

New Labour Codes of India
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Lecture 25
Bonus

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Dear students, in this class we are going to discuss about bonus. So, what is the concept of a bonus, who is eligible to get the bonus, and who can claim the bonus? If a company is running on loss, whether the employees can claim a bonus, and how many times the bonus is to be paid per year, and what is the minimum bonus and what is the maximum bonus, are the topics of our discussion today.

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CONCEPTS COVERED

- Concept of bonus
- Payment of Bonus
- Minimum Bonus
- Eligibility for Bonus
- Disqualification for Bonus
- Allocable surplus

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KEYWORDS

- Bonus

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Payment of Bonus Act, 1965 - Repealed

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Historical Aspects

- The practice of paying bonus in India appears to have originated during World War I, when certain textile mills granted 10% of wages as war bonus to their workers in 1917.
- In 1950, the Full Bench of the Labour Appellate evolved a formula for determination of bonus.
- A plea was made to raise that formula in 1959.
- At the 2nd and 3rd meetings of the 18th Session of Standing Labour Committee (G.O.I.) held at New Delhi in March/April 1960, it was agreed that a Commission be appointed to look into the question of bonus and evolve suitable norms.



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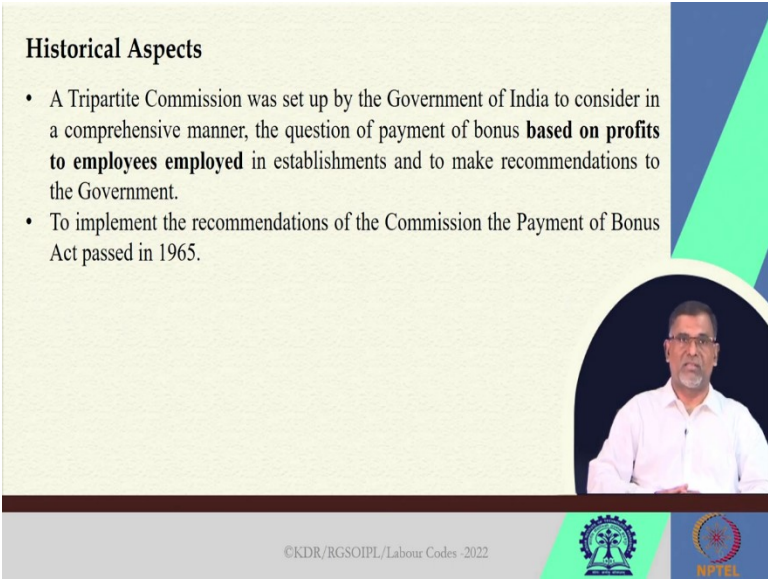
And if you look into the concept of a bonus, we can see that it is, actually, it is a return back of some kind of money to the employees as gratitude towards their work. So, this practice has not started post-independent time and much before the British time also, this was claimed by the employees and some of them may have started paying, especially after the First World War, certain textile mills are granted 10 percent of wages as war bonus.

So, at that point of time, the concept of bonus was something else. So, giving some additional money to the workers so that they will be benefited. So, this bonus was paid in 1970, 10 percent of wages. So, when it comes to the 1950s after most of the colonial countries become

independent. So, you can say that here the Full Bench of the Labour Appellate evolved a formula for the determination of bonus.

And also, that there was in the post-independence day, you can see that there were many times the percentage of bonus has been increased. And in many of the meetings of the standing labour committees the problem of what is exactly to be paid as a bonus has been discussed and the Labour Commissions has discussed this particular issue, and then finally come out with the illustration.

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Historical Aspects

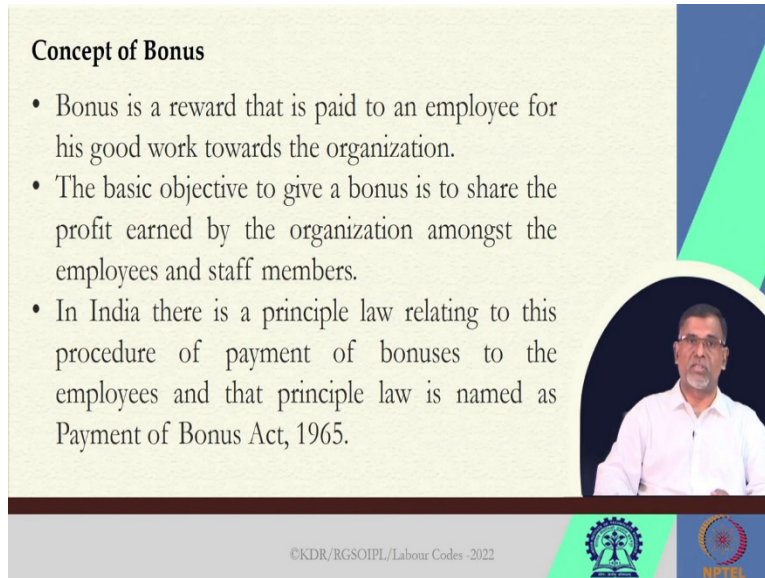
- A Tripartite Commission was set up by the Government of India to consider in a comprehensive manner, the question of payment of bonus **based on profits to employees employed** in establishments and to make recommendations to the Government.
- To implement the recommendations of the Commission the Payment of Bonus Act passed in 1965.

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The slide features a video inset of a man in a white shirt speaking. At the bottom, there are logos for the Government of India and the Labour Appellate Tribunal (LAT).

So, here we can say that always it is the bonus is thought to be a part of the profit, which is made by the employer. So, it is evident when it comes to so then we asked whether it is to be made a statutory right through this particular Act. That is the Payment of Bonus Act 1965, the Government of India made this particular practice a statutory provision. Now, everybody can ask for this bonus as a statutory right rather than a practice.

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Concept of Bonus

- Bonus is a reward that is paid to an employee for his good work towards the organization.
- The basic objective to give a bonus is to share the profit earned by the organization amongst the employees and staff members.
- In India there is a principle law relating to this procedure of payment of bonuses to the employees and that principle law is named as Payment of Bonus Act, 1965.

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And as we already said, actually a bonus is a reward that is paid to the employee for his good work towards the organization. It started like that. And it is also a share of the profit earned by the organization and which is transferred to the employees and it is staff members. So, this procedure of the now, the payments as I already said that statutory right under the Payment of Bonus Act 1965. So, after a lot of deliberation, during the post-independent time, the government enacted the Payment of Bonus Act 1965.

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Payment of Bonus Act, 1965 - Repealed

Objective:

- An Act to provide for the **payment of bonus to persons employed** in certain establishments **on the basis of profits** or on the **basis of production or productivity** and for matters connected therewith.
 - To impose statutory liability upon an employer of every establishment covered by the Act
 - To define principle of payment of bonus
 - To provide for minimum and maximum bonus
 - To provide machinery for enforcement of the liability



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If we look into the Act, it clearly says that it put a statutory liability upon the employer and also every establishment is covered by this particular Act. So, payment of bonus to persons employed in certain establishments. So, the government can exempt on the basis of profits or on the basis of production or productivity and for other matters. And also, the principle of payment of bonus is defined under this particular Act. And also, provided the minimum bonus and maximum bonuses, and also the machinery for enforcement of liability has been incorporated at that point of time in the Payment of Bonus Act 1965.

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Amendment to Payment of Bonus Act - Applicability

- In Section 2(13) of the Payment of the Bonus Act, 1965 the words “not exceeding ₹3,500/- per mensem” shall be **omitted**.
- In section 2(13) of the Payment of Bonus Act, 1965, *for the words “three thousand and five hundred rupees”, the words “₹10,000/-”* shall be **substituted**.
- In 2015, The ceiling was extended from **₹10,000/- to ₹21,000/-**.



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So, an amendment also has been made from time to time to this particular Act to increase the ceiling, the ceiling of salary, which they received per month. So, presently for a long period of time, the ceiling of salary was 10,000. People who are getting 10,000 or below are eligible to get this bonus for a long period of time. And 2015, the government increased more than doubled and presently the ceiling is 21,000 rupees. So, every person who is getting a salary per month, a salary of 21,000 or below is eligible to get a bonus.


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Amendment to Payment of Bonus Act - Applicability

- The constitutional validity of the act was challenged in the Supreme Court in the case of *Jalan Trading Company Ltd. v. Mill Mazdoor Sabha*, on the grounds of violation of Articles 14 and 19 of the Constitution.
- The Supreme Court ruled that the main provision of the Act which required the payment of a minimum bonus was constitutional.
- The payment of a bonus is fair since it complies with Articles 39 and 43 of the Constitution.



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And we can see whether it can be claimed as a statutory right. And also, the constitutional validity of this particular Act was posted in like in any other case. So, the people said that this is going to affect our trade and business and which is a fundamental right. So, in *Jalan Trading Company Limited versus Mill Mazdoor Sabha*, the constitutional validity of this particular Payment of Bonus Act has been questioned on the grounds of violation of Article 14 and Article 19 of the Constitution.

So, Supreme Court held that the main provisions of the Act, which required payment of a minimum bonus was constitutional. And the payment of bonus is fair, since it complies with Article 39 and 43 of the constitution. So, the Constitution provisions, in order to implement the constitutional provisions, the government can implement the legislations to implement the Social Security legislation in the name of excretion payments to employees. So, in this particular case, the Supreme Court confirmed the constitutional validity of the Payment of Bonus Act 1965.


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2007 Amendment to Payment of Bonus Act - Applicability

- Section 32 of the Act **excludes certain classes of employees** from the application of the Act such as employees in Life Insurance Corporation, Seamen, Dockworkers, University employees, employees employed through contractors on building operations, etc.



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And, as I said that from time to time, it is made applicable to many of the institutions and also excluded certain organizations, special organizations like LIC of India, Seaman, Dockworkers, University employees, employees employed through the contractors on building operations, etcetera. But we can see that even though it is specifically excluded in the Act, the employees of some of these organizations definitely through their collective bargaining power ask for the minimum bonus. So many of the operations like for example, building operations and constructions and also the contractors.

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Eligibility

- In **East Asiatic Co. Ltd. Vs Industrial Tribunal**, it was held that a retrenched employee *is eligible* for the bonus if they worked for a min of 30 days and have a salary of 10,000 pm in a year.



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In the East Asiatic Company Limited versus Industrial Tribunal. The court held that a retrenched employee is eligible for the bonus if he is worked for the minimum period of 30 days mentioned under the Act and the statutory minimum salary if he is drawing only the statutory minimum of Rupees 10,000 at a time. So, irrespective of the fact that he has been retrenched, but he has been retrenched after working for the statically required number of days he worked, then he is eligible for the bonus, for that particular financial year. And this is made clear in this particular case.

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The **Code** on Wages, 2019



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The Code on Wages, 2019

Objective:

- An Act to **amend** and **consolidate the laws** relating to **wages** and bonus and matters connected therewith or incidental thereto.



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The Code on Wages, 2019 - Certain Relevant Provisions

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. Establishments 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



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So, when we come to the code on wages, so it is the Code on Wages is also very clearly mentioned about it is to consolidate laws relating to the bonus as well. So, we will see the specific provisions with regard to that.


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The Code on Wages, 2019 - "Wages"

- ❑ 2(y) "wages" means **all remuneration**
- ❑ Whether by way of **salaries, allowances or otherwise,**
- ❑ Expressed in terms of money or capable of being so expressed,
- ❑ If the terms of employment, express or implied, were fulfilled,
- ❑ Which would be **payable** to a person employed in respect of his employment or of work done in such employment, and **includes**—
 - i. Basic pay;
 - ii. Dearness allowance; and
 - iii. Retaining allowance, if any
- **But does not include-**
- Any **bonus** payable under any law for the time being in force, **which does not form part of the remuneration** payable under the terms of employment;



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And here, so, we already discussed many times the definition of wages. So, the wages now include the basic wages, dearness allowances and retaining allowances, but clearly exclude the bonus payments. So, the bonus is not going to be part of the wages for all the purposes of the calculation of wages.


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Application of this Chapter to **establishments in public sector**

- 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 20% of the gross income** of the establishment in public sector for that year, then,
- The provisions of this Chapter **shall apply in that public sector** as they apply to private sector.
- **In any other case,** this Chapter **shall not apply to the employees employed by any establishment in public sector.**



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And here is the application, so we can see that in certain sectors like public sectors, public sector undertakings. And also, if it is selling goods and also manufacturers and service providers. So, in competition with the private sector. And we can see that they are also liable to pay a bonus. And

also, we can see that even in the public sector the gross income is less than or not less than 20 percent of the year.


Then also it is applied, these provisions are applicable to public sector undertakings as well. Otherwise, also now unions through their collective bargaining capacity, claim bonuses even from public sector undertakings as well. So, in India as far as India is concerned, even though there are specific provisions in the Act excluding certain conditions to the public sector undertakings, the workers with their collective bargaining power claim bonus. And the employees are forced to pay a bonus.

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Non-Applicability of this Chapter

This Chapter **shall not apply** to—

- Employees employed by the **Life Insurance Corporation of India**;
- Seamen under section 3(42) of the **Merchant Shipping Act, 1958**;
- Employees registered or listed under **Dock Workers (Regulation of Employment) Act, 1948**
- Employees employed by an establishment under the authority of any department of the **Central Government or a State Government or a local authority**;
- Employees employed by—
 - Indian Red Cross Society** or institution of a like nature
 - Universities** and other educational institutions;
 - Institutions including hospitals, chamber of commerce and social welfare institutions established **not for purposes of profit**
- Employees employed by the **Reserve Bank of India**



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And we can see that the other provisions certain specific exceptions are also made in the wages code I told you that in the Life Insurance Corporation, Merchant Shipping Act, Dock Workers add also in central government and state government or any local authorities and also employees of Indian Red Cross and Universities and other educational institutions are specifically exempted.


And other institutions like hospitals, chamber of commerce, and social welfare institutions, those who are working not for profit purposes are excluded. The employees of the Reserve Bank of India and other financial banking institutions are also excluded from the purview of this particular act.

That does not mean that those who are working in LIC do not have any bonus and those who are working in the banking sector does not have the bonus, yes, definitely, they also have bonus under their own special legislation and definitely the bank employees, we know that one of the highly organized sectors which they claim bonus through their bargaining power every year.

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Non-Applicability of this Chapter

- ❑ Employees employed by **public sector financial institution other than a banking company**, which the Central Government may, 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
 - iv. Any other relevant factor
- ❑ Employees employed by **inland water transport establishments operating on routes passing through any other country**; and
- ❑ Employees of **any other establishment** which the appropriate Government **may exempt** having regard to the overall benefits under any other scheme of profit sharing available in such establishments.



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And here we can see that certain specific sectors have non-applicability of these particular provisions. And public sector financial institutions, which I have already talked about the banking companies and specifically with regard to the capital structure, so, the nature of the activities, the nature of financial extractions and other factors to be taken into consideration, the employees of banking companies are very clear.


So, they want bonus, so many times there will be strikes to get bonus in these particular sectors. And also, we can see that inland water transport establishments operate the routes passing through any other country and also employees of any establishment. So, the government have the power to exempt itself from the purview of this particular act.

So, on the way around also we can see that the government exempt certain establishments, but the workers or employees through their bargaining capacity, and collective bargaining capacity, claim bonus, and we already said that like LIC or in banking sector institutions.


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Sarva Udyog Kamgar Sangh. vs. Jawahar Engineers Pvt. Ltd. (13.02.2002 - BOMHC)

- Govt. order granting exemption to the establishment from the application of the Bonus Act.
- Held: It is, necessary that the impugned order satisfies the three parameters laid down by the Supreme Court, namely **(a) financial position of the establishment; (b) relevant circumstances as may be applicable to the establishment; and (c) the public interest as a whole** and not confined to the personal or private interest of the establishment concerned.



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In some of the cases like Sarva Udyog Kamgar Singh versus Jawahar Engineers Private Limited, by the Bombay High Court. So, here, the government order granting exemption to certain establishments or exemption under the Bonus Act. So, the court said that, so, if certain conditions are satisfied, if certain conditions are satisfied, then the government can accept, like the financial position of the establishment to be taken into consideration, relevant circumstances applicable to the establishment, and thirdly, public interest as a whole.

These are the conditions laid down by the Supreme Court and it is not confined to the personal or private interests of the establishment. So, the private interests of the establishment need not take into consideration, but the financial position should be taken into consideration and circumstances applicable to that particular establishment, and thirdly, public interest. These are the 3 conditions to be taken into consideration when the government makes orders for exemption from payment of bonus under the Payment of Bonus Act 1965.


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Applicability of this Chapter

☐ Subject to the restrictions mentioned, the provisions of this Chapter **shall apply** to such establishment in which **20 or more persons are employed or were employed** on any day during an accounting year.



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And here also we can see that. So, this particular Act is applicable under the present situation to establishments in which 20 or more employees are working, or employed during any working accounting year. So, if 20 or more employees are employed, they are eligible to get the bonus every year.


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Eligibility for bonus

- There **shall be paid to every employee**
- By his employer
- Who **has put in at least 30 days work in an accounting year,**
- An annual minimum bonus calculated **at the rate of 8.33 %** of the wages or **₹100, whichever is higher**
- Whether or not the employer has any allocable surplus during the previous accounting year.



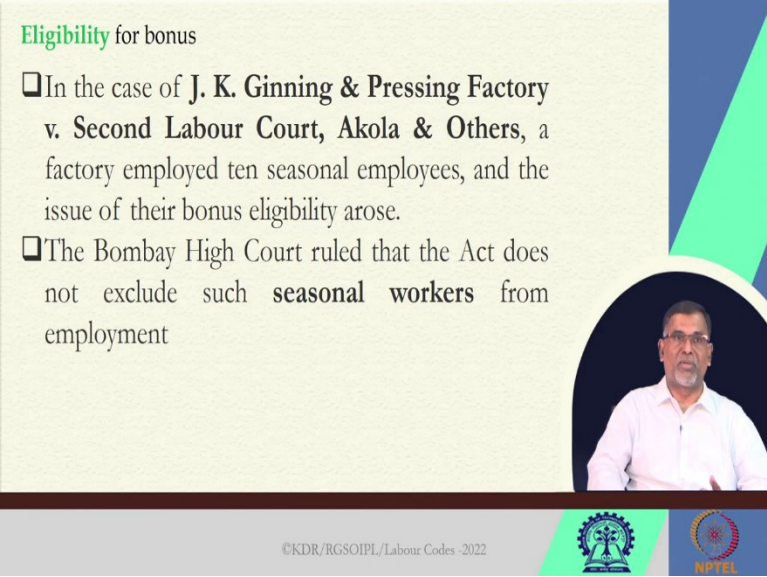
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So, the bonus should be paid to every employee and minimum if they are working 30 days in a particular accounting year and the annual minimum bonus should be 8.33 percent of the wages or 100, whichever is higher, but I am not able to understand what is the significance of 100 rupees because there is no state in India which provides a less than 100 rupees minimum wages.

So, it is going to be whatever you calculate is going to be more than 100 rupees, even though you calculate the minimum bonds of 8.33 percent. And most importantly, if one company is on high profit one year and there is a surplus amount available, it can be transferred to the next year's allocable surplus during the next year's payment of bonus. That particular provision is also available in the particular Act.

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Eligibility for bonus

- ❑ In the case of **J. K. Ginning & Pressing Factory v. Second Labour Court, Akola & Others**, a factory employed ten seasonal employees, and the issue of their bonus eligibility arose.
- ❑ The Bombay High Court ruled that the Act does not exclude such **seasonal workers** from employment

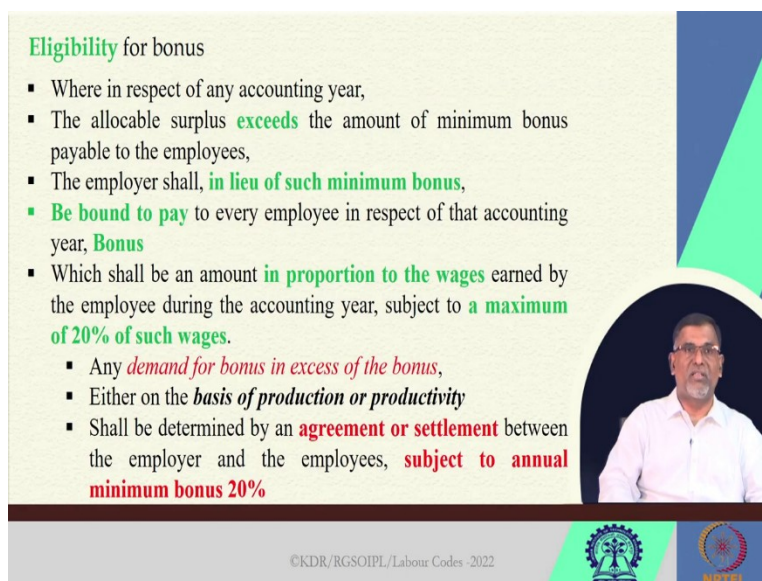
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So, in this case of J. K. Ginning and Pressing Factory versus Second Labour Court, Akola and Others. So, here, the question was where the seasonal employees are eligible for bonus, the Bombay High Court held that the Act does not distinguish between seasonal workers and permanent workers. So, seasonal workers are eligible for bonus.

Seasonal workers are eligible for bonus subject to a minimum of 30 working days in a preceding financial year. So, the seasonal workers are also eligible for bonus if they are working for a minimum period which is prescribed under the Act.



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Eligibility for bonus

- Where in respect of any accounting year,
- The allocable surplus **exceeds** the amount of minimum bonus payable to the employees,
- 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 20% of such wages.**
 - Any *demand for bonus in excess of the bonus,*
 - Either on the *basis of production or productivity*
 - Shall be determined by an **agreement or settlement** between the employer and the employees, **subject to annual minimum bonus 20%**

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But who is eligible to get bonus? Here, as I said that all employees, all employees who work for a minimum of 30 days are eligible to get a bonus. And we talked about allocable surplus, allocable surplus is the excess amount of profit which can be transferred to the next financial year for the distribution of bonus.


So, the minimum bonus once it is paid. So, he is bound to pay every employee the minimum bonus. So, the question is again, the minimum bonus mentioned is 8.33 percent and the Act fixes 20 percent as the maximum. So, any demand in excess of 20 percent is not allowed. So, if excess profits can be transferred to the next year is an allocable surplus. And there shall not be a settlement.

So, if there is a settlement between the employer and employee subject to the annual minimum bonus of 20 percent is allowable, then the question arises if the employer is willing more than 20 percent whether it can be paid, but the Act says that the maximum is 20 percent. And is silent on whether it is going to be legal or illegal more than 20 percent, but the minimum bonus paid should be 8.33 percent and the maximum is 20 percent mentioned in the particular Act.


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Proportionate reduction in **bonus** in certain cases.

- Where an employee **has not worked for all the working days in an accounting year**,
- The minimum bonus, if higher than 8.33% of the salary or wage of the days such employee has worked in that accounting year
- **Shall be proportionately reduced.**



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So, only in exceptional cases, certain directions can be made. So, for example, in the case that the employee has not worked for all the working days in an accounting year, then there can be a proportional reduction. So, these proportional reductions will be applicable only in rare cases, because the minimum working days are 30. So, we are very sure that every employee works more than 30 days, otherwise, it will be difficult for him to survive.

So, this minimum bonus is 8.33 percent. So, when calculating his wages, so there can be a proportionate reduction if he is not worked for the whole accounting year. So, the provision clearly says that proportionately reduced depends upon the working hours or number of working days. So, that should be reduced.


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Adjustment of customary or interim bonus against Bonus

- Where in any accounting year,—
 - i. An employer has paid any puja bonus or other customary bonus to employee; or
 - ii. An employer has paid a part of the bonus before the date on which such bonus becomes payable,
- 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 and the employee shall be entitled to receive only the balance.



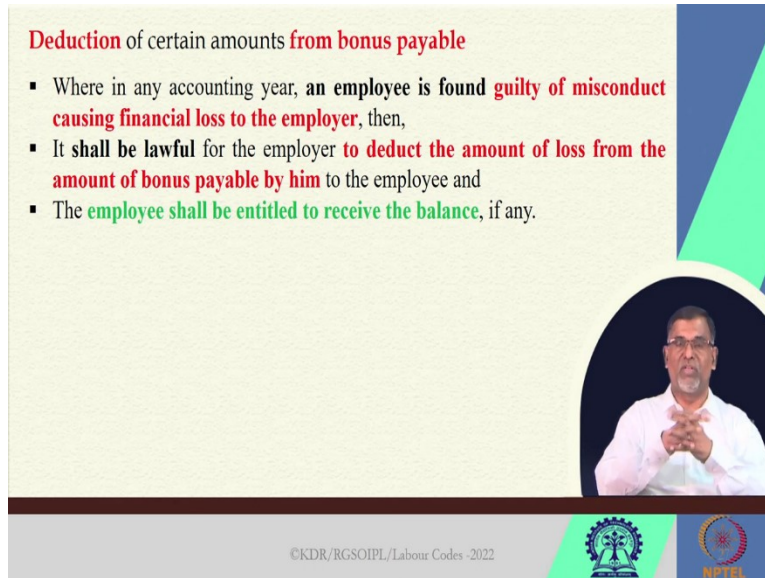
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Then, we know that the customary every employer pays many time a bonus, so many time means the bonus is paid on different occasions. For example, the case of Pooja holidays, Pooja bonus and then other auspicious days. So, it can be paid at different times, but the calculation will be subject to the Act. So, the already paid amount can be accounted for the total bonus. That means, it is not necessary that it should be paid at the end of the financial year or at any time.

So, it can be paid at different times by mutual agreement between employer and employee. So, the employer shall be entitled to deduct such kinds of bonuses which are paid in advance. So, in a financial year during puja, the puja time or any other auspicious times, which is paid according to from region to region, the auspicious dates changes. So, the employer can deduct that particular amount already paid to the employees.

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Deduction of certain amounts from bonus payable

- 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 and
- The **employee shall be entitled to receive the balance**, if any.

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And also, if any employee is found guilty of misconduct or causing financial loss to the employer. So, then also it is lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee, it means that the employer can very well detect such kind of amounts, which is lost due to the misconduct of the employee.

So, the employee is very well entitled to receive the balance amount and the employer can deduct such kind of amounts from the bonus which is due to that particular employee, but if there is a dispute between the employer and employee, definitely it should go for Dispute Settlement under the authority which is mentioned by the respective state governments.

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Time limit for payment of bonus

- 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 8 months (or further for sufficient reasons, but not beyond 2 years)** from the close of the accounting year.
- Where there is a **dispute** regarding payment of bonus **pending before any authority, such bonus shall be paid, within 1 month** from the date on which the award becomes enforceable or the settlement comes into operation.

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WPTU

And here you can see that now, this amount should be credited to the account of the employee by the employer within 8 months from the close of the accounting year. So, but very clearly says not beyond 2 years, but in the Indian circumstances, we can say very clearly that no employee is going to wait 2 years for getting the bonus.

So, they will usually take the bonus in advance during auspicious days. So, the provision says that, if a company is in trouble, for some reason or other reasons the bonus is not paid, it has to be paid within 2 years, maximum within 2 years. And if as I said, it may happen if there is a dispute pending.

And if a pending before any authority also, a bonus can be paid within one from the date of the award become enforceable or settlement comes into the operation. So, if there is any dispute between employer and employee, so, the employer is liable to pay the bonus within 1 month from the date of such awards. So, there is no escape from paying a bonus.

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Burden of Proof

- Where a **claim has been filed** on account of
 1. Non-payment of bonus or
 2. Less payment of bonus or
 3. On account of making deductions not authorised by this Code from the wages of an employee,
- The burden to prove that the said dues have been paid **shall be on the employer.**

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So, here we can see that any claims of the payment or non-payment, less payment, so authorized, unauthorized deductions. So, you can see that the burden of proof is with the employer. So, it means that the order of burden of proof is with the employer, the employer to prove that yes, we have paid the bonus or we have not paid the less bonus or also, or we have not made deductions.


So, the burden of proof is always with the employer. And again, the question in order to eliminate the provisions of this Act, is whether any agreement between the employer and employee is going to survive. So, it is very clear this particular provision says that contracting out is null and void. So, any contract or agreement between employer and employee to relinquish the right to bonus which is due under this particular code shall be null and void.

It means that if any employee is getting an appointment order, which clearly the employer says that he or she is not eligible for any bonus, that particular provision is going to be null and void. So, such kinds of people are eligible to get the bonus as per the Payment of Bonus Act 1965. So, it is not the case that the employer can claim that the employee has consented to such provisions. So, contracting out is null and void. So, no employer is going to be liable for such a provision, such a provision in the contract.


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Computation of number of working days

- An employee shall be deemed to have worked in an establishment in any accounting year **also on the days** on which
 - i. He has been **laid off**
 - ii. He has been **on leave with salary or wages;**
 - iii. He has been **absent due to temporary disablement** caused by accident **arising out of and in the course of his employment**
 - iv. The employee has been on **maternity leave with salary or wages**



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So, if you can look into the computation of the number of working days, this is very important for the bonus. So, here see if an employee is considered to be deemed to be working in an establishment in certain cases or a certain number of days. For example, the case of the laid-off period or leave with the salary or leave with wages and absence due to temporary disablement may be due to an accident or accident happened during arising out of under the course of employment and employee who has been on maternity leave, women employees on maternity leave with salary or wages. So, all these absent periods also should be taken into consideration as if they are present in the employment for the calculation of bonus.

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Disqualification for bonus

- An employee **shall be disqualified from receiving bonus,**
- If he is **dismissed from service** for—
 - a) Fraud; or
 - b) Riotous or violent behaviour while on the premises of establishment; or
 - c) Theft, misappropriation or sabotage of any property of establishment; or
 - d) Conviction for sexual harassment.



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And certain people are disqualified from receiving bonus, for example, people who are dismissed from service. So, dismissal and retrenchment are different. So, if people are dismissed because of their conduct, fraud, riotous or violent behaviour on the premises, theft, misappropriation, or sabotage of any property of the establishment, or conviction for sexual harassment, these people are not eligible for bonus.


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Disqualification for bonus

- **Pandian Roadways Corporation Ltd. vs. Presiding Officer.**
- Following that, the petitioner and management reached an agreement, and the petitioner was appointed as a new entrant.
- The petitioner claimed a bonus of Rs. 1,842 for the duration after his re-appointment.
- The court ruled in the case that " If an employee is dismissed from service, he is **disqualified from receiving any bonus** under the said Act, not just the bonus for the accounting year



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You can see some of the cases and the court responses. So, here this Petitioner was an employee of Pandian Roadways Corporation in Tamil Nadu. So, the case is Pandian Roadways Corporation Limited versus Presiding Officer. So, in this particular case, the petitioner's services are terminated. But later on, the management and the employee entered into a new agreement and gave him a reappointment.

And he started as a new employee. But after joining, the petitioner has filed a petition for a bonus of 1842 rupees during or the duration after his reappointment. So, the court said that if an employee is dismissed from service, it is very clear that he is disqualified from receiving any bonus. So, he does not have a bonus for the accounting year.

Even though he gets a reappointment, he can claim the bonus in the next year. So, that is working. So, it means that if an employee is dismissed, based on any of the grounds, then he is not eligible to get the bonus it is very clearly the court said.

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Disqualification for bonus

- In *Gammon India Ltd Vs Niranjan Das*,
- the court held that an employee who is dismissed from service for fraud, riotous or aggressive behaviour on the premises of the company,
- or **who is guilty of** theft, misappropriation, or sabotage of any establishment's property is **disqualified from** receiving bonus for the accounting year under section 9 of the Payment of Bonus Act, 1965.

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The slide features a video inset of a man in a white shirt speaking, and logos for KDR/RGSOIPL and NITEL at the bottom.

In this case, the *Gammon India Limited versus Niranjan Das*. The court held that if an employee is dismissed, mainly because in the service, he has committed fraud, notorious or aggressive behaviour in the company and also is guilty of theft and misappropriation he is disqualified from receiving any bonus in that particular accounting year, it is very clear. So, the court continuously held that a person who is an employee who is dismissed on charges, specifically on conduct is disqualified or not eligible to receive bonus.



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Set on and Set off of Allocable Surplus

- Where for any accounting year,
- The allocable surplus **exceeds** the amount of maximum bonus(20%) payable to the employees, then
- The excess shall, be **carried forward for being set on** in the **succeeding accounting year**
- To be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.
- 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(8.33%) payable to the employees
- Such minimum amount or the deficiency, shall be **carried forward for being set off** in the succeeding accounting year.



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And here as I told you, we already talked about the allocable surpluses, which can be carried forward to the next year. So, even though one company is at loss in one particular year. So, if a company have an excess amount, that means an excess amount of bonus which is agreed upon by both employer and employee. So, the excess profit can be carried forward on the succeeding account year.

So, in the next year also the employees will be paid an increased rate than the minimum wage is 8.33 percent. So, that carry forward of excess profit is permitted under the set on and set off of allocable surpluses in the company. So, there will be, the companies will be able to pay at least the minimum bonus even though the company is on a loss in a particular year. So, the set on and set off is allowed.


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Company under loss

- In **J.K. Chemicals Ltd. vs. Govt. of Maharashtra**
- The court held that the company would not be relieved from its liability to pay the minimum bonus if the bonus liability is negligible in comparison to the **loss** incurred.
- If the employer's damages were not caused by employee wrongdoing, the **employer must pay the statutory minimum bonus.**



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In *J. K. Chemicals versus the Government of Maharashtra*, so, the Court held that, so, a company would not be relieved from its liability, even though it is running on loss. So, when compared to the loss of the employees, those who are supposed to get the bonus, if the loss of the company is very negligible, then the employer must pay the statutory minimum bonus.

So, this is the one case where we can see that the court clearly said that, if the loss of the company is very minimal, then the employer has a statutory duty to pay the minimum bonus of 8.33 percent. So, it is not a question that whether the company is on profit or loss, but it depends on all the complete circumstances of the facts of the case.

And especially when the employees are not liable or they have not caused any damage or they have not done any wrongdoing and which cannot be attributable to the profitability of the company. So, the employer has to pay the minimum statutory bonus of 8.33 percent.

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CONCLUSIONS

- The code lays down the rules for minimum and maximum bonuses, qualifications and disqualifications, applicability, and non-applicability of the Act over public establishments.
- It provides a mechanism for calculating bonuses based on profit and performance.

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So, in conclusion, I would say that this is an excretion payment, but now it is a statutory right. So, the employer, it is not the sweet will of the employer to pay some bonus, but now, it is the statutory bonus minimum and the maximum is fixed. And the rules are clearly mentioned under the code, the wages code and also the qualification and disqualification, who will get the bonus and who can be disqualified from getting bonus.

And also, the carry forward of allocable surplus in this specific provision is also mentioned. And how the bonus is to be calculated is also mentioned under the act. And usually, bonus which we know that usually the bonus is paid on the percentage. So, even though it is mentioned 8.33 percent minimum.

So, it is the collective bargaining capacity of the employee and discussions with the employer, they fix the bonuses. Even though the company is on loss particular year. So, it is a statutory duty of the employer to pay the bonus in that particular year. So, it will depend upon each fact of the case.

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REFERENCES

- The Code on Wages, 2019
- The Code on Wages (Central Advisory Board) Rules, 2021
- The Code on Wages (Central) Rules, 2020 (**Draft**)

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So, we can say very well said that old comprehensive provisions that are included under the code on wages and the new rule which is coming into effect. That is the code on wages central rules 2020. Thank you.