



Aatma Capital
Nurturing Relationships



The Code on Wages, 2019-Part I

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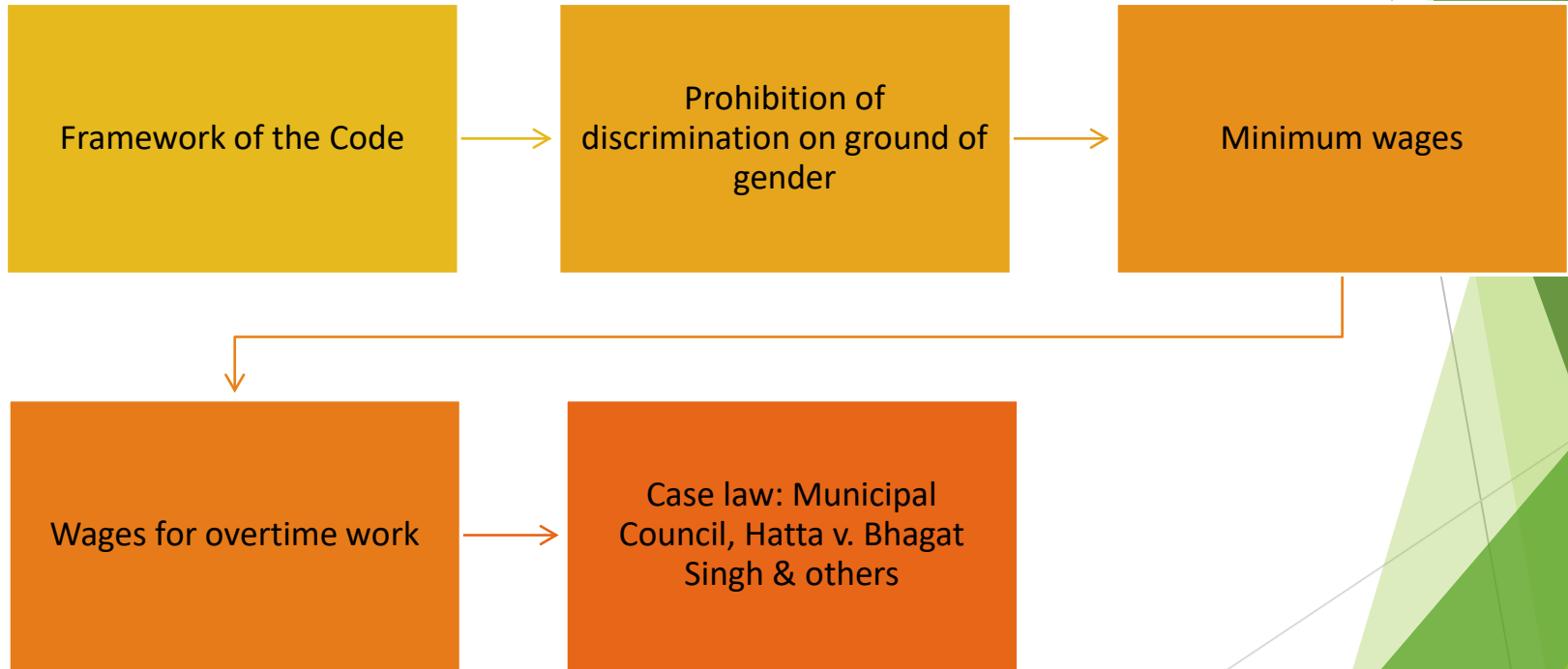
Credits and Acknowledgments

Iswariya BS

Legends used in the Presentation

CG	Central Government
Code	The Code on Wages, 2019
Govt.	Government
MWA	Minimum Wages Act, 1948
SG	State Government
u/s	Under section

Presentation Schema



Framework of the Code

Lok Sabha passed
the bill on 30th July,
2019

Rajya Sabha passed
the bill on 2nd
August, 2019

Received
President's assent
on 8th August, 2019

The Code on Wages, 2019 is an Act to consolidate and amend the laws regulating wages, bonus and for matters connected therewith or incidental thereto

Laws subsumed

The Payment of Wages Act, 1936

The Payment of Bonus Act, 1965

The Minimum Wages Act, 1948

The Equal Remuneration Act, 1976

Applicability as compared to the subsumed Acts

The Payment of Wages Act, 1936

- Applicable to employees who are drawing salary below a statutory limit

The Minimum Wages Act, 1948

- Applicable to employees engaged in scheduled establishments

The Code on Wages, 2019

- Applicable to all employees irrespective of limits and sector specific

Chapters of the Act

I- Preliminary

II- Minimum Wages

III- Payment of Wages

IV- Payment of Bonus

V- Advisory Board

VI- Payment of dues, claim and audit

VII- Inspector cum facilitator

VIII- Offences and penalties

IX- Miscellaneous

Definitions

- **Advisory Board** means the Central Advisory Board or, as the case may be,
- the State Advisory Board, constituted under section 42

- **Appropriate Government** means -
- → in relation to, an establishment carried on by or under the authority of the CG / the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company / a corporation / other authority established by a Central Act / a central public sector undertaking / subsidiary companies set up by central public sector undertakings / autonomous bodies owned or controlled by the CG, 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 CG
- → in relation to any other establishment, the SG

Contd.

- **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 / unskilled, manual, operational, supervisory, managerial, administrative, technical / clerical work for hire / reward, whether the terms of employment be express / implied,
 - and also includes a person declared to be an employee by the appropriate Govt.,
 - but does not include any member of the Armed Forces of the Union
-
- **Employer** means a person who employs, whether directly / through any person / on his behalf / on behalf of any person, one / more employees in his establishment and where the establishment is carried on by any department of the CG / SG, the authority specified, by the head of such department, in this behalf / where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—
 - (i) in relation to an establishment which is a factory, the occupier of the factory and where a person has been named as a manager of the factory
 - (ii) in relation to any other establishment, the person who / the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager / MD, such manager / MD
 - (iii) contractor and
 - (iv) legal representative of a deceased employer

- **Establishment** means any place where any industry, trade, business, manufacture / occupation is carried on and includes Govt. establishment

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

Contd.

- **Wages** means all remuneration whether by way of salaries, allowances / 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 / of work done in such employment, and
 - Includes -
 - basic pay;
 - dearness allowance; and
 - retaining allowance, if any,
 - but does not include –
 - Bonus payable which does not form part of remuneration under the terms of employment
 - Value of any house accommodation, any service which is excluded from the computation of wages by general / special order of appropriate Govt.
 - Contribution paid by the Employer for any pension / provident fund and interest accrued
 - any conveyance allowance or the value of any travelling concession*
 - any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment
 - house rent allowance*

Contd.

→ remuneration payable under any award or settlement between the parties or order of a court or Tribunal*

→ any overtime allowance*

→ any commission payable to the employee

- For calculating the wages under this clause, if payments made by the employer to the employee under clauses above (highlighted in blue colour) exceeds $\frac{1}{2}$ or such other per cent as may be notified by the CG, of the remuneration calculated under this clause, the amount which exceeds such $\frac{1}{2}$ or the per cent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause

→ any gratuity payable on the termination of employment

→ any retrenchment compensation or other retirement benefit payable to the employee / any *ex gratia* payment made to him on the termination of employment

- For the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (highlighted with * mark) shall be taken for computation of wage

Contd.

- **Worker** means any person (except an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes—
 - working journalists and
 - sales promotion employees and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged / retrenched / otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,
- but does not include any such person—
 - who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957 or
 - who is employed in the police service or as an officer or other employee of a prison or
 - who is employed mainly in a managerial or administrative capacity or
 - who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time

Prohibition of discrimination on ground of gender

- **No discrimination on the ground of gender** in matters relating to wages-

By the same employer

For the same work or

Work of similar nature done by the employee

- Employer shall not
- **Reduce the rate of wages** and
- **Make discrimination on the ground of sex while recruiting** (except employment of women is restricted / prohibited under any law for the time being in force)

- Dispute regarding the work is same / of similar nature will be decided by the authority notified by the appropriate Govt.

Chapter II- Minimum Wages

Fixation of Minimum rate of wages by appropriate Govt.

For time work or

For piece work

Even for employees who are employed on piece work, minimum rate of wages shall be fixed on time work basis

Manner of fixing minimum rate of wages on time work basis

Hour or

Day or

Month

Contd.

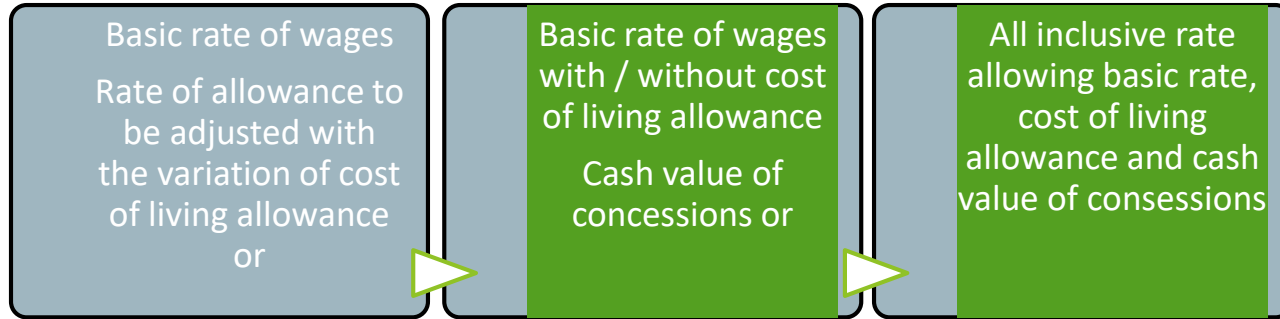
Criteria to be considered by appropriate Govt. while fixing minimum rate of wages

the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled / geographical area / both and

arduousness of work like temperature / humidity normally difficult to bear, hazardous occupations / processes / underground work and

Such other norms as may be prescribed

Components of minimum wages



- 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 Govt. may by notification, appoint

Contd.

Fixing / revising the minimum rate of wages

- Appointing committees to hold enquiries and recommend in respect of fixation / revision or
- By notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of the notification for taking the proposal into consideration

Composition of Committee

- representing employers
- representing employees equal to persons representing employers and
- independent persons, not exceeding 1/3rd of the total members of the committee

Issue of notification

- After considering the recommendation of the Committee / on receipt of all representations, appropriate Govt. shall issue notification
- It shall come into force as specified in it / on expiry of 3 months from the date of issue
- At the time of revision the appropriate Govt. shall consult the concerned Advisory Board

Period of review / revision

- At an interval not exceeding 5 years

Fixation of floor wage by CG

Based on the minimum living standard of the worker and it can vary for different geographical areas

Minimum rate of wages fixed by the appropriate Govt. shall not be less than the floor wage

Minimum rate of wages fixed by appropriate Govt. \geq Floor wage fixed by CG

If the minimum rates of wages fixed by the appropriate Govt. **earlier is more than the floor wage**, then, the appropriate Govt. **shall not reduce** such minimum rates of wages fixed by it earlier

CG may consult Central Advisory Board and SG before fixing floor wage

Wages of employee whose wages are fixed on day basis works for less hours than normal working hours

Generally, he will be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day

Exceptions:

- 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
- Such other cases and circumstances as may be prescribed

Contd.

Wages for 2 / more classes of work by an employee

If different minimum rate of wages is applicable for each work, then, the employer shall pay in respect of the time respectively occupied in each class of work, **not less than the minimum rate in force for each such class**

Minimum time rate wages for piece work

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

Contd.

Fixing hours of work for normal working day

No. of hours of work in a normal working day inclusive of intervals,

Day of rest in every period of 7 days and

To provide **payment for work on a day of rest** at a rate not less than the overtime rate

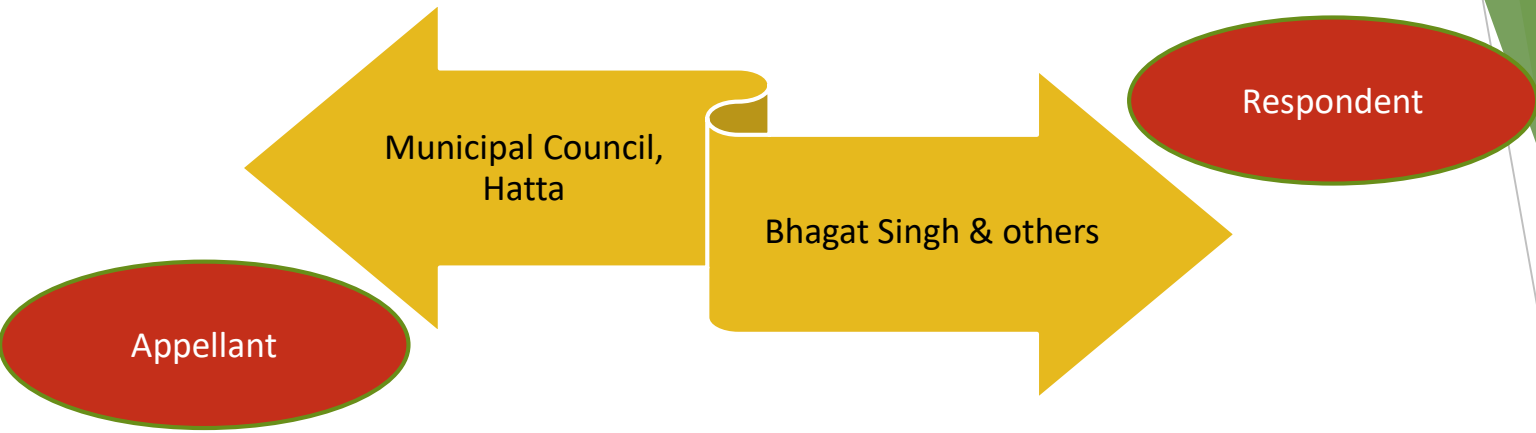
For **certain classes of employees the above will apply to an extent and subject to conditions** (employees engaged in any emergency work, whose employment is essentially intermittent, work in nature of preparatory / complementary etc.)

Employment of an **employee is essentially intermittent** if it is declared by the appropriate Govt. on the ground that the daily hours of duty or if there is no daily hours of duty, the **hours of duty normally include periods of inaction** during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Wages for overtime work

- Works on any day in **excess of the number of hours** constituting a normal working day by the employee,
- shall be paid by the Employer **for every hour / 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

Case law



Facts of the case

Respondents who are employees of Appellant have filed an application u/s 22 of MWA, 1948 for payment of overtime wages on the ground that they were working for 4 additional hours everyday before the competent authority (Labour Court)

The appellant filed a writ petition to the High Court but, the same was dismissed

Appeal to SC

Thus, the appellant filed a petition in the Supreme Court

Analysis of the case:

The appellant- Municipal Council are governed by the provisions of the Madhya Pradesh Municipalities Act, 1961 and there is no provision under the Rules for payment of any overtime allowance

But, the respondents contended that they would be entitled to overtimes wages u/s 14 of the MWA, 1948

SC Analysis and Decision as on 6th February, 1998

- As per MWA, 1948 the wages applicable to the respondents are Rs.50 p.m.
 - But, the respondents are getting wages above the minimum wages prescribed under the MWA, 1948
 - As per section 14 of MWA, 1948 – overtime wages is available to the employees, whose minimum rate of wages is fixed under the MWA, 1948
-
- Thus, in the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under MWA, 1948
 - As they are getting much more and that too under the Madhya Pradesh Municipal Services (Sales of pay and allowances) Rules, 1967
 - The application u/s 22 of MWA, 1948 is misconceived and MWA does not apply to those who are getting better wages under other statutory rules

Appeal was allowed and the order of High Court and competent authority was set aside



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