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Comparative Analysis of Payment of Bonus Act 1965 and Code on Wages 2019

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ABSTRACT

In this Article we will be comparing the differences between the Payment of Bonus Act 1965 and Code on Wages 2019 enacted by the Indian Legislature. We will be discussing the key changes which were brought in by the legislature while enacting the Code on Wages 2019 and how those changes are going to affect the Payment of Bonus to the Employees and what are the duties of the Employer which he is obliged to follow under the said Code. We will also see what the intention of the Legislature was while enacting the Code on Wages 2019 and repealing the older version of the Payment of Bonus Act 1965.

Therefore, in this Article the author has dealt with each and every aspect of the provisions of Payment of Bonus which guides itself under Chapter IV of the Code specifically. The author has also given its opinion on what will be the circumstances and shortcomings which the Legislature must have foreseen, or which must be clarified in the future by the Legislature or by the Indian Courts after interpreting the law in its literal sense or applying the Golden Rule of Interpretation.

I. BACKGROUND OF PAYMENT OF BONUS ACT 1965

The Payment of Bonus Act 1965 was enacted by the Legislature in order to provide for the payment of Bonus to persons who are being employed by establishments on the basis of profits, production or productivity and any other matter incidental thereto.

In India, the scope of giving Bonus to the workers and employees was started during First World War when the Textile mill owners used to give a 10% of Bonus on Basic Pay to the workers as War Time Bonus. In the year 1960, the Government of India formed a Tripartite Commission in order to analyze and consider the question and method of payment of bonus based on profits to the Employees employed in the concerned establishments and to make the recommendations to the Government of India. After receiving the recommendations from the Committee in 1964, the government enacted this Act in the year 1965.

This Act was applicable for those employees whose were earning Rs. 21,000 and below per

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month and it was the duty of the State Government to notify the people earning below the salary threshold that they are eligible for Bonus under this Central legislation.

As the Parliament enacted Code on Wages 2019, in order to orchestrate and abridge the Labor Law on Wages in India, the provisions of this Act have been incorporated under the Code of Wages 2019 and this Act stands repealed as per *Section 69* of the Code on Wages 2019².

II. LEGISLATIVE INTENT FOR ENACTING CODE ON WAGES 2019

In India, there have been multiple Central as well as State Legislations for governing the rights and obligations of the Employers and Employees in India and each legislation having its own persistence and a set of compliances which are exclusive to the subject matter covered under it. Therefore, there have been many inconsistencies in implementing these legislations and its governance and administration becomes cumbersome on the government and employers.

The implementation of Code on Wages was a step taken by the Legislature to amend and consolidate the laws relating to wages, bonus, and equal remuneration under one code so that these central legislations can be simplified and there is one uniform system of governance to ensure a compliance regime that can be enforced easily and effectively.

The Code on Wages 2019 applies to all establishments, employees, and employers until and unless it is exempted by the code itself. The Code spreads over 9 Chapters and 69 Sections instead of 115 sections of the previously enacted four labor legislations. The definitions provided under Chapter I will be applicable to all the Code. In the Code on Wages 2019, Chapter IV specifically deals with the Payment of Bonus provisions and the matters incidental thereto.

III. KEY CHANGES UNDER CODE ON WAGES WITH REGARDS TO THE DEFINITION'S

There has been a significant change in certain definitions under the Code which will be applicable for all the Chapters and has unified the definition. The definitions which had a significant change are:

1. *Wages*: It includes salaries, allowances, or anything else which can be expressed in terms of money or is capable of being expressed and includes Basic Pay, Dearness Allowance and Retaining Allowance. There is a list of specified Exclusions given under the Code. For the purpose of Payment of Bonus Act 1965, the statutory bonuses paid to an employee are not calculated as part of income and are exempted.

² Payment of Bonus Act 1965, Statement of Objectives and Long Title.

2. *Employee*: The Code has expanded the definition of employee and virtually includes all persons engaged in an establishment including the persons working in the managerial and administrative capacity. Therefore, the threshold of Rs 21000 under *Section 2(13)* of the Payment of Bonus Act 1965, for the purpose of Payment of Bonus has been removed.
3. *Employer*: The definition of Employer under the Code now expressly includes any person who employs, whether directly or indirectly through any person, or on his behalf of any person.
4. *Appropriate Government*: The definition under Payment of Bonus Act was *para-Materia* with the definition under the Industrial Disputes Act and is most expansive.
5. *Applicability of the Code*: For the purpose of Payment of Bonus Act, there is no wage ceiling of an employee and it has to be notified by the appropriate government.

IV. COMPARATIVE ANALYSIS BETWEEN THE PAYMENT OF BONUS ACT AND CODE ON WAGES

Under this head we will be discussing the key changes that have been made by the Legislature while consolidating the Labor Laws into one Code:

1. In the previous legislation of Payment of Bonus Act 1965, the act was applicable to those people employed and working in an establishment having a salary less than and equal to Rs. 21000 per month. But under the new provisions of Payment of Bonus Act in the Code of Wages under Chapter IV, Section 26 stipulates that if an establishment or an employer employs at least 20 persons within a given accounting year, then these provisions will be applicable. All employees whose wages does not exceed a specific monthly amount which is to be notified by the Central or the State Government will be entitled to get a bonus. The Bonus will be billed on higher of minimum wage or the wage ceiling fixed by the appropriate government for payment of Bonus.

As the threshold to determine the payment of bonus is under the preview of the Government, it is to be noted that the provisions relating to the Computation of Bonus remains the same as under the Payment of Bonus Act 1965³.

This amendment has given flexibility to the Central and State Governments over the establishments over which they have jurisdiction, so that there is no need to amend the code again and again. But different thresholds being set by different State Governments will create a burden on the employer having branches in multiple states in following the compliances. It

³ Code on Wages 2019, Section 26, No. 29, Acts of Parliament, 2019 (India).

is also not clear that whether the Employee will be eligible to qualify for bonus which would be fixed to the lowest wage threshold fixed in any State or where the employer has a branch office or would be the eligibility be limited to wage threshold fixed by the State Government where the employee is located⁴.

2. Under the Payment of Bonus Act, *Section 9* stipulates the grounds for Disqualification for Bonus such as fraud, riotous or violent behavior on the premises of the establishment, theft, misappropriation, or sabotage of any property⁵. Therefore, under the Code on Wages a new ground under which an employee can be disqualified from getting a bonus has been added. As per *Section 29(d)*, if an employee has been terminated from the service on account of conviction for sexual harassment, then he is not entitled to Bonus under the provisions of the Code⁶.

3. As per *Section 2 (4)(a)*, of the Payment of Bonus Act, the bonus is to be paid out of the allocable surplus which is to be computed at the rate of 60% of the available surplus for the majority of industries. Therefore, there has been a change under the Code on Wages with regards to the computation of allocable surplus⁷. Under the Code the allocable surplus is calculated at the rate of 67% of the available surplus for all establishments except Banking Companies for which it is still capped at 60%.⁸

4. *Section 19* of the Payment of Bonus Act 1965 stipulates that all amounts which are payable to an employee as bonus shall be given in Cash by his employer within a period of 8 months within an accounting year⁹. In comparison to this, as per *Section 39(1)* of the Code on Wages 2019, this situation has been changed and now the bonus which is payable to an Employee within an accounting period is to be credited directly into the Bank Account of the Employee within a period of 8 months near to the accounting year¹⁰.

5. Under Payment of Bonus Act, if there has been any dispute pending in relation to the payment, then the payment of bonus would have been delayed until the dispute has been resolved¹¹. But under the Code on Wages, if the dispute relates to the payment of bonus at a Higher rate, then the employer is still liable to pay the bonus at 8.33% which is the minimum rate for payment of bonuses within a period of 8 months from the close of the accounting year,

⁴ Cyril Amarchand Mangaldas, The Code on Wages, 2019, (April 12th, 2021, 6:29 pm), https://www.cyrilshroff.com/wp-content/uploads/2019/09/Code-on-Wages-2019_1609.pdf.

⁵ Payment of Bonus Act 1965, Section 9, No. 21, Acts of Parliament, 1965 (India).

⁶ Code on Wages 2019, Section 29(d), No. 29, Acts of Parliament, 2019 (India).

⁷ Payment of Bonus Act 1965, Section 2(4)(a), No. 21, Acts of Parliament, 1965 (India).

⁸ Code on Wages 2019, Section 31(1), No. 29, Acts of Parliament, 2019 (India).

⁹ Payment of Bonus Act, 1965, Section 19, No. 21, Acts of Parliament, 1965 (India).

¹⁰ Code on Wages 2019, Section 39(1), No. 29, Acts of Parliament, 2019 (India).

¹¹ Payment of Bonus Act 1965, Section 19(a), No. 21, Acts of Parliament, 1965 (India).

and the excess amount if any after the dispute is resolved, has to be paid within a period of 1 month of the date of the award or settlement arrived at during the adjudication¹².

6. Under the Code on Wages, there is a provision for the appointment of Inspector cum Facilitator, whose job is to advise the employers and employees on various compliances prescribed under the code and also has the powers to inspect. The Appropriate Government has the power to develop an inspection scheme which may also provide for a web-based inspection and calling of information relating to inspection¹³.

7. The Limitation period for filing of claims by an employee have been increased to 3 years instead of 6 months to 2 years in the previous legislations¹⁴. Moreover, the burden of proof is laid on the Employer to prove that the claims aroused by the employee have been settled with.¹⁵

8. In comparison to previous legislations Code on Wages has brought in graded penalty system for contraventions of the provisions of the code. Unlike the previous legislations which provided stricter punishment of imprisonment up to 6 months and fine, the penal action under the Code is relatively merciful and only entails fine. However, if there has been another conviction under the code within 5 years of the first conviction, then then there will be imprisonment for 3 months and is not compoundable. Under previous legislations the fine which can be imposed was up to Rs. 2,00,000 as compared to Rs 1,00,000 under the Code.

V. CONCLUSION

Backed by the confidence of the Parliament, the enactment of Code on Wages sees to bring a significant change in the labor laws of India and will also address the wage crisis by abridging the array of definitions and authorities involved. Its enactment will help in simplifying the compliance requirements and will also increase the scope of the definitions and previous laws to make them inclusive of the vast unorganized sector. Therefore, on the other hand in our opinion, the Code on Wages 2019 has given made the definitions ambiguous as it leaves them open for wide interpretation by the judicial bodies and has given a wider discretion power to the Government for its interpretation.

However, the most bizarre thing which we noticed while going through the Code on Wages was that as per *Section 26(2)* of the Code, the employees who earn above the threshold which

¹² Code on Wages 2019, Section 39(2), No. 29, Acts of Parliament, 2019 (India).

¹³ Code on Wages 2019, Section 51, No. 29, Acts of Parliament, 2019 (India).

¹⁴ PDS Legal, Code on Wages 2019- Key Features and Highlights, Mondaq, (April 12th, 2021, 10:45 pm), <https://www.mondaq.com/india/employee-benefits-compensation/856716/code-on-wages-2019-key-features-and-highlights>.

¹⁵ Code on Wages 2019, Section 59, No. 29, Acts of Parliament, 2019 (India).

has been notified by the Appropriate Government, would also be entitled to get bonus based on their minimum wages or any such wage amount determined by the government, whichever is higher¹⁶. Such a provision covers all the employees of an organization to receive a bonus which significantly adds up to the cost of the company.

Under the Payment of Bonus Act, 1965 individuals earning less than Rs 21000 per month were eligible to receive bonus irrespective to their individual performance, whereas under the Code on Wages persons who does not come under the threshold as specified by the appropriate government would also be entitled to a guaranteed bonus ranging from 8.33 percent to 20 percent based on the amount of allocable surplus in the organization¹⁷.

It has added up to the cost of the companies irrespective of the individual's performance within the organization in this growing and competitive market.

Also, the Code on Wages has expanded the definition of the new establishments which were exempted to pay bonus under previous legislations. *Section 26(8) (Explanation 2)*¹⁸ of the Code stipulates that the goods manufactured or produced during the course of trial running of any factory or of the prospecting stage of any mine or an oilfield shall not be taken into consideration. But there is an ambiguity with regards to the time limit for such trial running, which makes easier for the existing establishments to evade from paying bonuses¹⁹.

Moreover, rather than strengthening the penal provisions under Code, they have been made more liberalized and only civil in nature, which give more liberty to the employers to escape in case of non-compliance towards the Code. Furthermore, in the previous legislation the inspector had a power of a surprise check of the establishment and impose penal charges, but now the Code has termed them as Facilitators, and it is their duty to help the employers and employees to follow the compliances under the Code²⁰.

¹⁶ Code on Wages 2019, Section 26(2), No. 29, Acts of Parliament, 2019 (India).

¹⁷ Atul Gupta, Code on Wages 2019: In Simplification, Confusion?, Bloomberg Quint, (April 12th, 2021, 10:35 pm), <https://www.bloombergquint.com/opinion/code-on-wages-2019-in-simplification-confusion>.

¹⁸ Code on Wages 2019, Section 26(8), No. 29, Acts of Parliament, 2019 (India).

¹⁹ Nivedita Jayaram, Protection of Workers' Wages in India: An Analysis of the Labour Code on Wages 2019, EPW Engage, (April 12th, 2021, 11:15 pm), <https://www.epw.in/engage/article/protection-workers-wages-india-labour-wage-code>.

²⁰ Ibid.