** The Representative of the All India Trade Union Congress (AITUC) also demanded that more time should be given to examine this wage code. He said that the consolidation of various labour laws and piecemeal amendments in various

labour laws cannot go together. Definitional aspects need to be properly addressed. Trade unions need some more time to go through the Code in order to clearly know whether the proposed code contains the essential feature and essence of all the Acts to be amalgamated. Implementation aspects also need to be duly addressed. They could not express the opinion whether or not the Payment of Bonus Act, 1965 should be amalgamated in the proposed Code. He mentioned that a National Minimum Wage has to be fixed. Definition of appropriate government required to be clearly looked into and the Code should have criteria for fixation of minimum wage. The concept of need based minimum wage required to be given due consideration.

- (4) **HMS:** The Representative of the Hind Mazdoor Sabha (HMS) said that this attempt of the Government is against the Directive Principles of the Constitution. With regards to the Report of the 2nd National Commission of Labour, he mentioned that the report was neither accepted by the Government nor by the Trade Unions and Employers Associations, except for the portions regarding recommendations for the unorganised workers. He said that there are a large number of international conventions and recommendations and the proposed Code was against some of these norms. The minimum wage act is part of the ILO Convention ratified by the Government of India and therefore repealing of the Minimum Wages Act will be violation of the ILO Convention. He demanded that the ILC meeting should be called to discuss this matter and then only the Government should go ahead. He also wanted time for detailed study of the wage code.
- (5) **CITU:** The Representative of Centre of Indian Trade Unions (CITU) also agreed with the other Trade Unions regarding more time for comprehensive examination of the draft Wage Code. He mentioned that as there was dissenting note from the Representative of the Trade Unions in the 2nd NCL Report, the Government should not take plea of that Report. He said that the Trade Unions are demanding implementation of the labour laws since long time but the Government is gradually closing all enforcement departments. The focal point of labour code on wages should be who is a worker and what his wage is. He wanted to know the objective of the Government and the intention behind the Codification of the labour laws. There should be a common and comprehensive understanding before proceeding in the matter. He also demanded for the time to go into detail of the Wage Code.

- (6). **AIUTUC:** The Representative of All India United Trade Union Centre (AIUTUC) also agreed with other Trade Unions and mentioned that it is not possible to study this draft labour code in such a short time. He wanted more time to go through it. He said that the Simplification and codification should not result in dilution and no scope should be left for loop holes.
- (7). **TUCC:** The Representative of Trade Union Coordination Centre (TUCC) said that in earlier several meetings, the Employers' Associations have been demanding the simplification of labour laws, whereas the Trade Unions are asking for implementation of the labour laws. However, a balance has to be maintained between both. He mentioned that this is a good initiative of the Government but they could not get time to go through it. Regarding delegation of power to States for deciding the minimum wage, he mentioned that it should not be left to the States and the Centre should not abdicate its responsibility under the Code. There must be a statutory National Minimum Wage and States can provide over and above that. He mentioned that in the 15th ILC the linkage of cost of living and the Minimum Wage has been discussed. Regarding bonus provisions, simplification must be there and there should not be any ambiguity. The ceiling for the purpose of eligibility for bonus and calculation requires to be enhanced. Regarding penalty provisions in the draft Wage Code he said that the laws are being violated as the fine is very less. He demanded that the provision of imprisonment must be there as a penalty as minimum deterrent. He also demanded more time to examine the draft labour code.
- (8). **SEWA:** The Representative of Self Employed Women Association (SEWA) mentioned that the key features of all the four labour enactments need to be retained. The Code is still complicated and the concept of minimum wage requires more clarity. The issue of piece-rate wage workers has not been properly addressed. She demanded for more time so that a detailed response can be given by them.
- (9). **AICCTU:** The Representative of All India Central Council of Trade Union (AICCTU) also asked for more time for expressing their view on the Draft Wage Code. He mentioned that for the first time effort has been made to implement the recommendations of 2nd NCL. Amendments are going on in all labour laws and wanted to know the intention of the Government. In the name of inviting foreign capital, compromise should not be made with the basic rights of the workers. There should be a national minimum wage and the same should be effectively implemented.

- (10). **LPF:** The Representative of Labour Progressive Federation (LPF) appreciated that this is a very good attempt by the Government. He also mentioned that the time given was very short and they will be giving their views in a consolidated manner. Regarding fixation and determination of minimum wage, the Central Government should not abdicate its responsibility and should not totally depend on the State Governments. In Section 6 of the Bill, the category of highly skilled has been left out. For the purpose of calculation of cost of living, the ingredients should be clearly spelt out. In the context of section 8(3) it was suggested to continue with the time period of two years and five years. There should not be any ceiling for the purpose of eligibility and calculation of bonus. The Code should have a special provision of productivity linked bonus, which has been ignored.
- (11). **NFITU (DHN):** The Representative of National Front of Indian Trade Unions (Dhanbad) [NFITU (DHN)] welcomed the initiative of the Government. He also demanded more time for giving their suggestions on the Wage Code. Regarding penalty provisions, he suggested that it should be more than Rs. 10.00 Lakhs to act as deterrent. He suggested for a drafting Committee including representatives of trade unions and employers organisations for the purpose of codification of various labour laws. He said that the definitions under the Code should be clear and coverage should be clearly defined. He demanded that suggestions should be invited from all including public and other stakeholders to have wider consultation on this important matter.

B. Observations of Employers' Associations

- (1). **SCOPE:** The Representative of Standing Committee of Public Enterprises (SCOPE) supported the initiative of the government. However he mentioned that detailed comments will be sent after studying the Code. There is still scope for simplification of the Code. Formula for payment of more than the minimum bonus needs to be simplified. In this context it was suggested to keep in mind 'Profit before Tax' (PBT) and also performance related pay. It was further suggested that for this purpose the formula as being used by Department of Enterprises may also be taken into account. Definitions need to be made uniform and penalty provision needs to be revisited.

- (2). **EFI:** The Representative of Employers Federation of India (EFI) also supported the initiative of the government. He said that there is still scope for simplification of the language of the Code, especially in the context of bonus. While talking about living wage we should also have to keep in mind the capacity of the industry to pay.
- (3). **AIAI:** The Representative of All India Association of Industries (AIAI) mentioned that sick units and small and micro-enterprises should also be given due consideration while finalising the Wage Code.
- (4). **FASII:** The Representative of Federation of Association of Small Industries of India (FASII) demanded for more time for sending their views.
- (5). **ICSI:** The Representative of Indian Council of Small Industries (ICSI) welcomed the step of the government. He suggested that micro and small sector needs to be given due protection commensurate with its contribution to the economy and employment. He said that the ten times compensation for difference of wages is too high. Also the imprisonment provision is very harsh and it should not be there.
- (6). **LUB:** The Representative of the Laghu Udyog Bharti (LUB) complimented the government for very well prepared and balanced draft. He suggested that the deficiency of trust between employers and trade unions required to be bridged. There should be one national level minimum wage. Bonus issue has been also addressed very nicely in the draft Code. In the context of section 6 dealing with skilled, semi-skilled and unskilled category it was suggested to avoid micro management. In the context of section 8 it was suggested to delete the words 'not exceeding'. In section 15 regarding Advisory Board, the proportion of the representatives from workers and employers should be two third of total. In the context of section 22 it was suggested that it should be 8 days per day of absence. Section 28(1) & (2) required to be revisited. He also demanded that at least two weeks' time should be given to study the Agenda before calling for such Meeting.
- (7). **ASSOCHAM:** The Representative of Associated Chambers of Commerce & Industry of India (ASSOCHAM) complemented the government for promptness. He suggested that Government should not go to micro-level in categorising skilled, semi-skilled workers and this should be left to the employers to decide. In the context of section 8(3) it was suggested that 'at intervals not exceeding five years' was required to be substituted by 'after five years'. Regarding mode of payment of wages to be

decided by appropriate Government, he suggested that mix of the three modes viz. cash, cheque and bank transfer should not be there and it should be either of the three. Regarding deductions from wages (section 20 (2) (II)), provision regarding 'legal inquiry' of decree should also be included. In section 21 (6) instead of "60 days", maximum time limit should be 'one year'. In the context of section 27, the provision of chapter dealing with bonus should be applicable to any establishment in which 20 or more persons were employed at least for 7 days during an accounting year. In the context of section 49(2) it was suggested that the certification should be from within the existing system. The set off and set on table was required to be simplified. Expenditure on training and development as well as on corporate social responsibility (CSR) should also be taken into account for the purpose of balance sheet. He demanded for more time to come out with detailed suggestions.

- (8) CII: The Representative of Confederation of Indian Industries (CII) congratulated the Ministry for drafting of the Code. He said that there should be clear cut suggestion which part of the Code needs to be simplified and why. The Code is silent about limitation and malicious and false cases and complaints. There is confusion in 'Inspector' and 'facilitator'. He said that detailed comments will be sent by them in writing.
- (9) PHDCCI: The Representative from PHD Chambers of Commerce & Industry in India (PHDCCI) appreciated the Governments' effort. He suggested that the bonus provision needs to be simplified especially in the context of payment of minimum bonus. In the context of section 4 it was suggested that the authority for determination of disputes with regard to same and similar nature of work should be judicial authority. In the context of section 19 it was suggested that the time limit for establishments engaging more than 1000 employees should be up to tenth day of the expiry of wage period. Section 48 should spell out the limit for maintenance of records and registers. Complaints should be filed only after permission from higher officials. The Code should have penalty provision for false claims.
- (10) COSIA: The Representative of Chamber of Small Industry Associations (COSIA) congratulated the government for its initiative. He requested for time to go through with the draft and come out with concrete suggestions. Wages should be fixed mainly taking into account level of skill and hardship involved and there should not be any other consideration like employment. There should be an exemption from payment of contribution in respect of bonus for employees in the age group of 18 to

21. The Minimum Wages Advisory Boards both at the central and the state level should have the representatives from medium and small enterprises also. Also the 'Minimum Wages' should be defined for MSMEs and big industries separately.

C. Observations of State Governments

- (1) **Uttar Pradesh:** The Representative of State Government of Uttar Pradesh said that the detailed comments on the Wage Code will be sent later. However, she mentioned that the implementation clauses have been diluted in the draft Wage Code. One of the important reasons for ineffective implementations is that in a large number of cases records of workers (such as wage slip) are not maintained. Facilitation is not enough for effective implementation. Apprentices should not be exempted from the definition of workers. Provisions of the Code dealing with equal remuneration need to be further strengthened. Government should not be exempted for any of the purposes under the Code. Penalties need to be made graded and there should be deterrent penalty for not keeping the workers on rolls as it is the most important reason responsible for non-implementation of various other aspects of labour law. Penalties / fine needs to be indexed so that the amount is increased in time.
- (2) **Odisha:** The Representative of State Government of Odisha suggested that the Rule making power under the Code should be given to State Governments. Powers of inspectors need to be relooked. He mentioned that the major constituents for wage determination are still left out. He said that the detailed section wise comments will be sent shortly after obtaining government approval.
- (3) **Maharashtra:** The Representative of State Government of Maharashtra said that detailed comments will be submitted later. He mentioned that the Definition of employee has been made too broad. Substitution of the term 'inspector' by 'facilitator' may dilute implementation. For the purpose of applicability of bonus, number of employees may be reduced from 20 to 10 as is the case in Maharashtra. Experience of contract workers needs to be taken into account in fixation and determination of their wage.
- (4) **Haryana:** The Representative of State Government of Haryana applauded the government's initiative. He suggested that the definitions need to be made more

comprehensive and inclusive so as to ensure the protection of wages of employees under all the categories and skill and hardship should be given due consideration in determination and fixation of minimum wage. He said that detailed comments on each section will be sent later.

- (5). **Gujarat:** The Representative of State Government of Gujarat also said that detailed comments will be sent later on. The provision of bonus need to be defined clearly as under 'Factories Act, factories can be defined under Section 85, if employing less than even 5 workers.

5. Thanking the participants, Secretary (L&E) appreciated for the wonderful deliberations which would ultimately help in proceeding further in the journey towards formulation of Codes. Secretary requested all those present to send their comments in writing as well.

6. Summing up the deliberations, Hon'ble Minister of State (IC) for Labour & Employment thanked all the Participants and said that the apprehensions expressed about intention of the Government are not correct. The government's ultimate objective is transparency and accountability. The issue of implementation of the labour law is directly related to strength of the trade unions. Hon'ble Minister requested both the employers and trade unions to give specific proposals / suggestions for finalising the Code. He also expressed that State Governments have to play a key role in helping and strengthening the Central Government. Hon'ble Minister said that we will have one more meeting on this issue where Trade Unions and Employers' Association should come with specific ideas and we will consider that.

7. The Meeting ended with vote of thanks by Joint Secretary to Hon'ble Minister and all Participants for sparing their valuable time for this tripartite consultation meeting.

List of participants in the Tripartite Consultation Meeting on The Labour Code on Wages held on 10th March, 2015 at Hall No. 3, Vigyan Bhavan, New Delhi under the chairmanship of Hon'ble MOS(IC) for Labour & Employment

Ministry of Labour & Employment

1. Sh. Bandaru Dattatreya, Hon'ble MOS (IC) Labour & Employment ...in chair
2. Shri Shankar Aggrawal, Secretary (L&E)
3. Sh. Deepak Kumar, Additional Secretary (L&E)
4. Sh. P. P. Mitra, Principal Labour & Employment Advisor,
5. Shri B. B. Mallick, Joint Secretary & DGLW
6. Sh. Alok Kumar, Joint Secretary & DGET
7. Sh. Manish Gupta, Joint Secretary
8. Sh. Dheeraj Kumar, Joint Secretary
9. Shri D. Chaudhury, Deputy Director General
10. Ms. Anuja Bapat, Director
11. Sh. D. P. Singh, Deputy CLC (C)
12. Shri S.K. Tripathi, Under Secretary
13. Dr Onkar Sharma, Regional Labour Commissioner (C)
14. Dr Sanjay Upadhyay, Fellow VGNLI
15. Dr S.D. Singh, Consultant

Central Ministries/Department

1. Ms. Shubhra Singh, Joint Secretary, Department of Industrial Policy & Promotion
2. Sh. Amit Singla, Deputy Secretary, Department of Commerce
3. Sh. R. K. Sood, Under Secretary, Department of Rural Development

State Governments

1. Sh. G. Srinivas, Principal Secretary (Labour), Government of Odisha
2. Sh. K. Satpathy, Asst. Labour Commissioner, Government of Odisha
3. Ms. Shalini Prasad, Labour Commissioner, Government of Uttar Pradesh
4. Sh. H. K. Jawade, Labour Commissioner, Government of Maharashtra
5. Sh. A. K. Pandey, Department of Labour, Government of Maharashtra
6. Sh. Anupam Mallik, Additional Labour Commissioner, Government of Haryana
7. Sh. K. O. Shah, Additional Commissioner of Labour, Government of Gujarat
8. Sh. Kumar Digvijay, Joint Labour Commissioner, Government of Bihar

Central Trade Unions

1. Shri B. N. Rai, Bhartiya Mazdoor Sangh (BMS)
2. Sh. M. N. Jha, Bhartiya Mazdoor Sangh (BMS)

3. Shri G. Sanjeeva Reddy, Indian National Trade Union Congress (INTUC)
4. Sh. K. K. Tiwari, Indian National Trade Union Congress (INTUC)
5. Sh. Ashish Pandey, Indian National Trade Union Congress (INTUC)
6. Shri DL Sachdev, Secretary, All India Trade Union Congress (AITUC)
7. Shri Thampam Thomas, Vice President, Hind Mazdoor Sabha (HMS)
8. Shri A. K. Padmanabhan, Centre of Indian Trade Union (CITU)
9. Shri RK Sharma, Secretary, All India United Trade Union Centre (AIUTUC)
10. Sh. S. P. Tiwari, Trade Union Coordination Centre (TUCC)
11. Ms. Shikha Joshi, Self-Employed Women's Association (SEWA)
12. Shri Rajiv Dimri, All India Central Council of Trade Union (AICCTU)
13. Shri V. Subburaman, Labour Progressive Federation (LPF)
14. Dr. Deepak Jaiswal, National President, National Front of Indian Trade Union (NFITU-Dhanbad)

Employers' Associations

1. Sh. Rajeev Bhardwaj, Standing Committee of Public Enterprises (SCOPE)
2. Sh. Bhagirathi Dhal, Employers Federation of India (EFI)
3. Ms. Renu M. Verma, All India Association of Industries (AIAI)
4. Ms. Jaspreet Kaur, Federation of Associations of Small Industries (FASII)
5. Sh. P. Kumar, Indian Council of Small Industries (ICSI)
6. Sh. R. K. Bhardwaj, Laghu Udyog Bharti (LUB)
7. Sh. O. P. Mittal, Laghu Udyog Bharti (LUB)
8. Sh. G.P. Srivastava, Associated Chambers of Commerce & Industry of India (ASSOCHAM)
9. Sh. Rajesh Gopinathan, Confederation of Indian Industry (CII)
10. Sh. Rajiv Kapoor, Confederation of Indian Industry (CII)
11. Sh. R. K. Joshi, PHD Chamber of Commerce & Industry (PHDCCI)
12. Sh. Ravi Wig, PHD Chamber of Commerce & Industry (PHDCCI)
13. Sh. Purushaottam Agwan, Hon' General Secretary, Chamber of Small Industry Associations (COSIA)

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Record of discussions in the Second Tripartite Consultation Meeting on The Labour Code on Wages held on 13th April, 2015 at Tagore Chamber, SCOPE Complex, New Delhi under the chairmanship of Hon'ble.MOS(IC) for Labour & Employment

The second tripartite consultation meeting to discuss the draft of the Labour Code on Wages was held at 03.00 PM on 13.04.2015 at Tagore Chamber, SCOPE Complex, New Delhi under the chairmanship of Hon'ble Minister of State (Independent Charge) for Labour & Employment. The meeting was attended by the representatives of Central Trade Unions, Employers' Associations, State Governments and Senior Officers from the Central Ministries (part of the Inter Ministerial Group) and Ministry of Labour & Employment. List of participants is at Annexure.

2. Initiating the discussions, Shri Dheeraj Kumar, Joint Secretary welcomed all Participants to this tripartite meeting and highlighted the issues for discussion. In his opening remarks, Hon'ble Minister Shri Bandaru Dattatreya said that the way for amalgamation and consolidation of labour enactments was paved by the report of the 2nd NCL. He further shared that the proposed Code will be amalgamating the provisions of the 4 Acts namely the Minimum Wages Act 1948, the Payment of Wages Act 1936, the Payment of Bonus Act 1965; and the Equal Remuneration Act 1976 and while amalgamating, important provisions of all the related enactments would be consolidated without diluting the key features of the various enactments. He mentioned that the draft Labour Code on Wages was discussed earlier in the Tripartite Meeting held on 10.03.2015 and the draft has been improved on the basis of deliberations held in that Meeting.

3. Intervening in between representative from All India Trade Union Congress (AITUC) placed on record their protest for stoppage of the Minimum Pension of Rs. 1000/- under the Employees' Pension Scheme of EPFO. Hon'ble Minister clarified that he has already taken up the matter with the Finance Minister and the matter is under consideration. Thereafter, the Hon'ble Minister Shri Bandaru Dattatreya invited the Participants from the stake holders Groups to offer their specific suggestions, so as to improve the draft Labour Code on Wages.

4. Thereafter, representatives of the Central Trade Unions, Employers' Associations and State Governments deliberated on the draft Labour Code on Wages Bill 2015, one by one. The observations put forth by the participants are summarised as under (grouped in stakeholders wise):

A. Observations of Central Trade Unions

- (1). BMS: The Representative of the Bharatiya Mazdoor Sangh (BMS) mentioned that the second National Commission on Labour had suggested for 7 labour codes. As all labour laws are interconnected, Labour Code on Wages can not be considered in isolation. He said that "Wage" has 3 aspects viz. whether it is in cash or in kind; it shows the dignity of labour; and also in which sector it is covered. He opposed the concept of fixing of Minimum Wages by the State Governments as employers will go to the States where the Minimum wage is low. He said that National Minimum Wage should be fixed and States can improve upon on the basis of local factors. He suggested for change in nomenclature of the Code as "Bhartiya Vetan Sanhita" or "Indian Code on Wages". He suggested that the Bank Accounts will be opened for payment of wages and the right of making complaints is being given to the Trade Unions also in addition to the workers. He did not support the word "facilitator" being used for 'inspector'. Regarding fixation of wages he suggested that the 44th ILC has made certain recommendations and that may also be looked into.
- (2). INTUC: The Representative of Indian National Trade Union Congress (INTUC) supported the views expressed by the BMS representative. However he questioned the requirement of Labour Code and Acts may remain separate and there is no need for merging. Regarding composition of Minimum Wages Advisory Board, he suggested that instead of all members being Government appointee, representatives from Trade Unions may be appointed. He opposed the provision of appeal as made in Labour Code. He suggested that at State level also Minimum Wage Board should be there.
- (3). AITUC: The Representative of the All India Trade Union Congress (AITUC) said that Trade Unions can not decide unless they are given complete picture. He questioned selective approach in implementing the recommendations of the National Commissions of Labour.

Government should bring comprehensive Codes on all. A Tripartite Committee should be formed which will examine the drafts and come out with its recommendations. He mentioned the plea of employers about competing with the world and wondered why not wages in India should also be of world level. He opposed all powers to be given to States for fixing minimum wages. Regarding implementation of labour laws he said that sufficient Budget allocations and manpower should be there with enforcement agencies. He suggested that enforcement and monitoring mechanism for labour laws should also be tripartite. Regarding this Code on Wages, he said that normal working day has not been defined in the Code and it has been left to be decided by the Government. For Bonus, he suggested that there should not be any ceiling. Also calculation formula for it should be simplified and transparent. He mentioned that at one hand Government is drafting Labour Code on wages and at the same time going for the amendment in the Minimum Wages Act.

- (4). AIUTUC: The Representative of All India United Trade Union Centre (AIUTUC) supported the views expressed by other Trade Unions. He added that though severe penalty may not be there for violation of the provisions of the Code but certainty of punishment must be there to act as deterrent.
- (5). TUCC: The Representative of Trade Union Coordination Centre (TUCC) said that the Minimum Wages Act is connected with other Labour laws and a comprehensive approach should be adopted.
- (6). SEWA: The Representative of Self Employed Women Association (SEWA) supported the views expressed by other Trade Union members. She said that informal sector should also be taken into consideration in drafting the Code.
- (7). AICCTU: The Representative of All India Central Council of Trade Union (AICCTU) said that since long time they are demanding for strict implementation of the labour laws and the Minimum Wages. These amendments are anti-worker and the concept of Code should be clarified first. He said that they oppose this Code.
- (8). LPF: The Representative of Labour Progressive Federation (LPF) mentioned that under "appropriate Government", both State and Central Government should be there. Also the name "inspector" should be retained for psychological effect.
- (9). NFITU (DHN): The Representative of National Front of Indian Trade Unions (Dhanbad) [NFITU (DHN)] supported the views expressed by other Trade Unions.

B. Observations of Employers' Associations

- (1). AIOE: The Representative of All India Organisation of Employers (AIOE) mentioned that the Code uses terms 'employee' and 'workers'. This should be either of the two and not both. He said that wages are paid on monthly basis whereas bonus is given annually. Therefore Bonus Act should be out of the purview of this Code. With regards to inclusion of supervisors also in the definition of "employee" under this Code, he suggested that some higher wage ceiling say Rs. 15000/- per month may be fixed. In the List of defaulters, only the habitual defaulters should be included and the names should be there only if they do violations 3-4 times. Regarding payment of wages to a removed/dismissed employee (Section 18 (2)), payment should be made in 7 days instead of 48 hours. In Section 43, for settlement of claims under the Code, the claim as well as appellate authority should be quasi-judicial in nature. There should be a time limit for maintenance of records. He opposed the provisions in Section 48 regarding taking cognizance of offences under this Code. He welcomed the provision for compounding but suggested for some fine for the frivolous complaints. Under Section 58, State Governments should also be given power to make rules.
- (2). EFI: The Representative of Employers Federation of India (EFI) said that the factor "capacity to pay" should also be considered while fixing the minimum wages and industry's view point should also be considered. Bonus should be left for negotiation between employer and employee and not included here. In case of workers, skilling and experience is important and that should be taken care while fixing the wages. He suggested that some uniform

system should be there across the country for fixing minimum wages. Regarding constitution of Minimum Wages Advisory Boards at the State level clear guidelines should be there regarding eligibility and composition. Also the claims authorities should be quasi-judicial and fair.

- (3). COSIA: The Representative of Chamber of Small Industry Associations (COSIA) mentioned that MSME sector should also be focussed upon while finalising the Labour Code on Wages. In definition itself, MSME sector should be mentioned separately. For small scale sector a basic floor minimum wage should be fixed and on the basis of skills this can be increased on percentage basis. There should be simple wage mechanism for MEMEs. In section 8, review of the minimum wages should be same time across after 5 years interval. In the Advisory Boards, MSME sector should be represented. The working hours should be allowed upto 12 hours. Payment of wages through Bank or Post Office is good but payment of advances can be allowed in cash. As for as payment of wages on 7th day is concerned, it should be 10th day for MSMEs. Bonus provisions should not apply to MSMEs and it should be linked to profit. The facilitator should guide the employer about non-compliance of the provisions and give 3 month time for compliance after giving notice. Maintenance of records should be for 3 years only and not beyond that.
- (4). AIMO: The Representative of All India Manufacturers' Organisation (AIMO) said that we all are working for same goal and workers are our assets. He suggested that Bonus Act should be removed out of this Labour Code.
- (5). FASII: The Representative of Federation of Association of Small Industries of India (FASII) said that the eligibility of bonus should be revisited.
- (6). ICSI: The Representative of Indian Council of Small Industries (ICSI) said that small industries can not go in such legal terminologies. Penalties in the Code are too harsh. Small industries should be exempted from inspections and cost of production should be minimised.
- (7). LUB: The Representative of the Laghu Udyog Bharti (LUB) said that the name of the Code should be as per Indian system. He opposed the section 6 (3) regarding revising the minimum wages by the States from time to time.
- (8). ASSOCHAM: The Representative of Associated Chambers of Commerce & Industry of India (ASSOCHAM) mentioned that they have already provided their comments in earlier Meeting. He said that in definition of employee contract workers should be clarified. Regarding procedure for fixing minimum wages, there should be broad guidelines from the Central Government on the basis of which minimum wages can be fixed by the State Government. Under section 32 regarding sums deductible from gross profits, the CSR funds should be included. In Section 49 the penalty amount of Rs. 1.00 Lakhs is very severe and some categorisation should be there.
- (9). FICCI: The Representative of Federation of Indian Chambers of Commerce & Industry (FICCI) supported the views expressed by AIOE. He mentioned about some discrepancies in cross referencing in the Code regarding sections.
- (10). PHDCCI: The Representative from PHD Chambers of Commerce & Industry in India (PHDCCI) supported the Governments' effort.
- (11). FISME: The Representative of Federation of Indian Micro, Small & Medium Enterprises (FISME) mentioned under section 43 and 44 regarding claim settlement, excessive delegation has been given to State Government without giving any guidelines. He said that in the definition of "employee" managers should not be included. Under Section 43, the compensation amount of 10 times is too draconian. Also cross referencing about section 47 in definition of 'facilitator' in section 2 (f) is incorrectly mentioned as section 49 (1).

C. Observations of State Governments

- (1). Uttar Pradesh: The Representative of State Government of Uttar Pradesh welcomed the move of the Central Government in drafting this Code.
- (2). Odisha: The Representative of State Government of Odisha mentioned that State's minimum wages are very less in comparison to central sphere wages.
- (3). Meghalaya: The Representative of State Government of Meghalaya said that the name "facilitator" should be replaced by some other word which is regulatory in nature.
- (4). Madhya Pradesh: The Representative of State Government of Madhya Pradesh suggested that the definition of "employee" should be adopted from the Payment of Gratuity Act.
- (5). Punjab: The Representative of State Government of Punjab also supported that the definition of "employee" should be adopted from the Payment of Gratuity Act. Also the definition of "employer" is restricted in nature. The manner of fixing wages should be clarified. Also the qualifications for the claim authorities are not given.
- (6). Haryana: The Representative of State Government of Haryana said that in the preamble of the Labour Code, the words "for securing the earned wages" should be included. Also at several places, the "appropriate Government" should be clarified whether it is State Government or Central Government. A separate section on 'deferred wage' should be included. In section 43 (4) regarding claims under the Code, only Trade Unions should be authorised to approach on behalf of worker and not NGOs. Regarding hours of work, calculation has to be top downwards. Minimum wage should be in cash and not "in kind".
- (7). Tamil Nadu: The Representative of State Government of Tamil Nadu endorsed the views of representative of Haryana. She suggested that Minimum wages should be fixed for all employees. She asked that under section 39 (v) (c) who will decide about the 'not for profit' institutions. Regarding coverage of MSMEs, she mentioned that they will be covered under Small factories Bill.

5. Representative from Ministry of MSME suggested that the Service sector should also be brought under the purview of this Labour Code. He mentioned that it is better to have a uniform system from Central level and States should follow that. Concept of small and very small establishments should be incorporated in the Code.

6. Summing up the deliberations, Additional Secretary (L&E) clarified that hence forth nomenclature of "Facilitators" in place of "Inspectors" will be used in all Labour Codes. He also brought to the notice of participants about corrigendum issued regarding section 8 (3) about fixing the minimum wages on the basis of skills and arduousness of work etc. Regarding fixing of minimum wages, State Governments are being empowered so as to bring parity and uniformity. Regarding penalty, the amount of fine mentioned is upper limit and actual amount will be decided by the judicial authority. He also mentioned that under section 44 a provision of Appellate Board is being introduced to simplify and expedite the dispute resolution mechanism.

7. In his concluding remarks, Hon'ble Minister of State (IC) for Labour & Employment thanked all the Participants and said that the apprehensions expressed about intention of the Government are not correct. There is no dilution of any provisions protecting the interest of workers. The main purpose of the Labour Code is rationalisation, simplification and ease of compliance of labour laws. He said that State Governments have to play a major role. He mentioned that the fixation of minimum wage will be on the basis of skill required, arduousness of work assigned to the worker, cost of living and geographical location of the place of work. Regarding penalties also, for the first time offence only fine will be imposed and also opportunity will be given to improve. Central Government will continue to give direction regarding minimum wages to the State Government from time to time.

8. Hon'ble Minister mentioned that Government is intending to bring 4 Labour Codes viz. Labour Code on Wages, Labour Code on Industrial relations, Labour on Social Security & Welfare and

Labour Code on safety & Working Conditions by amalgamating the relevant provisions of the Labour laws. He mentioned about the initiatives taken by the Government for unorganised workers and also requested State Governments to utilise the cess collected for the building and other construction workers. Regarding 'inspections' he said that after introduction of randomised computer based inspection schemes, such apprehensions are misplaced.

9. The Meeting ended with vote of thanks by Joint Secretary to Hon'ble Minister and all Participants for sparing their valuable time for this tripartite consultation meeting.

List of participants in the Second Tripartite Consultation Meeting on The Labour Code on Wages held on 13th April, 2015 at Tagore Chamber, SCOPE Complex, New Delhi under the chairmanship of Hon'ble MOS(IC) for Labour & Employment

Ministry of Labour & Employment

1. Sh. Bandaru Dattatreya, Hon'ble MOS (IC) Labour & Employment ...In chair
2. Sh. Deepak Kumar, Additional Secretary (L&E)
3. Sh. Dheeraj Kumar, Joint Secretary
4. Shri D. Chaudhury, Deputy Director General
5. Sh. Suresh Singh, Director
6. Dr Onkar Sharma, Regional Labour Commissioner (C)
7. Dr S.D. Singh, Consultant
8. Sh. Piyush Sharma, Consultant
9. Shri S.K. Tripathi, Under Secretary

Central Ministries/Department

1. Dr. M. Vijaywargia, Joint Secretary & Legislative Counsel, Legislative Department
2. Dr. O. P. Mehta, Director, Ministry of MSME
3. Sh. Amit Singla, Deputy Secretary, Department of Commerce
4. Sh. Sanjay Kumar, Under Secretary, Department of Commerce
5. Sh. Gopal Prasad, Deputy Secretary, Department of Industrial Policy & Promotion
6. Sh. Amar Nath Singh, Deputy Secretary, Department of Expenditure
7. Sh. S. K. Chaudhary, Under Secretary, Ministry of Women & Child Development

State Governments

1. Sh. A. K. Sinha, Principal Secretary (Labour), Government of Uttar Pradesh
2. Ms. Shalini Pandit, Labour Commissioner, Government of Odisha
3. Smt. M. N. Nampui, Labour Commissioner, Government of Meghalaya
4. Sh. Jawaid Akhtar, Labour Commissioner, Government of West Bengal
5. Sh. R. G. Pandey, Additional Labour Commissioner, Government of Madhya Pradesh
6. Sh. Harish Nayar, Additional Labour Commissioner, Government of Punjab
7. Sh. Anupam Malik, Additional Labour Commissioner, Government of Haryana
8. Sh. S. Narsimha Murthy, Additional Labour Commissioner, Government of Karnataka
9. Ms. S. Kalavani, Joint Commissioner of Labour (Conc.), Government of Tamil Nadu
10. Sh. Kumar Digvijay, Joint Labour Commissioner, Government of Bihar
11. Sh. Arvind K. Pendse, O/o Labour Commissioner, Government of Maharashtra
12. Sh. Ajit Singh N Dodia, Assistant Commissioner of Labour, Government of Gujarat
13. Sh. R. L. Rishi, Assistant Labour Commissioner, A & N Islands Administration
14. Sh. K. Ravinder Reddy, Assistant Commissioner of Labour, Government of Telangana
15. Sh. Prem Sagar, Labour Inspector, O/o Labour Commissioner, UT of Chandigarh
16. Sh. Prasad Pednekar, Assistant Labour Commissioner, Government of Goa

Central Trade Unions

1. Shri B. N. Rai, Bhartiya Mazdoor Sangh (BMS)
2. Ch. Zile Singh, Indian National Trade Union Congress (INTUC)
3. Shri R. P. Singh, Indian National Trade Union Congress (INTUC)
4. Sh. Mohit Awana, Indian National Trade Union Congress (INTUC)
5. Sh. Sh. G. L. Dhar, All India Trade Union Congress (AITUC)
6. Shri DL Sachdev, Secretary, All India Trade Union Congress (AITUC)
7. Sh. K. Radhakrishna, All India United Trade Union Centre (AIUTUC)
8. Sh. K. I. P. Menon, Trade Union Coordination Centre (TUCC)
9. Ms. Shikha Joshi, Self-Employed Women's Association (SEWA)
10. Shri Rajiv Dimri, All India Central Council of Trade Union (AICCTU)
11. Shri V. Subburaman, Labour Progressive Federation ((LPF)
12. Sh. Ram Jash Singh, Sr. Vice President, National Front of Indian Trade Union (NFITU-Dhanbad)
13. Sh. Rakesh Malviya, Secretary, National Front of Indian Trade Union (NFITU-Dhanbad)

Employers' Associations

1. Sh. Sanjay Bhatia, President, All India Organisation of Employers (AIOE)
2. Sh. Bhagirathi Dhal, Employers Federation of India (EFI)
3. Sh. V. K. Singh, All India Manufacturers' Organisation (AIMO)
4. Ms. Jaspreet Kaur, Federation of Associations of Small Industries (FASII)
5. Sh. P. K. Singhania, Indian Council of Small Industries (ICSI)
6. Sh. O. P. Mittal, Laghu Udyog Bharti (LUB)
7. Sh. G.P. Srivastava, Associated Chambers of Commerce & Industry of India (ASSOCHAM)
8. Sh. Rajesh Gopinathan, Confederation of Indian Industry (CII)
9. Sh. Harendra Kumar, Confederation of Indian Industry (CII)
10. Sh. Srinageswar, Federation of Indian Chambers of Commerce & Industry (FICCI)
11. Sh. R. K. Joshi, PHD Chamber of Commerce & Industry (PHDCCI)
12. Sh. Ravi Wig, PHD Chamber of Commerce & Industry (PHDCCI)
13. Sh. Naveen Jain, Federation of Indian Micro, Small & Medium Enterprises (FISME)
14. Sh. A. Saxena, Federation of Indian Micro, Small & Medium Enterprises (FISME)
15. Sh. D. Bandyopadhyay, Federation of Indian Micro, Small & Medium Enterprises (FISME)
16. Sh. Purushaottam Agwan, Hon' General Secretary, Chamber of Small Industry Associations (COSIA)

Annexure 4

Comments of the concerned Ministry/Departments and response of the Ministry of Labour & Employment thereon

Sl. No.	Name of the Ministry/Department	Comments	Response of Ministry of Labour & Employment thereon
1.	Department of Agriculture & Cooperation [Vide OM No. 4-2/2010-ALL-ES dated 13.07.2015]	<p>(i) There is a wide variation between agricultural wages and non-agricultural wages. As per Labour Bureau's Monthly Publication on Average Daily Wage Rates for Agricultural and Non-agricultural occupations for the month of April 2015, the average agricultural wage rate is significantly less than the non-agricultural wages. While fixing the Minimum Wages, Government should appropriately examine inter-state and intra-state differences in agricultural and non-agricultural wages.</p> <p>(ii). Any periodic increases in minimum wages should be based on rise in Consumer Price Index for Agricultural Labour (CPI-AL) and not on Consumer Price Index for Industrial Workers (CPI-IW)</p> <p>(iii). Even though a farmer is technically an employer of agricultural labourers he should not be burdened with the responsibility of maintaining wage books, wage slips and wage cards for the labourers employed by him for farming operations.</p>	<p>(i). Power of fixation and revision of minimum wages, which at present vests with both Central and State Government in their respective spheres, will henceforth lie exclusively with State Governments. Therefore, State Governments are presumed to take into consideration all factors as suggested by the Department of Agriculture & Cooperation.</p> <p>(ii) Agreed. Mention of CPI-IW is replaced with 'Consumer Price Index' in section 8(4) of the Wage Code. However, it is for the State Governments to consider appropriate CPI, while deciding the factors for revising the minimum wages in a particular occupation.</p> <p>(iii). Agreed. A sub-section (4) is being added in section 50 regarding 'Records, returns and Notices' as under:</p> <p>(4). <i>The provisions of sub-section (1) to (3) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose:</i></p> <p align="center"><i>Provided that such employer, when demanded, shall produce before the Facilitator, the reasonable proof of the payment of wages to the persons so employed.</i></p>

		<p>(iv). Such an elaborate Code is more relevant for industrial workers and not for agricultural labourers. Hence, it is considered necessary to design a simplified code for agricultural labourers.</p> <p>(v) While constituting the State/Central Minimum Wages Advisory Board, a representative from Department of Agriculture & Cooperation of the appropriate Government may be included to take care of the balance between farm viability and fair wage for agricultural workers.</p> <p>(vi) At present, agricultural labourers do not come under the purview of Payment of Bonus Act, 1965. The Ministry of Labour & Employment may review the organizational structure of farms in the country and decide whether agricultural labourers need to be brought under the scheme of payment of bonus.</p>	<p><i>Explanation: For the purposes of this sub-section, the expression "domestic purpose" means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.</i></p> <p>(iv). Only the relevant provisions of the Code will apply to the agricultural workers and there may not be any need for separate Code for agricultural workers.</p> <p>(v). This suggestion will be appropriately considered while formulating the Rules.</p> <p>(vi) The Labour Code on Wages does not propose any changes in the existing applicability of bonus provisions in the establishments.</p>
2.	<p>Ministry of Panchayat Raj</p> <p>[Vide OM No. N-11011/301/2015-Pol.II dated 21.07.2015]</p>	<p>The position of Panchayats as per the draft Code is ambiguous. Panchayats are not departmental offices, but local governments. However, in actual fact the salaries and other service conditions of Panchayat employees are decided by State Governments. It is important to ensure that Panchayats do not become liable under the Labour Code on Wages for decisions of State Government. Therefore:</p> <p>(i) Whether or not Panchayats are to be covered under "local authority" may be clarified in the Bill. Ambiguity in this regard would lead to lack of clarity in policy and to litigation.</p>	<p>The Wage Code is applicable wherever the employer-employee relationship is established and therefore wherever, Panchayats are the "employer", they will be responsible for the payment of wages and allowances to the employees.</p>

		<p>(ii) Panchayats should not be held liable for decisions of State Governments regarding various provisions of the Labour Code.</p> <p>(iii): State departments of Panchayati Raj should also be consulted.</p>	<p>Consultations with the State Governments have been done during the Tripartite Consultation process and no State Government has raised such issue.</p>
3.	<p>Department of Economic Affairs</p> <p>[Vide OM No. 15(1)/Ec.Dn./2010 (Vol.II) dated 08.07.2015]</p>	<p>(i) The Bill proposes a delegation in several provisions to the States. However, with regard to the minimum wages, the proposed Code suggests setting up a Central Minimum Wage Advisory Board, and makes directions of the Advisory Board binding on the Government. This is not advisable. India is not a single labour market nor it is price/cost of living similar across the country. Therefore, mandated minimum wage rates from the centre would appear not only to do a contradiction to the spirit of the proposed Bill, but would also be self-defeating as it would be difficult for Central Board to be as aware of conditions, and cost of living, in each State as the State Governments are. In fact, there is no apparent need to create a Central Advisory Board at all. Ministry of Labour may likely to reconsider.</p> <p>(ii). With regard to section 7, Ministry of Labour may consider if house rent allowance should also be counted as a component of wage. It is a cost to the company and not counting it perhaps discourages formal employment (India's current formal employment is 7% of all employment, which is certainly not in the interest of labour itself). Naturally, if HRA is counted, then the minimum wages would have to be fixed higher, depending on the State/city etc.</p> <p>(iii). With regard to proposed section 10, insisting on payment of full day's wage for even part time work may militate against part-time employment, taken by some to increase family income. The world over wage rate is hourly wages. As urbanization increases, most markets seem to be rushed over the weekends, between 4-8 PM. Many families would seek to add to their</p>	<p>The Code now provides for constitution of an Advisory Board to look into matter related to wages as well as increasing employment opportunities to women. The advice of the Central Advisory Board is not binding on the Central Government.</p> <p>(ii). Accepted.</p> <p>The definition of "wage" in section 2 (z) is being revised by adding one more sub-clause (vi) as 'any house rent allowance', in addition to the sub-clauses (i) to (v), which have been given providing the components which includes wages.</p> <p>(iii). Section 10 of the Code prescribes for payment of full normal working day wages to an employee even if he was employed for less than normal working hours during the day, if his minimum rate of wages has been fixed by the day basis. However, Section 6 of the Labour Code prescribes for fixation of rate of wages for a period determined</p>

		<p>income by fulfilling the need for extra manpower of shops and restaurants at this time. Therefore, there is perhaps a need to provide for the possibility of employment for half a day. Ministry of Labour may like to also consider this possibility.</p> <p>(iv). With regard to section 14, prescribing Overtime at double the wages may derive formal overtime underground. Since overtime is optional and presumably labour would not accept it if it is not remunerative enough, perhaps Ministry of Labour would like to consider even one and a half time of wage-rate may be sufficient.</p>	<p>by the hour, or by the day, or by the month. In view of this, for such work at weekends, as has been suggested here, the employee's wages may be fixed on hourly basis, and paid according to the number of hours he is employed.</p> <p>(iv). Even in the present provision under the Minimum Wages Act 1948, the Overtime rate is twice the ordinary rate of wages. In view of this, reducing this rate to one and a half time is not appropriate.</p>
4.	<p>Ministry of Rural Development</p> <p>[Vide OM No. J-11060/1/2015-MGNREGA (RE-III) dated 24.07.2015]</p>	<p>1. Both Sections 6(1) and 28 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (42 of 2005), give the Central Government, the authority to determine its wage rates independent of the Minimum Wages Act, which is proposed to be overridden by the Labour Code. Whereas, Section 6(1) is a non-obstante Section which provides for the fixation of wage rates and begins with the words "Notwithstanding anything contained in the Minimum Wages Act, 1948", Section 28 gives the provisions of the MGNREG Act overriding authority over other legislations. These are in furtherance of the legislative intent to keep the activities under the MGNREG Act separate and distinct from those under any other legislation especially the Minimum Wages Act. The implication is that it will not be possible to fix budget for the MGNREGA, as the power to revise minimum wages vests with State Governments under the Code and the Central Government has, absolutely no role in fixation of the wage rate in respect of any category of employment under the proposed Labour Code. This will lead to a state of fiscal unpredictability. The only instrument upon which the Centre's budget liability is premised is the control over the wage rate. If this is controlled by States through minimum wages then the Centre will</p>	<p>Agreed with the suggestion of the Ministry of Rural Development.</p>

		<p>fund the MGNREG Act, but will be unable to control the fund requirement. The Parliament would not be permitted to control and use its constitutional authority to examine and approve expenditure through the process of budget approval.</p> <p>2. Many provisions of the draft Labour Code, especially clause 13, are contrary to the related provisions under MGNEG Act.</p> <p>3. The unified Labour Wage Code intends to take place of all labour laws, especially those mentioned in clause 60. Consequently, all the provisions of these laws finding place in the Code would be applicable to MGNREGA in view of clause 57 of the draft Code. This will have major conflicts with the provisions of MGNREG Act having far reaching consequences derailing the implementation.</p> <p>4. Ministry of Rural Development has been constantly expressing to the Ministry of Labour & Employment, its stand that the MGNREGA wage rates may be kept outside the purview of the Minimum Wages Act. As a matter of fact, in a meeting of the Committee of Secretaries (CoS) held on 24.08.2012 to discuss the National Floor Level Minimum Wage (NFLMW) and other proposed amendments to the Minimum Wages Act 1948, Secretary (RD) mentioned that MGNREGA may be exempted from NGLMW since the MGNREG Act itself excludes the applicability of Minimum Wages Act. Accordingly, in Para-20 of the draft Cabinet Note circulated by Ministry of Labour on the subject, of which the minutes of CoS meeting are one of the annexure, it is mentioned that "MGNREGA wage rates have been kept outside the purview of the Minimum Wages Act, which meets the requirement of the Ministry of Rural Development.</p> <p>5. Keeping in view the above, Ministry of Rural Development request that the following revised provisions may be made in the draft Labour Code:-</p>	<p>Accepted.</p> <p>Wages under MGNREGA will be exempted from the coverage of Labour Code on Wages and</p>
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5	<p>Department of Commerce</p> <p>[Vide OM No. 14/28/2014-TPD (Environment) dated 24.07.2015]</p>	<p>No objection, subject to that Ministry of Labour & Employment may reconsider the formulation for sub-section 2 of section 48 and add the elements of third party certification which were there at the Tripartite consultation stage for facilitating ease of doing business".</p>	<p>Labour Code on Wages provides for laying down an inspection scheme by the appropriate Government. This issue of 'third party certification' can be incorporated in the inspection scheme, if required, at that time.</p>
6.	<p>Ministry of Corporate Affairs</p> <p>[Vide OM No. 4/42/2015-CL V dated 24.07.2015]</p>	<p>No objection, subject to that 'Explanation' to clause 56 of the said Bill which defines "company", for the purposes of the said clause may also specifically include LLP incorporated under the Limited Liability Partnership Act (LLP Act), 2008, in sub-clause (a).</p>	<p>Accepted</p> <p>In the section 54 regarding 'Offences by companies, the sub-clause (a) of the "Explanation" is revised as under:</p> <p>(a) "company" means anybody corporate and includes -</p> <p>(i) a firm; or</p> <p>(ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009); or</p> <p>(iii) other association of individuals; and</p>
7.	<p>Ministry of Steel</p> <p>[Vide OM No. 4(18)/2015-Coord. dated 29.07.2015]</p>	<p>(i) The title of the Bill should be Labour Code on Wages & Bonus Bill 2015 as Bonus is not part of the wages.</p> <p>(ii) There should also be a provision for speedy disposal of matters by Claim Authorities falling under the</p>	<p>(i) Bonus is closely related to the subject of wages and hence included in this Code.</p> <p>(ii) Section 45 (2) of the Wage Code clearly mentions that the endeavour shall be made by the</p>

		<p>purview of this Code.</p> <p>(iii) The amount of fine in penalties is too low on a general basis. The amount of fine should be fixed as per the magnitude of operation of the concerned establishment. Further, the term of imprisonment should also be increased with each subsequent violation by the concerned employer.</p> <p>(iv) The employer should not be accorded an opportunity before imposing any penalty for violations if the violation of the same nature occurs even after the period of five years.</p> <p>(v) Inclusion of unorganised sector for the applicability of provisions of minimum wages is a welcome move. However, minimum wages for scheduled employment in Steel sector is also needs to be notified as at present there is no schedule minimum wages for steel sector in most of the States.</p> <p>(vi) Provision for payment of wages through cash may be removed altogether as payment by cash has many inherent drawbacks.</p> <p>(vii) The formula for calculation of bonus in case of allocable surplus exceeds the minimum bonus, needs simplification. The petty contractors find it difficult to compute the bonus resulting in the loss of extra bonus to workers employed in intermittent nature of jobs, daily wages through contracts even when the contractor actually has allocable surplus.</p>	<p>authority to decide the claim within a period of three months.</p> <p>(iii) Penalty provisions have been made in correspondence to the gravity of the violations. Penalties amounting to Rs. 10000/- to Rs. 50000/- cannot be termed as too low. Focus of the provisions of the Code is on enforcement of labour laws through guiding and advising the employers and penal provisions should be applied only for habitual offenders.</p> <p>(iv) Five years' time period has been kept considering the chances of likely changes in management in some units. However, this opportunity will not be given to an employer violating the provision of payment of wages due to an employee.</p> <p>(v) The Labour Code on Wages will not have any Scheduled employment and it will apply to all employees including in the steel sector.</p> <p>(vi) A facilitative provision has been kept in the Code to deal with exceptional cases where the payment has to be made in small amount for a shorter time period of work and appropriate Government will decide the amount upto which payment can be made in cash.</p> <p>(vii) The existing provisions of the Payment of Bonus Act 1965 have been retained without any modifications in the calculation formula.</p>
8.	<p>Ministry of Mines</p> <p>[Vide OM No. CDN-13/5/2015-COORD dated 27.07.2015]</p>	<p>(i) In section 2(d), 'appropriate government has been defined. It has been stated that 'appropriate Government' means in relation to establishment carried on by or</p>	<p>(i) At present, the Minimum Wages Act 1948 and the Payment of Wages Act 1936, defines 'appropriate Government' in case of 'Mines' as Central Government.</p>

		<p>under the authority of the Central Government or the establishment of Banks, Mines, Air Transport.... etc. the Central Government. It means all mines are considered under the Central Government. It is not correct. The mines may be under the control of State Government or the Central Government. Therefore, the Central Government cannot be the exclusive 'appropriate Government' in case of all mines.</p> <p>(ii) In the draft Bill, 'Company', 'Contractor', 'Cooperation', 'Corporation', 'Employer' (covered under Section 2 of the Factories Act) have been defined. It is suggested to include "firm", "individual" and "other association of individual" in the list of definitions and they should also be considered in the meaning of 'employer'.</p>	<p>In order to ensure continuity and also to avoid any disparity in wages and other terms and conditions of workers working in mines, either under the control of Central Governments or State Governments, it has been proposed to continue with the present definition.</p> <p>(ii) The 'employer' has been clearly defined in the Code for different type of establishments. Also section 54 has explained that in case of 'company', the firm or other association of individuals will be included in the definition of 'company'.</p>
9.	<p>Department of Health & Family Welfare</p> <p>[Vide OM No. Z-28015/33/2015-Estt.I dated 29.07 2015]</p>	<p>(i) A single broad law that replaces multiple laws on the same subject will help rationalize contradictions in existing laws. Instead of getting entangled in four laws, employers will have to comply with one set of rules which will lead to better monitoring and reduce hassles for both employees and employers.</p> <p>(ii). Proposal to make payment to employees via cheque or electronic transmission would help attain broader objective of financial inclusion.</p> <p>(iii). The States would be given partial autonomy in the fixation and revision of minimum wages. The minimum wages in an area can, therefore, be decided keeping in view the cost of living in that area and other need based factors. However, a single floor rate should be decided by the Government and States should be free to set the minimum wage rate higher than his basic wage, but not lower than it.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii). Provisions have been made that the Central Government may give directions to the State Government, for carrying out execution of the provisions of the Code. This takes care of the concern raised by the Department of Health & Family Welfare.</p>
10.	<p>Department of Industrial Policy & Promotion</p> <p>[Vide OM No. 5/1/2010-MPS (Vol.II)]</p>	<p>While the Department of Industrial Policy & Promotion supports the measures proposed for labour welfare, the effect of higher wages in an increasingly competitive global manufacturing ecosystem needs to</p>	<p>The exercise of Codification of Labour Laws itself is an effort of the Government to make the laws simple and easy for compliance to promote Ease of Doing Business. Wages have</p>

	<i>dated 06.08.2015]</i>	be factored. It should also be ensured that implementation of the provisions is in sync with the efforts of the Government to promote Ease of Doing Business.	to be fixed keeping in view various relevant factors for different type of occupations and this will certainly address the scenario in that industry while deciding the minimum wages.
11.	Department of Electronics & Information Technology (DeitY) <i>[Vide OM No. 2(6)/2015-CD dated 10.08.2015]</i>	DeitY supports the proposal with observations that: (i) Since ICT can play an important role in the implementation of Wages Bill 2015 and the same has not been explicitly mentioned in the draft bill, Deity suggests an additional Para 47 (5) under Chapter V (miscellaneous) as below: "Strategic use and deployment of Information and Communications Technologies (ICT) including Cloud and Mobile platforms in the overall implementation of Wages Bill, 2015" (ii). It is seen that the proposal involves activities/features related to maintaining records electronically, filling returns electronically and web based inspection schedule in addition to features related to wages. As the information security activities are vital in these electronic/web based activities, it is suggested that implementation of suitable information security measures may be made part of the proposal.	Observations of Deity are noted. Concerns raised are mainly related to the implementation aspects of the Labour Code on Wages, which will be appropriately taken care while formulating Rules under this Wage Code.
12.	Ministry of Textiles <i>[Vide OM No. 4/7/2015-Coord. dated 12.08.2015]</i>	Supports the proposal with following suggestions: (i) As per the new Labour Code on Wages, provision of minimum wage will apply to all employments covering both organized and unorganised sector. In case of textiles specially garments the job work done (embroidery, washing, pressing etc.) is incidental and peripheral nature and may be kept out of purview of meaning of minimum wages. (ii). Fine on contravention has been proposed in Fine slabs of Rs. 5000/- and Rs. 10000/- and for the repetition of the offence within a period of five year, if convicted for the first offence, penalty for the	(i) The Wage Code strives to ensure payment of at least minimum wages to all workers whether in organized or unorganised sector. In view of this excluding any specific sector or occupation may not be appropriate and will be injustice to the workers of that sector. However, the definition of 'employee' is modified to address the concern on outworker. (ii).Penalty provisions have been made in correspondence to the gravity of the violations. Focus of the penal provisions of the Code is on enforcement of labour laws through guiding

		second offence in the form of fine extendable to Rs. One lakh or imprisonment upto 3 months. The clause relating to imprisonment may be considered for deletion.	and advising the employers and penal provisions should be applied only for habitual offenders. However, repeat offenders must have some deterrent penalty to avoid violations.
13.	Department of Expenditure [Vide OM No. 3 (1)/E-Coord/2010 dated 18.08.2015]	<p>(i) Chapter II, Clause 15 (4) of the Labour Code on Wages Bill 2015 states that the Central Government shall constitute Central Minimum Wages Advisory Board which shall consist of persons to be nominated by the Central Government representing employers and employees in the employment. It is not clear whether any salary, honorarium etc. will be paid to the members of the Board nor the specific numbers of the members of the Advisory Board has been indicated. Terms and conditions of the members of the Board may be finalized in consultation with Department of Expenditure.</p> <p>(ii) The DCN states that "The Government establishments are, at present, not covered under the provisions of Payment of Wages Act, 1936 until so notified. Now, the Labour Code on Wages will apply to all employees and irrespective of wage ceilings". Whereas, Clause 26 of Chapter III, on 'Payment of Wages', which <i>inter-alia</i>, stipulates time limit for payment of wages, states that "Notwithstanding anything contained in this chapter, the provisions of this chapter shall not apply to the Government establishments except where the appropriate Government applies, by notification, such provisions to the government establishments specified in the notification." That is to say, application of provisions under payment of wages, which include adhering to time lines also, are not binding on the Government, whether State or Central. Such a provision which is not binding is akin to not laying down the provision.</p>	<p>(i) The section on "Advisory Board" has since been revised as section 42 to reflect its composition and functions for advisory board on Minimum Wages Act as well as Equal Remuneration Act. However, this is only enabling provision and details about the composition of Board, its Members, their salary and allowances will be prescribed in Rules by the appropriate Government. Department of Expenditure will be consulted at the time of making Rules related to the Central Advisory Board, as suggested.</p> <p>(ii). Again, this is an enabling provision only to facilitate the appropriate Government for extending the provisions of this Code to any government establishment (viz. factories, PSUs, offices etc.) if it is desired so. At present under the Payment of Wages Act also, appropriate Government has to notify the establishment in order to get them covered under the Act. In absence of such enabling provisions, it may not be possible for the Governments to extend the coverage to such establishments even if needed.</p>

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		<p>(iii) Clause 20 (5) in Chapter III states that "No fine shall be imposed on any employed person who is under the age of fifteen years". It appears to be a tacit approval for child labour. It may be reworded to specifically exclude children till the age of 14 years.</p> <p>(iv) Clause 22 (1) states that "A deduction...for damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person." But, the amount of damage can exceed the wages. In that case condition kept in case of 'Fines' in Clause 20 (4) may be applied to deductions also, i.e. 'The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period'.</p>	<p>(iii) Prohibition of employment of children below 14 years age is covered under the Child Labour (Prohibition and Regulation) Act 1986 and repeating that provision here also is not required as this Code is meant for wage related matters. However, as the adolescents between age 14 to 18 years can be employed in non-hazardous units, it is suggested that a fine should not be imposed on a person below 15 years of age keeping in view his tender age.</p> <p>(iv) Deduction for damages or loss is recovery of the loss of employer by the neglect of the employee and this is different from the fine imposed on him, which is basically a penal provision by the employer on the employee. Therefore, while restriction of fine is appropriate in order to avoid exorbitant amount imposed as fine, damages has to be recovered through deduction for the wages, which may not be confined in ceiling of three percent of the wages.</p>
14.	<p>Ministry of Petroleum & Natural Gas</p> <p>[Vide OM No. J-25018/5/2015-Gen. dated 20.10.2015]</p>	<p>(i) In section 2(d) regarding definition of 'Appropriate Government' Appropriate Govt. for oil PSUs and its subsidiaries remains the Central Govt. Similar treatment for Contractor's establishment is appropriate.</p> <p>(ii) In section 2(k) (i) regarding definition of "Employee", managerial, administrative, technical or clerical work has also been included in the definition of employee. Scope of Code goes beyond worker category to include Managers. It is not appropriate to extend the coverage to Managerial, administrative employees/officers who are highly skilled and highly paid. An 'out-worker' as defined under the Contract Labour (R&A) Act, 1970 is excluded from the definition of the term 'worker' in that Act. It is surprising that the same</p>	<p>(i) Noted.</p> <p>(ii) Accepted.</p> <p>'out worker' has been removed from the definition of 'employee'. However, as payment of wages has to be ensured to all employees in time and in prescribed manner, managerial and supervisory cadres have not been excluded from the definition of 'employee'. But for the payment of bonus, wage limit for the workers has been introduced so as to avoid payment of bonus to highly paid</p>

		<p>has been included in the definition of the term 'employee' under the Code. Such inclusion is contrary to the provision of the CLPRA. Since the term 'contract labour' has not been included in the Code, it is illogical to include an 'out-worker' with whom the Principal Employer (PE) has no contact and who does not work in the premises of the PE under the definition of employee. Since they are already 'employees' of the Contractor, who has been defined under the Code, there is no need for justification to include the term under the definition of 'employee'. In any case, the 'establishment' of the Contractor is already covered under the Code.</p> <p>(iii) In section 2(z) regarding definition of "Wages" Exclusion no. 8 may be reworded to clarify it as gratuity payable under the Payment of Gratuity Act, 1972. As Payment of Wages Act was created in 1936, the definition did not refer to statutory gratuity which was created in 1972. A recent Madras High Court judgment has interpreted wages to include statutory gratuity, which should not be treated as wages.</p> <p>Another complication is that payment of wages on dismissal, removal, retrenchment or resignation is to be ensured within the next 2 working days, as per Sec. 18(2) of the Code, whereas PG Act allows a timeframe of 30 days from the date of separation.</p> <p>Another complication is related to PF contribution on wages. If statutory gratuity is not excluded from the definition, a claim for PF contribution on gratuity paid could also be technically raised, as had been done by the EPFO in relation to encashment of Leave with Wages, in the past.</p> <p>(iv) In section 5 regarding Payment of minimum rate of wages, State Govt. has been given the exclusive responsibility of fixing and notifying minimum wages within its territorial jurisdiction. This will end the current duality in wages being prescribed by both Central and</p>	<p>employees.</p> <p>(iii) The exclusion from the definition of 'wage' mentions "any gratuity payable on the termination of employment in cases <u>other than those specified in sub-clause (iv)</u>". The sub-clause (iv) says about "any sum which by reason of the termination of employment of the person employed is <u>payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made.</u> The gratuity payable under Payment of Gratuity Act 1972 has prescribed a time limit for such payment and therefore not covered under sub-clause (iv).</p> <p>(iv) Noted</p> <p>With regards to the fixing factors for different type of work, it is clearly mentioned that the State Government shall take into account the skill required, the arduousness of</p>
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		<p>State Govts for the same scheduled employment.</p> <p>By fixing factors for different types of work, which will be multiplied by the minimum wages; the other wages are to be computed. It is not clear whether this refers to different skill levels or to different natures of work such as technical, clerical, etc.</p> <p>(v) In section 8(3) regarding procedure for fixing and revising minimum wages, where a variable D.A component is part of the MW, then the wages are to be revised once in five years and otherwise in once in two years. This is acceptable.</p> <p>(vi) In section 18(2) regarding Time limit for payment of wages, in case of removal or dismissal or retrenchment from service the time limit of two working days for release of wages due may be increased to three working days. In the case of resignation or closure of the establishment, the time frame may be increased to seven working days. In cases of death of an employee, a time limit of 15 working days payment of unpaid wages may also be incorporated.</p> <p>(vii) In section 19(3) (j) and (n) regarding deductions which may be made from wages, deductions for adjustment of over-payments of wages as permitted under the Payment of Wages Act, 1936 should be included in the Code. Instead of seeking written authorization for contribution/fees to a registered TU or contribution to PM Relief Fund etc., electronic option exercised by the employee through Intranet/Internal employee self-service portal of the establishment may be provided for.</p> <p>(viii) In section 20(2) regarding Fines, electronic display of acts and omissions may also be permitted to be exhibited on the intranet/Internal website of the establishment, which can be viewed by all employees.</p> <p>(ix) In section 21(2) regarding deductions for absence from duty the minimum number of ten</p>	<p>the work assigned to the worker, geographical location of the place of work and other factors which the St: Government considers appropriate. This will ensure fixing different factors for work requiring different skill levels.</p> <p>(v) Noted.</p> <p>(vi) The time limits for payment of wages in different conditions have been made incommensurate with the existing provisions under Payment of Wages Act, as far as possible,</p> <p>(vii) Noted.</p> <p>(viii) This will be prescribed in Rules, as mentioned in this Section.</p> <p>(ix) Not accepted. This provision is similar to the section 9 of the Payment of</p>
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		<p>employed persons required to act in a concerted manner, to absent themselves without notice is high. Even fewer persons can sit on strike, such as hunger strike and such employed persons acting in a concerted manner can strike work without giving notice. Therefore, the figure ten may be reworded as four or more employed persons etc.</p> <p>(x) In section 28 regarding disqualification for bonus In addition to the existing provisions related to dismissal from service for fraud, riotous or violent behavior on premises of the establishment, theft, misappropriation for sabotage of property of the establishment, conviction for sexual harassment has been added. This is a welcome addition.</p> <p>(xi) In section 38 regarding Time limit for payment of bonus E-payment of bonus has been provided for, which is a welcome change.</p> <p>(xii) In section 40 regarding Non-applicability of the Chapter, Provision for exemption from the Chapter relating to Bonus has been provided. This is a necessary provision to enable establishments, which may already have an existing system of profit sharing and to whom this Chapter is applicable, to apply for exemption.</p> <p>(xiii) In section 41(1) regarding Power of remove difficulties, Limitation period of two years to remove difficulties in the Code does not appear to be required. In a dynamic business and economic environment the Central Govt. should retain the power to retain any difficulties in the Code at any point of time and not limit it to two years.</p> <p>(xiv) In section 43 regarding Payment of various undisbursed dues in case of death of employed person, the provision should also include a time period for payment of dues either to the nominee or the authority. Fifteen working days is recommended as appropriate period in this regard.</p>	<p>Wages Act 1936, where "ten or more employed persons" has been specified.</p> <p>(x) Noted.</p> <p>(xi) Noted.</p> <p>(xii) Noted.</p> <p>(xiii) This provision is made to avoid any difficulty in initial two years of the commencement of this Code. Thereafter, if any change or clarification is required, that may be required to be processed as amendment to the Act and not be carried out through official notification only in the Gazette.</p> <p>(xiv) Noted and these details can be taken care in the Rules to be prescribed.</p>
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	<p>(xv) In section 44 (4) regarding Claims under the Code and procedure thereof, nominee in case of death of an employee should be permitted to make an application for dues under the Code.</p>	<p>(xv) This is as per existing provision.</p>
	<p>(xvi) In section 45 regarding Appeal, Creation of an Appellate Authority is a welcome addition.</p>	<p>(xvi) Noted.</p>
	<p>(xvii) In section 47 regarding Records, Returns and Notices, the provision permitting maintenance of electronic records and not just registers is welcome. Similarly, it should be permitted to treat hosting of abstract of the Code on the intranet/internal website of the establishment and not insist for Notice Boards, where all employees have access to the internal website. Similarly, in a move to reduce the usage of paper, e-wage slips or e-mail containing e-wage slip details should be permitted and accepted as effective compliance of the Code. Submission of e-returns is a welcome provision.</p>	<p>(xvii) Noted.</p>
	<p>(xviii) In section 50 regarding Penalties for offences, Penalties have been substantially increased in the new Code. These will act as deterrents and encourage employers to ensure that wages not less than the minimum wages are paid in time. Provision for 'show cause' and time to comply before initiation of prosecution is welcome. A time frame of 21 working days may be prescribed in this regard.</p>	<p>(xviii) Noted. This is a procedural aspect and the days for the compliance will be decided by the Facilitator, as per the actual circumstances and nature of violation.</p>
	<p>(xix) In section 51 regarding Compounding of offences, the provision of compounding of offences is a welcome provision. This will reduce the number of likely future prosecutions and dispense quick justice.</p>	<p>(xix) Noted.</p>
	<p>(xx) In section 54 regarding Burden of proof, the burden of proof has to be on the claimant, with the employer only having to counter with proof of compliance. Otherwise this will lead to vexatious and frivolous complaints being raised.</p>	<p>(xx) The employer has to provide proof that he has made the payment of dues and this information will be available with the employers only. Therefore frivolous claims will be avoided rather being raised.</p>

		<p>(xxi) Lack of clarity – Labour laws, which are now being rationalized as Labour Codes, should be made applicable to unionized category of employees only, i.e., for workers, as defined under the existing laws. Inclusion of supervisors, officers, engineers, managers, administrators under the definition of 'employee' exceeds the brief of the labour legislations and attempts to extend the coverage of labour Codes to officers also. This step needs to be reviewed. The term 'worker' and 'employee' have both been used in the Code. The term is not interchangeable and should be retained as 'worker'.</p> <p>(xxii) Time frame for filling of claims: No time frame has been prescribed for making claims against the employer under the Code. It is recommended that a time frame of six-months be prescribed, which may be relaxed for cogent reasons by the Authority prescribed under the Code.</p> <p>(xxiii) Malicious or vexatious claims – the provisions of Sec. 15 (3) and (4) of the Payment of Wages Act, 1936 be retained in the Code so that bona fide errors or disputes are treated as such. Fine amount for malicious or vexatious claims be increased in the same proportion as penalty for non-payment.</p>	<p>(xxi) It has been proposed that the provisions of Wages (fixing minimum wages as well as payment of wages) should apply to all employees irrespective of their category (officers as well as workers). However the dispute redressal mechanism for industrial disputes and also the payment of bonus will be available only to workers and appropriate distinction has been made wherever required for this purpose in the Code.</p> <p>(xxii) Accepted. It has now been proposed in section 44 (5) that the application for claims can be filed <u>within five years</u> from the date on which claims arises. However, the claim authority, on sufficient reason shown by the applicant to it, may condone the delay.</p> <p>(xxiii) Not accepted. This may provide unnecessary burden on a worker and it may deter the worker to raise even a legal claim.</p>
15.	Department of Telecommunications [Vide OM No. 2-11/2015-Policy-I dated 09.07.2015]	Support the Bill	Noted
16.	Department of Social Justice & Empowerment [Vide OM No. 23-7/2013-Cdn. dated 10.07.2015]	Support the Bill	Noted
17.	Department of Chemicals & Petrochemicals [Vide OM No. 20015/69/2015(Coord) dated 13.07.2015]	Support the Bill	Noted

18.	Ministry of Road Transport & Highways [Vide OM No. CD-14010/15/2015-Coord dated 15.07.2015]	Support the Bill	Noted
19.	Ministry of Home Affairs [Vide OM No. 11034/45/2015-IS-IV dated 16.07.2015]	No objection	Noted
20.	Department of Defence (DRDO) [Vide OM No. DMS/LW/9557 dated 15.07.2015]	Welcomes the move	Noted
21.	Ministry of AYUSH [Vide OM No. Z.28015/117/2015-PP&C dated 16.07.2015]	Support the Bill	Noted
22.	Department of Heavy Industry [Vide OM No. 21(2)2010-Coord dated 16.07.2015]	Support the Bill	Noted
23.	Department of Consumer Affairs [Vide OM No. N-9/11/2015-P&C dated 20.07.2015]	Support the proposal	Noted
24.	Ministry of Power [Vide OM No. 12/37/2015-T&R dated 20.07.2015]	Support the Bill	Noted
25.	Ministry of Culture [Vide OM No. 4-8/2015-CDN dated 22.07.2015]	Support the Bill	Noted
26.	Department of School Education & Literacy [Vide OM No. F.19-7/2015-EE.1 dated 22.07.2015]	Support the Bill	Noted
27.	Department of Posts [Vide OM No. 92-21/2015-Coord/O&M dated 21.07.2015]	No specific comments to offer	Noted
28.	Ministry of Housing & Urban Poverty	Support the Bill	Noted

	Alleviation [Vide OM No. K-14015/01/2014-USD dated 22.07.2015]		
29.	Ministry of Food Processing Industries [Vide OM No. P-12026/10/2015-PC (123) dated 24.07.2015]	Support the proposal	Noted
30.	Ministry of Development of North East Region [Vide OM No. 7/4/2013-DoNER (Labour) (Vol.II) dated 27.07.2015]	Support the proposal	Noted
31.	Department of Public Enterprises [Vide OM No. W-11/0002/2015-DPE (WC) dated 24.07.2015]	No objection	Noted
32.	Department of Animal Husbandry, Dairying & Fisheries [Vide OM No. 25-1(100)/2015-ADF/AR dated 23.07.2015]	Support the proposal	Noted
33.	Department of Defence Production [Vide OM No. 4 (21)/2015/D(Coord/DD P) dated 29.07.2015]	Nil comments	Noted
34.	Department of Food & Public Distribution [Vide OM No. 17012/2/2010-FC-3 dated 24.07.2015]	Support the proposal	Noted
35.	Department of Science & Technology [Vide OM No. 01/11/2015-DST dated 23.07.2015]	No comments	Noted.
36.	Ministry of Tourism [Vide OM No. 2-P&C(9)/2015 dated 22.07.2015]	Support the proposal	Noted
37.	Department of Fertilizers [Vide OM No.	No objection	Noted

	28012/8/2015-Coord. dated 27.07.2015]		
38.	Ministry of Skill Development & Entrepreneurship [Vide OM No: MSDE- 1(1)/2015-AP dated 10.07.2015]	No objection to the proposal.	Noted
39.	Ministry of Women & Child Development [Vide OM No. 43011/17(4)/2015- Coord dated 31.07.2015]	Support the proposal	Noted
40.	Ministry of Civil Aviation [Vide OM No. AV- 31015/14/2015-C&W dated 27.07.2015]	Support the proposal	Noted
41.	Department of Financial Services [Vide OM No. 4/1/8/2015-IR dated 31.07.2015]	No comments to offer	Noted
42.	Department of Personnel & Training [Vide OM No. 49014/1/2015-Estt ©- Pt. dated 29.07.2015]	No comments to offer	Noted
43.	Ministry of Shipping [Vide OM No. CD- 11053/34/2015-Coord. dated 12.08.2015]	No specific comments to offer	Noted.
44.	Department of Higher Education [Vide OM No. 16- 15/2014-TS.VII dated 17.08.2015]	Support the proposal	Noted
45.	Ministry of Urban Development [Vide OM No. 28012/24/2014-W.3 dated 24.08.2015]	Support the proposal	Noted
46.	Ministry of Micro, Small & Medium Enterprises [Vide OM No. 10(2)/2015-MSME Pol. dated 04.09.2015]	Support the proposal	Noted

47.	Ministry of Information & Broadcasting [Vide OM No. O-14011/10/2015-PMS dated 13.08.2015]	Support the proposal	Noted.
48.	Ministry of Coal [Vide OM No. 60013/1/2015-PRIW-I dated 31.08.2015]	Support the proposal	Noted.
49.	Department of Pharmaceuticals [Vide OM No. 50013/7/2015-CDN dated 31.12.2015]	No comments to offer	Noted

STANDING COMMITTEE ON LABOUR
(2017-18)

Minutes of the First Sitting of the Committee

The Committee sat on 6th October, 2017 from 1430 hrs. to 1640 hrs. in Committee Room No. 2, Block-A, PHA-Ext. Building, New Delhi.

PRESENT

Dr. Kirit Somaiya - CHAIRPERSON

MEMBERS
LOK SABHA

2. Shri Rajesh Kumar Diwakar
3. Shri Ashok Dohare
4. Shri Satish Chandra Dubey
5. Shri C.N. Jayadevan
6. Shri Bahadur Singh Koli
7. Dr. Arun Kumar
8. Shri Kaushalendra Kumar
9. Shri Hari Manjhi
10. Shri R. Parthipan
11. Shri Naba Kumar Sarania
12. Shri Kodikunnil Suresh
13. Shri Dayakar Pasunoori

RAJYA SABHA

14. Shri Ram Narayan Dudi
15. Shri Nazir Ahmed Laway
16. Shri P.L. Punia
17. Shri Rajaram
18. Shri Tapan Kumar Sen
19. Shri N. Gokulakrishnan
20. Ms. Dola Sen

SECRETARIAT

- | | | | |
|----|------------------------|---|-----------------|
| 1. | Ms. Rimjhim Prasad | - | Joint Secretary |
| 3. | Smt. Anita B. Panda | - | Director |
| 4. | Shri Dhiraj Kumar | - | Addl. Director |
| 5. | Smt. Archana Srivastva | - | Under Secretary |

PART I
(1430 hrs to 1500 hrs.)

2.	XX	XX	XX	XX
3.	XX	XX	XX	XX
4.	XX	XX	XX	XX
5.	XX	XX	XX	XX
6.	XX	XX	XX	XX

PART II

(1500 hrs. to 1640 hrs.)

Witnesses

Representatives of the Ministry of Labour & Employment

Sl. No	Name of the Officer	Designation
1.	Shri Heera Lal Samariya	Additional Secretary
2.	Sh. Anil Kumar Nayak	Chief Labour Commissioner (C)
3.	Sh. R. K. Gupta	Joint Secretary

7. At the outset, the Chairperson welcomed the representatives of the Ministry of Labour & Employment to the sitting of the Committee, convened to have a briefing on 'Code on Wages Bill, 2017'. The Chairperson then drew attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees. He then asked the representatives of the Ministry to give an overview of the subject matter.

8. The Additional Secretary, Ministry of Labour & Employment, accordingly, briefed the Committee on the subject highlighting *inter-alia* sub-summation of 4 Acts in 'Code on Wages', consultation with stakeholders, major changes proposed in the Code vis-a-vis existing acts, benefits to workers, etc. Thereafter, the Members raised queries on various issues which, *inter-alia*, included low wages to contract workers in NIC, GAIL, Railways, Airports, private organisations, etc; implementation of social security schemes and minimum wages; accountability, details of inspection; reasons for not mentioning the word 'worker' in chapter-II; national minimum wage and variable dearness allowances; recommendations of the 45th and 46th Indian Labour conference in 2015; denial of bonus to contract workers of BVG in Parliament Complex, Shram shakti Bhawan, VP House, etc; disparity between the salaries of contract workers in Government and private organisation; harassment of women employees at Government/private organisations; inclusion of Beedi Workers; etc. The Additional Secretary, Ministry of Labour & Employment responded to queries raised by the Members.

9. The Chairperson thanked the witnesses for appearing before the Committee and briefing them on the subject as well as responding to the queries raised. The Chairperson directed the Additional Secretary of Ministry of Labour & Employment to furnish written replies within 10 days in respect of those queries, for which information was not readily available with them during the meeting as well as which required detailed and statistical information.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

XX Does not pertain to this Report.

STANDING COMMITTEE ON LABOUR
(2017-18)

Minutes of the Third Sitting of the Committee

The Committee sat on Tuesday, the 24th October, 2017 from 1100 hrs. to 1330 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. Kirit Somaiya - CHAIRPERSON

MEMBERS

LOK SABHA

1. Shri Rajesh Kumar Diwakar, MP
2. Shri Ashok Kumar Dohrey, MP
3. Shri Satish Chandra Dubey, MP
4. Shri Satish Kumar Gautam, MP
5. Dr. Boora Narsaiah Goud, MP
6. Shri C.N. Jayadevan, MP
7. Shri Bahadur Singh Koli, MP
8. Dr. Arun Kumar, MP
9. Shri Kaushalendra Kumar, MP
10. Shri Hari Manjhi, MP
11. Shri R. Parthipan, MP
12. Shri Hari Om Singh Rathore, MP
13. Shri Naba Kumar Sarania, MP
14. Shri Kodikunnil Suresh, MP
15. Shri Dayakar Pasunoori, MP

RAJYA SABHA

16. Shri Nazir Ahmed Laway, MP
17. Shri P.L. Punia, MP
18. Shri Rajaram, MP
19. Shri Amar Shankar Sable, MP
20. Shri Tapan Kumar Sen, MP
21. Shri N. Gokulakrishnan, MP
22. Ms. Dola Sen, MP

SECRETARIAT

1. Ms. Rimjhim Prasad - Joint Secretary
2. Smt. Anita B Panda - Director
3. Shri Dhiraj Kumar - Additional Director
4. Smt Archana Srivastva - Under Secretary

Part -I

Witnesses

REPRESENTATIVE OF BHARTIYA MAZDOOR SANGH (BMS)

Sl. No	Name of the Officer	Designation
1.	Shri Pawan Kumar	Zonal Organising Secretary, BMS

REPRESENTATIVE OF CENTRE OF INDIAN TRADE UNIONS (CITU)

Sl. No	Name of the Officer	Designation
1.	Smt. K. Hemalata,	President, CITU

REPRESENTATIVE OF ALL INDIA TRADE UNION CONGRESS (AITUC)

Sl. No	Name of the Officer	Designation
1.	Shri. Vidya Sagar Giri	Secretary, AITUC

REPRESENTATIVE OF ALL INDIA UNITED TRADE UNION CENTRE (AIUTUC)

Sl. No	Name of the Officer	Designation
1.	Shri Ramesh Kumar	Member

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Trade Unions to the sitting, convened to hear suggestions/ views of the representatives of the Central Trade Unions viz. (i) Bharatiya Mazdoor Sangh (BMS), (ii) All India Trade Union Congress (AITUC), (iii) Centre of Indian Trade Unions (CITU) and (iv) All India United Trade Union Centre (AIUTUC) on 'Code on Wages Bill, 2017'. The Chairperson

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then drew attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees. He then asked the representatives of various Trade Unions to put forth their suggestion/ views on 'Code on Wages Bill, 2017'.

3. The representatives of Trade Unions then raised the issues relating to universal wage, drawbacks of maintenance of minimum bank balance, same wage for same work to contract workers; national minimum wage, loopholes in implementation of Labour Laws/ Acts; violation of Right to Strike; Bonus Act, Equal remuneration/ wages; loopholes in inspection by Ministry; differentiation of workers under skilled, unskilled and semi skilled work etc.

4. Thereafter, the Members raised queries on various issues which, *inter-alia*, included universal wage; making wages region wise; gap between subjective and objective realities; measures to be taken for efficient implementation of the Act; monitoring process and conviction rate for non implementation of minimum wages/ Bonus; common minimum wages in Central and State Organisations, etc.

5. The Chairperson then thanked them for appearing before the Committee and responding to the queries raised. The Chairperson directed the representatives of various Trade Unions to furnish written memoranda on other clauses of the Bill on which they want to make suggestions within 10 days.

PART-II

REPRESENTATIVE OF PHD CHAMBERS OF COMMERCE & INDUSTRIES (PHDCCI)

Sl. No	Name of the Officer	Designation
1.	Shri Ravi Wig	Former President and Chairman, HR and IR Committee

**REPRESENTATIVE OF FEDERATION OF INDIAN CHAMBERS OF
COMMERCE AND INDUSTRY (FICCI)**

Sl. No	Name of the Officer	Designation
1.	Shri B.P. Pant	Advisor, FICCI

REPRESENTATIVE OF COMMERCE AND INDUSTRY OF INDIA (ASSOCHAM)

Sl. No	Name of the Officer	Designation
1.	Shri K.C. Mehra	Senior Managing Committee Member, ASSOCHAM

REPRESENTATIVE OF CONFEDERATION OF INDIAN INDUSTRIES (CII)

Sl. No	Name of the Officer	Designation
1.	Shri M. S. Unnikrishnan	Chairman CII National Committee on Industrial MD &CEO, Thermax Ltd.,

6. At the outset, the Chairperson welcomed the representatives of (i) The Associated Chambers of Commerce & Industry of India (ASSOCHAM), (ii) Confederation of Indian Industries (CII), (iii) Federation of Indian Chambers of Commerce & Industries (FICCI) and (iv) PHD Chambers of Commerce & Industries (PHDCCI), to the sitting convened to hear/ suggestion on 'Code on Wages Bill, 2017'. The Chairperson then drew attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees. He then asked the representatives of ASSOCHAM, CII, FICCI and PHDCCI to put forth their suggestions/ views on 'Code on Wages Bill, 2017'.

7. The representatives of CII, FICCI, PHDCCI and ASSOCHAM then raised the issues relating to universal wage, differentiation in wages of workers under (skilled/ semi skilled/ unskilled) category, comparison of minimum wages with other countries, definition and fixation of National minimum wage.

8. Thereafter, the Members raised queries on various issues which, *inter alia*, included the present wages given by the employer to the workers, initiatives taken by the garment Industry employers about the wages, discussion with the associations, eligibility of PF to garment workers problems faced by the Industries and measures to be taken to make the workers and Industries profitable.

9. The Chairperson then thanked them for appearing before the Committee and responding to the queries raised. The Chairperson directed representatives of PHDCCI, FICCI, ASSOCHAM and CII to furnish written memoranda on other clauses of the Bill on which they want to make suggestions within 10 days.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

STANDING COMMITTEE ON LABOUR
(2017-18)

Minutes of the Eighth Sitting of the Committee

The Committee sat on Thursday, the 11th January, 2018 from 1530 hrs. to 1700 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Dr. Kirit Somaiya, MP – Chairperson

MEMBERS

LOK SABHA

2. Shri Rajesh Kumar Diwakar, MP
3. Shri Ashok Kumar Dohrey, MP
4. Shri Satish Kumar Gautam, MP
5. Shri C.N. Jayadevan, MP
6. Shri Bahadur Singh Koli, MP
7. Dr. Arun Kumar, MP
8. Shri Hari Manjhi, MP
9. Shri Hari Om Singh Rathore, MP
10. Shri Kodikunnil Suresh, MP

RAJYA SABHA

11. Shri Ram Narain Dudi, MP
12. Shri Nazir Ahmed Laway, MP
13. Shri Rajaram, MP
14. Shri N. Gokulakrishnan, MP
15. Ms. Dola Sen, MP

SECRETARIAT

- | | | |
|------------------------|---|---------------------|
| 1. Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. Smt. Anita B Panda | - | Director |
| 3. Shri Dhiraj Kumar | - | Additional Director |
| 4. Shri C. Vanlalruata | - | Additional Director |

WITNESSES

REPRESENTATIVES OF COUNCIL OF INDIAN EMPLOYERS (SCOPE)

Sl. No	Name of the Officer	Designation
1.	Dr. U.D. Choubey	Director General
2.	Shri Rajeev Bhardwaj	Director (HR)

REPRESENTATIVE OF LAGHU UDYOG BHARATI

Sl. No	Name of the Officer	Designation
1.	Shri R.K. Bharadwaj	National Vice President

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of Council of Indian Employers (CIE) - SCOPE; and Laghu Udyog Bharti (LUB) to the sitting, convened to hear suggestions/ views of the representatives of the Council of Indian Employers (CIE) - SCOPE; and Laghu Udyog Bharti (LUB) on 'Code on Wages Bill, 2017'. The Chairperson then drew attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees. He then asked the representatives of stakeholders to put forth their suggestions/ views on 'Code on Wages Bill, 2017'.

3. The representatives of stakeholders then raised the issues relating to National Minimum Wage; payment of wages to employees; same wage for experienced and newly joined employees for same work; exploitation of employees by their employers in payment of minimum wage; offences and penalties under 'Section 52'; Section 6(1), sub-clause 2 & 3; minimum number of days to determine minimum wage, leave salary; ambiguity on clauses dealing

with fine, bonus etc., adding depreciation in calculation of profit under clause 30(a), revision of wages for employees working in unorganised sector; etc.

4. Thereafter, the Members raised queries on various issues which, *inter alia*, included efficient implementation of Act regarding minimum wages, DA and Bonus; measures to increase minimum wages; calculation of direct tax under universal wage; making wages region wise; measures to be taken for efficient implementation of the Act; monitoring process and conviction rate for non implementation of minimum wages/ Bonus; common minimum wages in Central and State establishments, etc.

5. The Chairperson then thanked them for appearing before the Committee and responding to the queries raised. The Chairperson directed the representatives of stakeholders to furnish written memoranda containing their suggestions on various clauses of the Bill, if any, within 10 days.

6. XX XX XX XX

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

XX Does not pertain to this Report.

STANDING COMMITTEE ON LABOUR
(2017-18)

Minutes of the Ninth Sitting of the Committee

The Committee sat on Thursday, the 18th January, 2018 from 1430 hrs. to 1645 hrs. in Committee Room No. '2', Parliament House Annexe - Extension Building, New Delhi.

PRESENT

Dr. Kirit Somaiya, MP - Chairperson

MEMBERS

LOK SABHA

2. Shri Rajesh Kumar Diwakar, MP
3. Shri Satish Kumar Gautam, MP
4. Shri Bahadur Singh Koli, MP
5. Dr. Arun Kumar, MP
6. Shri Kaushalendra Kumar, MP
7. Shri Naba Kumar Sarania, MP
8. Shri Dayakar Pasunoori, MP

RAJYA SABHA

9. Shri Nazir Ahmed Laway, MP
10. Shri Rajaram, MP
11. Ms. Dola Sen, MP

SECRETARIAT

- | | | |
|------------------------|---|---------------------|
| 1. Smt. Anita B Panda | - | Director |
| 2. Shri Dhiraj Kumar | - | Additional Director |
| 3. Shri C. Vanlalruata | - | Additional Director |

WITNESSES

REPRESENTATIVES OF MINISTRY OF LABOUR & EMPLOYMENT

Sl. No	Name of the Officer	Designation
1.	Smt. M. Sathiyavathy	Secretary (L&E)
2.	Shri Anil Kumar Nayak	Chief Labour Commissioner (C)
3.	Shri Manish Kumar Gupta	Joint Secretary
4.	Shri R.K. Gupta	Joint Secretary

2. XX XX XX XX. The Committee further decided to seek permission of Hon'ble Speaker to present the Report on 'Code on Wages Bill, 2017' till the second week of the Budget Session (Second Part).

3. Representatives of the Ministry of Labour & Employment were then ushered in. The Chairperson welcomed the representatives of Ministry of Labour & Employment to the sitting convened to hear views of the Ministry on the memoranda received by the Committee containing suggestions on 'Code on Wages Bill, 2017'. The Chairperson then drew attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees. He then asked the representatives of the Ministry to put forth their views.

4. The Secretary, Ministry of Labour & Employment then explained various points that emerged from the memoranda received on the said Bill by the Committee, through PowerPoint Presentation, which *inter-alia* included difference in definition of 'employee' and 'worker' Section 2(j), 2(y); definition of 'same work or work of similar nature' Section 2(u); definition of appropriate government; methodology of fixation of National Minimum wage; increase in minimum wages; universal national minimum wage; gap for reviewing minimum wages from 5 years to 3 years; existing minimum wage set by the State and Central Government; wage ceiling of Rs.18,000/- removed by the wage code under payment of wages act; dilution of Equal Remuneration Act

under gender discrimination; disputes regarding payment of wages, minimum wages or gender discrimination; appointment of facilitator in lieu of labour inspector/enforcement officer; dilution of provisions of inspections/enforcement mechanism; etc.

5. Thereafter, the Members raised queries on various issues which, *inter-alia*, included definition of "employer" under Section 2(k); Universal National Minimum Wage; setting the minimum wage at Rs.18,000 per month in the Code; extension of the provisions of Minimum Wage to Unorganized Sector workers; consultations between Central and State Governments while determining national minimum wages under section 9 (1), (2) & (3); deduction of 8 days wages for 1-day strike under the code; calculation of direct tax by the employer under Section 35(a); etc.

6. The Chairperson then thanked the representatives of the Ministry for appearing before the Committee and responding to the queries raised. The Chairperson directed the Secretary, Ministry of Labour & Employment to furnish written replies within ten days in respect of those queries, for which information was not readily available with them during the meeting as well as which required detailed and statistical information. Further, the Chairperson requested the Members to send their suggestions, if any, on the 'Code on Wages Bill, 2017'.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

XX Does not pertain to this Report.

STANDING COMMITTEE ON LABOUR
(2017-18)

Minutes of the Thirteenth Sitting of the Committee

The Committee sat on Wednesday, the 28th February, 2018 from 1130 hrs. to 1240 hrs. in Committee Room No. '2', Parliament House Annexe - Extension Building, New Delhi.

PRESENT

Dr. Kirit Somaiya, MP - Chairperson

MEMBERS

LOK SABHA

2. Shri Rajesh Kumar Diwakar, MP
3. Shri Satish Kumar Gautam, MP
4. Shri Bahadur Singh Koli, MP
5. Shri Kaushalendra Kumar, MP
6. Shri Hari Manjhi, MP
7. Shri Hari Om Singh Rathore, MP

RAJYA SABHA

8. Shri P.L. Punia, MP
9. Shri Ram Narain Dudi, MP
10. Nazir Ahmed Laway, MP
11. Shri Tapan Kumar Sen, MP
12. Shri N. Gokulakrishnan, MP

SECRETARIAT

- | | | |
|------------------------|---|---------------------|
| 1. Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. Smt. Anita B. Panda | - | Director |
| 3. Shri C. Vanlalruata | - | Additional Director |

2. At the outset the Chairperson welcomed the Members to the sitting of the Committee, convened for finalisation of Report on 'Code on Wages Bill, 2017'.

3. The Committee then held discussion on the draft report on 'Code on Wages Bill, 2017. The Chairperson gave an overview of the Recommendations of the Committee made in the Draft Report and requested the Members to give their suggestions on them, if any. Thereafter, the Members of the Committee desired some modifications/ suggestions in the draft Report like deductions from salary under section 18 of the Bill and whether the same is not deposited by the employers, deductions on account of absence from duty, calculation of direct tax payable, etc.

4. Further, the Chairperson requested the Members to give their suggestions on the Report on 'Code on Wages Bill, 2017, if any, in writing by 1st March, 2018 positively, so that the same may be incorporated in the report.

The Committee then adjourned.