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India's First Step towards Consolidation of Labour Laws: The Code on Wages, 2019

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Deepak Arora

Manager - Government Relations and Public Policy, NASSCOM

Vikram Shroff

Head & Leader, HR Law, Nishith Desai Associates (Mumbai)

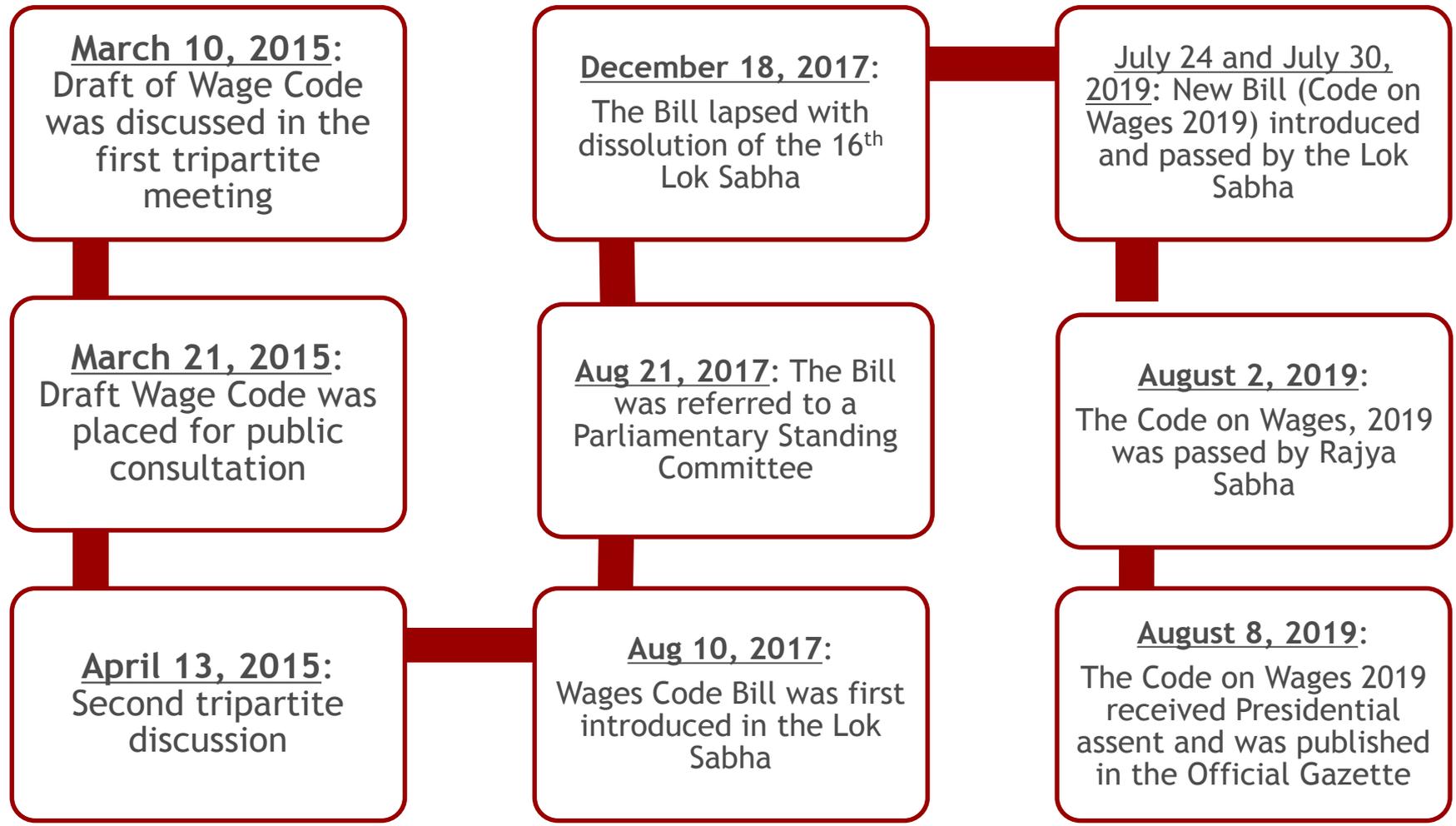
Preetha S

Leader, HR Law, Nishith Desai Associates (Bangalore)

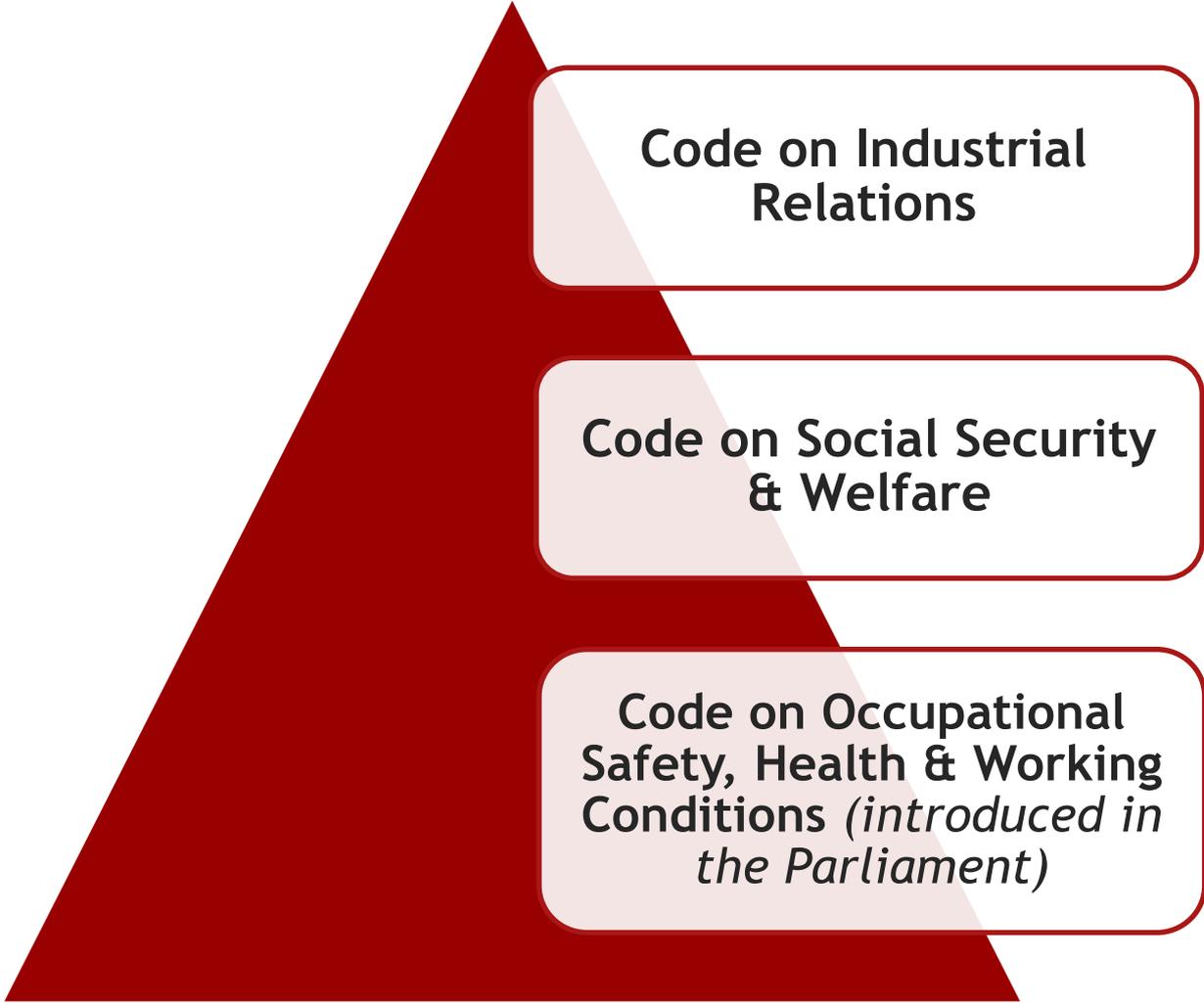
Background

- India has approximately 44 central and 100 state specific labour laws.
- The Ministry of Labour & Employment has been targeting the codification of labour laws to:
 - ✓ transform old & archaic labour laws
 - ✓ expand the ambit of the law (to cover a broader working population);
 - ✓ remove multiple definitions (often overlapping) & authorities;
 - ✓ ensure ease of compliance & ability to do business in India seamlessly;
 - ✓ rationalize penalties and accordingly increase implementation.
- India's federal level labour laws are proposed to be combined under four codes. **The Code on Wages, 2019 is the first in the series!**
- The Code on Wages now merely awaits its effective date.
- Different provisions of the Code may have different effective dates.
- The Rules under the Code on Wages, 2019 is yet to be released.

Evolution of the Wage Code



Other Codes in the pipeline



Code on Industrial Relations

Code on Social Security & Welfare

Code on Occupational Safety, Health & Working Conditions *(introduced in the Parliament)*

What is the Code on Wages?



Any action taken under the above enactments including any notification, nomination, appointment, order or direction made or any amount of wages paid shall be deemed to have been done under the Code on Wages unless it is contrary to the provisions of the Code and until such time that they are repealed by the provisions of the Code or a notification to that effect issued by the Central Government.

Code on Wages: Structure

Chapter I:

Applicability & Coverage, Definitions & provisions mandating equal remuneration

Chapter II

Provisions relating to payment of minimum wages

Chapter III

Provisions relating to payment of wages

Chapter IV

Provisions relating to payment of bonus

Chapter V

Constitution of an Advisory Board

Chapter VI

Manner of raising claims

Chapter VII

Appointment of Inspector cum Facilitator

Chapter VIII

Penalties

Chapter IX

Miscellaneous

Coverage and Applicability

- Applies to employees in both the organized and un-organized sectors.
- The provisions relating to payment of wages under the Wage Code will extend to **all employees** irrespective of their wage ceiling & type of employment whereas
 - a) the Payment Of Wages Act, 1936 (POWA) applies only to factories & certain specified establishments & those employees who draw monthly wages of up to INR 24,000 (approx. US\$ 340) and
 - b) the Minimum Wages Act, 1948 (MWA) which applies only to scheduled employments,



Definition of ‘Wages’

All remuneration whether by way of salaries, 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,—

- a) basic pay;
- b) dearness allowance; and
- c) retaining allowance, if any.

Exclusions:

Statutory bonus	Value of house accommodation/supply of water, light, medical attendance or other amenity	Provident fund, pension and interest accrued thereon	Conveyance allowance/ value of travelling concession
Sum paid to defray special expenses	House Rent Allowance	Remuneration payable under award or settlement	Overtime Allowance
Commission	Gratuity	Retrenchment Compensation	Other Retiral Benefits/Ex-gratia

Wages

- **Atleast 50% of total remuneration to constitute ‘wages’!**
- If the exclusions under the definition of ‘wages’ exceed one half or such other per cent. as may be notified by the Central Government of the entire remuneration, the amount which exceeds such one half or such other per cent. shall be treated as ‘wages.’

Case Study I

CTC Break Up	Amount
Basic	Rs 5000
HRA	Rs 3000
Conveyance	Rs 2000
Total	Rs 10,000

Wages under the Code = Rs.5000

Case Study II

CTC Break Up	Amount
Basic	Rs 4000
HRA	Rs 4000
Conveyance	Rs 2000
Total	Rs 10,000

Wages under the Code = Rs. 5000

Case Study III

CTC Break Up	Amount
Basic	Rs. 6500
HRA	Rs 2000
Conveyance	Rs 1500
Total	Rs 10000

Wages under the Code = Rs. 6500

Employee vis-à-vis Worker

The Wage Code distinguishes between an 'Employee' and a 'Worker'

An 'Employee' is 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.

A 'Worker' is any person (except an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied; however excludes *inter alia* (i) someone who is employed mainly in a managerial or administrative capacity; or (ii) someone who is employed in a supervisory capacity drawing a monthly wage exceeding INR 15,000 or such amount as may be notified by the Central Government.

Prohibition of Gender Discrimination (1/2)



- Also prohibits discrimination on the grounds of gender **while recruiting** any employee for the **same work or work of a similar nature** & in the **conditions of employment**, except in cases where employment of women in such work is prohibited or restricted under any law.
- While the ERA referred to 'discrimination **between men & women workers**', the Code on Wages 2019 prohibits discrimination on the '**grounds of gender.**'

Prohibition of Gender Discrimination (2/2)

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

- For the purpose of computing equal **‘wage’** to all genders, the following exclusions shall also be taken into consideration:
 - a) conveyance allowance/travelling concession;
 - b) HRA;
 - c) remuneration payable under an award or settlement or order of a court/Tribunal; and
 - d) overtime allowance.

Minimum Wages

- Unlike the MWA, which applies only to scheduled employments, the minimum wage provisions under the Wage Code will apply to all types of establishments irrespective of their nature of business/activities.
- **New concept of floor wages introduced!**
- The Central Government shall fix a floor wage taking into account the minimum living standards of workers & depending on the geographical areas.
- Basis the floor wage rate, appropriate government (Central or State) to fix the minimum wage rates.
- The minimum wages prescribed by the appropriate governments **cannot be lesser** than the floor wage.
- In the event that the existing minimum rate of wages fixed by the appropriate governments are **higher than the floor wage**, the appropriate governments **shall not reduce** the minimum wages fixed by them.
- The minimum rate of wages shall be reviewed and revised by the appropriate governments in intervals not **exceeding 5 years**.

Payment of Wages

- **New clause** on mode of payment of wages added to facilitate payment through electronic mode.
- **Fixation of wage period** by the employer either as daily or weekly or fortnightly or monthly, such that wage period should not exceed 1 month.
- **New clause on time limit** for payment of wages for various categories of employees has been fixed.
 - Employees engaged on daily basis, at the end of the shift;
 - weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
 - fortnightly basis, before the end of the second day after the end of the fortnight;
 - monthly basis, before the expiry of the seventh day of the succeeding month.
- **Time limit for payment of wages:** If an employee is removed, dismissed, retrenched, **resigns** or becomes unemployed due to closure of an establishment, the wages shall be paid **within two working days**.

Permissible deductions

- Consistent with the provision on permissible deductions under the POWA!
- Permissible deductions *inter alia* include:
 - a) Fines;
 - b) Deductions for absence from duty;
 - c) Damage or loss of goods;
 - d) Recovery of advances and overpayment of salaries;
 - e) Deductions for amenities & services provided by the employer;
 - f) Contribution to PM's National Relief Fund;
 - g) Deductions for income tax, provident fund etc.
- Deductions should not exceed 50% of the employee's total wages in a wage period.
- In cases where the authorized deductions exceed 50% of the wages, the excess may be recovered by the employer in the manner to be prescribed.

Payment of Bonus

Applicability & Coverage:

- Applicable to establishments employing at least 20 employees or
- establishments in which at least 20 employees have been employed on any day in the relevant accounting year
- Bonus shall be payable in the range of 8.33% - 20% of the employee's wages to all employees within the prescribed salary threshold who have worked for at least 30 working days in the relevant accounting year

Disqualification for Bonus:

If an employee is dismissed from service for:

1. Fraud
2. Riotous or violent behavior in the premises of the establishment,
3. Theft, misappropriation or sabotage of any property of establishment,
4. **Conviction for sexual harassment**

Inspector-cum-Facilitator



- **Right to be Heard:** In case of any violation on the part of the employer, the Inspector-cum-Facilitator shall not initiate action without giving an opportunity to the employer to rectify such non-compliance.
- In case of repetition of offence of the non-compliance **within five years** from the date of first violation, such opportunity **shall not** be provided.
- The appropriate government must lay down an ‘inspection scheme’ which may also provide for **web-based inspection** and calling of information.

Offences (& Penalties) and Limitation Period

Offences and corresponding degree of penalties increased!

Offences:

- (i) paying less than the due wages; or
- (ii) for contravening any provision of the Code on Wages.
 - The Code has decriminalized all offences **except** where it is a repeat of a similar offence within 5 years.
 - The maximum penalty is imprisonment for three months and/or with a fine of up to Rs. 1,00,000 (approx. US\$1,425).
 - The compensation payable for any default in payment of wages, minimum wages, bonus, etc. could be up to 10 times the claim determined by the relevant authority.
 - It also allows compounding of the first offence, which means that the organisation can pay a composition fee to settle the matter and avoid lengthy court proceedings.

Limitation Period has been increased!

- The period of limitation for filing of claims by a worker has been enhanced to **three years (from 6 months to 2 years)**.

Miscellaneous Provisions

Death of Employee:

- Dues will be paid to the persons nominated by the employee
- Where there is no nomination or for any reasons such amount cannot be paid to the person so nominated, then, the dues shall be deposited with the authority as specified in the rules.

Records, Returns and Notices:

- Code on Wages mandates the employer to:
 1. maintain a register containing details of the persons employed, muster roll, wages and such other details in the manner to be specified in the rules;
 2. display of a notice on the notice board at a prominent place at the establishment containing the abstract of the Code on Wages, category-wise wage rates of employees, wage period, day or date and time of payment of wages and the name and address of the Inspector cum Facilitator having jurisdiction;
 3. Issue wage slips to employees in the format to be prescribed.

Rules to specifying the formats for the registers/returns etc. are yet to be released!

Few Misses..

- The Code appears to be compilation of four laws rather than a true reform.
- No differentiation between small sized, mid-sized and large establishments in terms of compliance requirements
- The definition of ‘wages’ actually simplified?
- Is the performance of an employee irrelevant in determining bonus payments?
- The anti-discrimination provisions are confined to ‘gender based discrimination’.
- The ‘permissible deductions’ do not legalise clawback clauses (e.g: retention bonuses paid to employees).
- The onus to demonstrate compliance has expressly been shifted onto the employer in case of a claim made by an employee or trade union.
- The increase in limitation period could pose administrative and economic burden upon employers.

1. Do employers need to start complying with the Code on Wages now?
2. Is there a significant difference in the definition of ‘wages’?
3. Will the Central Government now fix the minimum wages for all establishments?
4. Are employers required to re-evaluate their existing wage structures?
5. Does the Code on Wages have any impact on provident fund contributions?
6. Is there any change in the law relating to working hours/ overtime/holidays for IT/ITeS companies?
7. Can the registers under the Code on Wages be maintained in electronic format?
8. How should the statutory bonus be calculated in the absence of a notification on the wage threshold?
9. Is compounding possible after prosecution has been initiated?
10. What would be the immediate action items for IT/ITeS companies once the effective date of Wage Code has been notified?

Disclaimer

This presentation is merely an overview of the recent and proposed changes to relevant Indian labour laws and does not purport to be exhaustive or conclusive. It does not constitute legal advice or opinion, and it should not be relied upon by any person for any purpose, nor is it to be quoted or referred to in any public document or shown to, or filed with any government authority, agency or other official body without our consent. We are relying upon relevant provisions of the Indian law, and the rules thereunder, and the judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial action or decisions. We disavow any obligation to update this presentation in the event of changes in applicable laws, or if additional or newly discovered information is brought to our attention.

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THANK YOU

deepak@nasscom.in
vikram.shroff@nishithdesai.com
preetha.s@nishithdesai.com