

# Article on Satyamev Jayate to Shramev Jayate

मेहनत का सम्मान, अधिकार ए कसमान!!!

- Prity Adwani, FCS
- Tejas Jawale, ACS

*"We need to come out of the mindset that industry and labour are always in conflict with each other. Why not have a mechanism where both benefits equally?"*

**- Honorable Prime Minister Narendra Modiji**

## INTRODUCTION:

Before Independence, there was a need of labour laws to safeguard the interest of workers who were then the slaves to the britishers. After Independence till date there has been various major changes in Labour Laws considering the interest of the workers / employees who are working for various organisations, factories, corporates, etc.

There are more than 100 state and approximately 30 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security, wages, etc.

The 4 labour codes, that have been approved by the President are the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, subsuming 29 central labour regulations, aim to rationalise, consolidate and simplify these complex labour legislations. The codes also seek to expand the coverage of social security (such as pension) to include the unorganised sector, the self-employed, migrant workers etc. within the legislative framework. To cover about those codes in a single article would be too brief if mentioned. Therefore, though there are four labour codes which are in place, this article is written with an intention to highlight few of the important labour laws enforced in India towards Social Security of employees / workers.

## THE CODE ON SOCIAL SECURITY, 2020

*"New Labour Code for New India"*

The Code on Social Security, 2020 subsumes nine central labour legislations.

- ✓ Employee's Compensation Act, 1923
- ✓ Employees' State Insurance Act, 1948

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- ✓ Employees' Provident Fund and Miscellaneous Provisions Act, 1952
- ✓ Maternity Benefit Act, 1961
- ✓ The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959,
- ✓ The Cine Workers Welfare Fund Act, 1981,
- ✓ Payment of Gratuity Act, 1972
- ✓ The Building and Other Construction Workers Welfare Cess Act, 1996
- ✓ The Unorganised Workers' Social Security Act 2008.

**Applicability:** The Code shall apply to any establishment by notification of the Central Government subject to the threshold specified.

Highlights of the New Labour Code on Social Security are as follows:

1. Definitions for fixed-term employment, home-based worker, self-employed worker, platform worker and gig worker have been provided.
2. The definition of 'employee' was introduced and is applicable across all parts of the Code.
3. As per Section 3 of the Code, it is not mandatory to obtain registration if the industry establishment is already registered under any other Central labour law.
4. Section 4 of the Code provides the enforceability of social security organizations and their constitution. It is required for fund administration for different types of workers.
5. As per Section 125 of the Code, a fixed limitation period of 5 years will be set, including proceedings and inquiries for the determination of the money dues of an employee.
6. Aggregators have been introduced in the Code as a digital intermediary or a marketplace for a buyer or user of a service to connect with the seller or the service provider. As mentioned in Schedule 7 of the Code, the list of aggregators shall contribute 1%-2% of their annual turnover to the social security fund.
7. Fixed-term employees shall be subjected to payment of gratuity on a pro-rata basis by the employer. The gratuity period has been reduced from 5 years to 3 years for working journalists.
8. The Code specifies penalties for certain offences such as:
9. The Central Government may defer or reduce the employer's or employee's contributions (under PF and ESI) for up to three months in the case of a pandemic, endemic, or national disaster.

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***"To replace inspector raj system, inspector will be made inspector cum facilitator and random web-based inspection system will be also started."***

## **EXISTING LABOUR LAWS RELEVANT TO SOCIAL SECURITY:**

### **1. EMPLOYEE'S COMPENSATION ACT, 1923**

#### **Introduction:**

The Employee's Compensation Act, 1923 is made to offer compensation to the employees who have encountered injuries due to an accident during their employment. This Act ensures that rights of the Labours are maintained even after they encounter some disability or death due to an accident during their work.

#### **Scope:**

This act is applicable across India except for Jammu and Kashmir.

#### **Employers Liability of Compensation:**

In cases of

- (i) occupational disease
- (ii) Personal injury
- (iii) Accident
- (iv) Arising out of employment and in the course of employment
- (v) Notional Extension of employment

#### **Compensation:**

In case of Permanent Total Disablement: Amount equal to 60% of injured employees monthly wages or Rs.1,20,000/- whichever is higher.

In case of Death: Amount equal to 50% of injured employees monthly wages or Rs.1,20,000/- whichever is higher.

Compensation shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty.

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## 2. EMPLOYEES' STATE INSURANCE ACT, 1948

### Introduction:

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

- ✓ Sickness.
- ✓ Maternity Leave.
- ✓ Disorders(mental or physical).
- ✓ Disability.
- ✓ Death.

### Scope:

The Act extends to whole of India.

It applies to all factories and other establishments with 10 or more persons employed in such establishment and the beneficiaries' monthly wage does not exceed Rs 21,000 are covered (In Maharashtra and Chandigarh limit is 20 members rather than 10)

### Contribution

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

### Registration Requirements:

Registration under ESIC: Shops or Establishments that have 10 or more employees, drawing the wages of up to (not exceeded) Rs.21,000 /- a month are required to be registered in FORM 01 within 15 days after the act becomes applicable to a unit or establishment for ESIC under the ESI Act 1948.

### Compliances:

Every employer covered under this act has to comply with various compliances such as deposit of monthly contribution, in order to file half yearly return and report to ESIC authorities if there is any change in business activity, address, ownership and the management, maintenance of registers and records etc.

## 3. EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

### Introduction:

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

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provides for payment of terminal benefits on the happening of various contingencies such as retirement, closure, retirement on attainment of the age of superannuation, voluntary retirement and retirement due to factors which result in incapacity of the employee to work.

**Scope:**

The Act extends to whole of India.

It applies— (a) to every establishment which is a factory engaged in any industry specified in Schedule I of the Act and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

**Contribution:**

**PRESENT RATES OF CONTRIBUTION**

BY	CONTRIBUTION ACCOUNTS			ADMINISTRATION ACCOUNTS	
	EPF	EPS	EDLI	EPF	EDLI
<b>EMPLOYEE</b>	12% /10%	0	0	0	0
<b>EMPLOYER</b>	Difference of EE share and Pension Contribution	8.33%	0.5%	0.50% !! [w.e.f. 01-06-2018]	0 [w.e.f. 01-04-2017]

*EDLI: Employees' Deposit Linked Insurance Scheme*

**Compliances:**

- ✓ Payment of Contribution within 15<sup>th</sup> of the following month
- ✓ Details of Employees within one month of coverage
- ✓ Addition of Members: Within 15 days of the following month
- ✓ Details of Contribution: By 25<sup>th</sup> of the following month
- ✓ Consolidated Statement: Yearly alongwith Form 3A
- ✓ Return of Ownership: Within 15 days of coverage

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#### 4. MATERNITY BENEFIT ACT, 1961

##### **Introduction:**

The Maternity Benefit Act, 1961 is a legislation that protects the employment of women at the time of her maternity. It entitles women employees of 'maternity benefit' which is fully paid wages during the absence from work and to take care of her child.

##### **Eligibility:**

A woman must be working as an employee in an establishment for a period of at least 80 days in the past 12 months to be entitled to maternity benefit under the provisions of the Maternity Benefit Act.

The following female employees shall be eligible for maternity leave:

- ✓ delivers a baby (i.e. birth mother)
- ✓ legally adopts a child (i.e. adoptive mother) or
- ✓ is a commissioning mother. Commissioning mother means a biological mother who uses her egg to create an embryo implanted in any other woman (i.e. child born through surrogacy).

##### **Maternity Benefits:**

For a female employee having less than 2 children: shall be entitled for Maternity leave, with full pay for a period of continuous twenty-six (26) weeks (excluding National holidays) for each pregnancy up to a maximum of two (2) pregnancies.

The female employee can take Maternity leave earliest eight (8) weeks before the expected date of delivery.

For a female employee undergoing third pregnancy: shall be entitled for Maternity leave, with full pay for a period of continuous 12 weeks (excluding National holidays) for each pregnancy.

The female employee can take Maternity leave earliest 6 weeks before the expected date of delivery.

For an adoptive and commissioning mother: shall be entitled for Maternity leave, with full pay for a period of continuous 12 weeks, starting from the date on which the child is handed over to the mother.

In the event of a miscarriage: six (6) weeks of paid leave immediately following a miscarriage

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### **Creche Office:**

Each organisation having 50 (fifty) or more representatives will be required to have an obligatory creche office, either independently or alongside other normal offices. The lady is likewise to be permitted 4 (four) visits per day to the creche, which will incorporate the interim for rest permitted to her.

**Work from home:** If the nature of work assigned to a woman is such that she can work from home, an employer may allow her to work from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman.

## **5. PAYMENT OF GRATUITY ACT, 1972**

### **Introduction:**

Gratuity is a lump sum that a company pays when an employee leaves an organization, and is one of the many retirement benefits offered by a company to an employee.

In India, gratuity rules and requirements are set out under the Payment of Gratuity Act, 1972.

### **Scope:**

It extends to whole of India Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

It applies to:

- ✓ Establishment or class of establishments in which 10 or more employees are employed

### **Eligibility of Employees:**

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years.

### **Amount of Gratuity:**

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

\* Wages include all emoluments including DA, but does not include bonus, commission, HRA, overtime wages and any other allowances.

According to explanation under section 4(2), if the wages is paid monthly then the per day wage for the pupose of calculation of gratuity will be calculated as follows

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Salary/Wages for Gratuity = Rate of Monthly Wage Last Drawn \* 15 /26

**Compliances:**

✓ **Creation of Trust:**

As per the Income Tax Act, any contribution made by an employer towards payment of gratuity to employees, is not an allowed expenses meaning thereby it is not allowed for deduction however, the contributions made by the employer in a gratuity trust is allowed as a business expense under section 36 (1) (v) of the income tax act, 1961.

✓ **Due date of Payment:**

The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

**CONCLUSION:**

Changes in Labour Laws considering the changing era is a laudable step forward. However, the impact of changes labour law from time to time is immense, like it requires huge change in management for employers. Employers would need to start preparing for these laws by first analyzing the impact and then creating internal policies, processes and governance structures which are aligned with the various requirements under the labour laws.

Implementation of new labour codes would take many more years. However, Government is doing its best by framing the new laws considering the need in the society and the social security as a Priority.

**“Let us honour all the labourers and workers who are working day and night to build a country”**

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