

THE CODE ON WAGES, 2017

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition of discrimination on ground of gender.
4. Determination of disputes with regard to same or similar nature of work.

CHAPTER II

MINIMUM WAGES

5. Payment of minimum rate of wages.
6. Fixation of minimum wages.
7. Components of minimum wages.
8. Procedure for fixing and revising minimum wages.
9. Power of Central Government to fix national minimum wage.
10. Wages of employee who works for less than normal working day.
11. Wages for two or more classes of work.
12. Minimum time rate wages for piece work.
13. Fixing hours of work for normal working day.
14. Wages for overtime work.

CHAPTER III

PAYMENT OF WAGES

15. Mode of payment of wages.
16. Fixation of wage period.
17. Time limit for payment of wages.
18. Deductions which may be made from wages.
19. Fines.
20. Deductions for absence from duty.
21. Deductions for damage or loss.
22. Deductions for services rendered.
23. Deductions for recovery of advances.
24. Deductions for recovery of loans.
25. Chapter not to apply to Government establishments.

CLAUSES

CHAPTER IV

PAYMENT OF BONUS

26. Eligibility for bonus, etc.
27. Proportionate reduction in bonus in certain cases.
28. Computation of number of working days.
29. Disqualification for bonus.
30. Establishment to include departments, undertakings and branches.
31. Payment of bonus out of allocable surplus.
32. Computation of gross profits.
33. Computation of available surplus.
34. Sums deductible from gross profits.
35. Calculation of direct tax payable by employer.
36. Set on and set off of allocable surplus.
37. Adjustment of customary or interim bonus against bonus payable under this Code.
38. Deduction of certain amounts from bonus payable.
39. Time limit for payment of bonus.
40. Application of this Chapter to establishments in public sector in certain cases.
41. Non-applicability of this Chapter.

CHAPTER V

ADVISORY BOARD

42. Central Advisory Board and State Advisory Boards.

CHAPTER VI

PAYMENT OF DUES, CLAIMS AND AUDIT

43. Responsibility for payment of various dues.
44. Payment of various undisbursed dues in case of death of employee.
45. Claims under Code and procedure thereof.
46. Reference of disputes under this Code.
47. Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies.
48. Audit of accounts of employers, not being corporations or companies.
49. Appeal.
50. Records, returns and notices.

CHAPTER VII

FACILITATOR

51. Appointment of Facilitators and their powers.

CHAPTER VIII

OFFENCES AND PENALTIES

52. Cognizance of offences.
53. Penalties for offences.
54. Offences by companies.
55. Composition of offences.

CLAUSES

CHAPTER IX

MISCELLANEOUS

56. Bar of suits.
57. Protection of action taken in good faith.
58. Burden of proof.
59. Contracting out.
60. Effect of laws, agreements, etc., inconsistent with this Code.
61. Delegation of powers.
62. Exemption of employer from liability in certain cases.
63. Protection against attachment of assets of employer with Government.
64. Power of Central Government to give directions.
65. Savings.
66. Power of appropriate Government to make rules.
67. Power to remove difficulties.
68. Repeal and savings.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

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.*

BE it 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.

5 (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; 5

(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; 10 15

(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; 20 18 of 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; 25 2 of 1912.

(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— 30

(I) any tax chargeable under the—

(A) Income-tax Act, 1961; 43 of 1961.

(B) Companies (Profits) Surtax Act, 1964; 7 of 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; 35

(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; 40 52 of 1961.

(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 45

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;

14 of 1947. (w) “Tribunal” shall have the same meaning assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947;

45 (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,—

(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. (y) “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—

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.

25 **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.

(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:—

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:

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.

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.

30 **13.** (1) 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;

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;

Power of Central Government to fix national minimum wage.

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

Wages for two or more classes of work.

Minimum time rate wages for piece work.

Fixing hours of work for normal working day.

(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 in action 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.

(4) 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 cranage 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.

(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:

10 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.

15 **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.

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

20 **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.

25 **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.

30 (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;

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

40 **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

5

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.

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
15 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.

5

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.

10

(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,—

15

(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:

20

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

25

(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

30

(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.

35

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:

40

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;

45

(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. 5

(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. 10

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, 15

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. 20

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: 25

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. 30

(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: 35

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. 40 45

(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—

(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.

CHAPTER V 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—

(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.

Non-
applicability
of this
Chapter.

Central
Advisory
Board and
State
Advisory
Boards.

44 of 1958.

5
9 of 1948.

10

15

20

25

30

35

40

(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 undischursed 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—

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

30 (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.

(4) Any application before the authority for claim referred to in sub-section (1) 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 (1) arises: 10

Provided that the authority referred to in sub-section (1) 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 (1) and the appellate authority appointed under sub-section (1) 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. (1) 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. 40

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. 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.

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, 5 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, Cognizance of offences.
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.

16 of 1926. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no 2 of 1974. court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class 15 shall try the offences under this Code.

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 45 in such case the prosecution shall be initiated in accordance with the provisions of this Code.

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

(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;

(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;

10

(s) the authority and manner of depositing with such authority, various undisbursed 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;

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

20

(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;

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

25

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

(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 modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

30

35

(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 | |
|------|--|---|---|---|-------------------|
| | Rs. | Rs. | Rs. | Rs. | Of (year) |
| 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. | Rs. | | |
| | Total of Item No.3..... | | | |
| 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</i> as per profit and loss account. | | | |
| 2. | <i>Add back</i> provision for: | | | |
| | (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</i> also: | | | |
| | (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. | | | |
| | Total of item No.3..... | Rs. | | |

| 1 | 2 | 3 | 4 | 5 |
|----|---|----------|---|-------|
| 4. | <p><i>Add</i> 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> | | | |
| | Net total of item No. 4..... | Rs. | | |
| 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 or agricultural income-tax). | | | * * |
| | (b) Profits of, and receipts relating to, any business situated outside India. | | | * * |
| | (c) Income of foreign concerns from investments outside India. | | | * * |
| | (d) Expenditure or losses (if any) debited directly to 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 or agricultural income-tax); | | | |
| | (ii) losses of any business situated outside India. | | | * * * |
| | (e) In the case of foreign concerns 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, taxation or development rebate or development allowance, 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. | | | |
| | Total of item No. 6 | Rs. | | |
| 7. | Gross profits for purposes of bonus (item No. 5 minus item No. 6) | Rs. | | |

Explanation.—In sub-item (aa) 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).

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 (ii) 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;

(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.

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;

(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.

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 un-willingness 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

A

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)

LOK SABHA

CORRIGENDA

to

THE CODE ON WAGES, 2017
[To be/As introduced in Lok Sabha]

1. Page (ii), in the Arrangement of Clauses, against clause 30,-

for "Establishment to"
read "Establishments to"
2. Page 27, line 9,-

for "constitutes by"
read "constituted by"
3. Page 39, line 4 from the bottom,-

for "by cheque or by crediting the wages through digital or electronic mode in"
read " by cheque or through digital or electronic mode or by crediting the wages in"
4. Page 39, line 2 from the bottom,-

for "by cheque or"
read "by cheque or through digital or electronic mode or"

NEW DELHI;

August 9, 2017

Shravana 18, 1939 (Saka)