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Sexual Harassment and the Code on Wages

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Why in News

According to a provision in the **Code on Wages 2019**, ‘**conviction for sexual harassment**’ can be a **ground for denying bonus payouts** to employees.

The Central government published the **Draft Code on Wages (Central) Rules, 2020** in July 2020 and placed it in the public domain inviting objections and suggestions.

Key Points

- The Code lays down norms for annual bonus dues that accrue to employees, replacing the **Payment of Bonus Act, 1965**, which bars bonus dues only in case of fraud, violent conduct and theft or sabotage.
 - **Payment of Bonus Act, 1965:**

The **minimum bonus** payable is **8.33% of the salary or wage** earned by the employee during the accounting year subject to a **maximum of 20%** of such salary or wage and is **applicable to all employees earning a salary of up to Rs. 21,000 a month.**
 - **Section 29 of the Code** states that “Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for fraud or riotous or violent behaviour while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment or conviction for sexual harassment.”

The **salary and bonus payment limits are yet to be notified** under the Code on Wages.

- Other **disqualification triggers are explicitly restricted to actions on an employer's premises**, the trigger referring to conviction under sexual harassment does not include such a condition about the location of the incident.
 - As of now, **it is not clear if sexual harassment incidents or related crimes against women outside the workplace could lead to dismissal** of employees with loss of bonus payments but it should come under the purview irrespective of where it is done.
- **Significance of the Move:**
 - This is a huge step to **get people to be on their best behaviour** in the workplace as the prospect of losing one's benefits may make employees more careful of their conduct.
 - This is also a step forward **towards creating seriousness about instances of sexual harassment** at the workplace and in general.
 - This move will serve as an additional deterrent apart from the **Prevention Of Sexual Harassment (POSH) law of 2013**.

Code on Wages Act, 2019

- The **new wage code removes the multiplicity of wage definitions**, which can significantly reduce litigation as well as compliance cost for employers.
- It links minimum wage across the country to the **skills of the employee** and the **place of employment**.
- It seeks to **universalise the provisions** of minimum wages and their timely payment to all employees irrespective of the sector and wage ceiling.
- It seeks to ensure **Right to Sustenance for every worker and intends to increase the legislative protection** of minimum wage.
- A **National Floor Level Minimum Wage** will be set by the Centre and will be **revised every five years**, while states will fix minimum wages for their regions, which cannot be lower than the floor wage.
- It **subsumes the following four labour laws:**
 - Payment of Wages Act, 1936
 - Minimum Wages Act, 1948
 - Payment of Bonus Act, 1965
 - Equal Remuneration Act, 1976

Prevention Of Sexual Harassment Law 2013

- Under it, sexual harassment includes **any one or more of the following unwelcome acts or behaviour** (whether directly or by implication):
 - Physical contact and advances.
 - Demand or request for sexual favours.
 - Making sexually coloured remarks.
 - Showing pornography.
 - Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

- As per the POSH law guidelines, firms are required to form an **Internal Complaints Committee (ICC)** to **inquire into complaints of sexual harassment** at the workplace.
- ICC is required to **make recommendations** to employers on the action required pursuant to its inquiry in such complaints.
- If the ICC upholds a complaint, it **could be interpreted as a conviction** and ICC has the **powers to decide if someone is guilty and report it further to the police**, though not all sexual harassment cases translate into a police case.

Source: TH