
ASSESSMENT AND DETERMINATION OF DUES UNDER THE CODE ON SOCIAL SECURITY, 2020

Nikhil Mehare, Government Law College, Mumbai

ABSTRACT

The Code on Social Security, 2020 consolidated nine central labour enactments. It was brought substantially into force on 21 November 2025 by a notification which, as corrected on 19 December 2025, also repealed the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Code replaced the machinery for determining employer dues under the 1952 Act and the Employees' State Insurance Act, 1948. This paper examines the assessment and determination of employer dues under section 125 of the Code. It tests that provision against the framework it displaced and against the employment contribution regimes of the United States, the United Kingdom, Japan and China.

The paper argues that the reform is narrower than is commonly supposed, and that in several respects the employer's position has worsened. It further argues that the transition has been managed by instruments whose effect is itself uncertain. Five of the seven sub-sections of section 125 reproduce section 7A of the Act of 1952, and the insurance appellate provisions substantially re-enact provisions in force since 2010. Two provisions are genuinely new, and neither does what it is taken to do. The five-year limitation proviso limits the initiation of a proceeding rather than the reach of a determination, and it gives one trigger to two jurisdictions of different character. The two-year inquiry period is an obligation to endeavour, which the authority's own administrative superior may extend.

What the Code changed lies principally in what it omitted. The powers of review and of escaped determination, and, in the provident fund chapter, the discretion to relieve an employer of the appellate pre-deposit, have gone without explanation. The transition compounds these defects in three ways. It is unsettled whether the corrigendum that completed the repeal operates from 21 November or from 19 December 2025. Inquiries pending under the repealed Act carry the repealed remedies. And the Employees' Provident Funds Scheme, 2026 abates proceedings and avoids orders by subordinate instrument.

The comparison shows India alone in limiting the initiation of a proceeding

rather than the determination or its enforcement. India is also alone in making the length of the period independent of the employer's conduct, and it has no parallel in conditioning a hearing upon a percentage deposit.

Keywords: Code on Social Security 2020; assessment of dues; section 125; limitation; transition; provident fund; employees' state insurance.

1. Introduction

The Code on Social Security, 2020 repeals and consolidates nine central enactments.¹ It was brought into force in stages. Provisions relating to the Employees' Pension Scheme were brought into force on 3 May 2023.² The bulk of the Code followed on 21 November 2025,³ under a notification corrected on 19 December 2025.⁴ The Code replaces the assessment machinery of the repealed statutes with a single provision, section 125. This paper asks what that substitution has achieved.

Three features invite scrutiny. First, the Code introduces limitation where section 7A of the Act of 1952 had none: no proceeding may be initiated after five years from the date the dispute is alleged to have arisen or the amount to have become due.⁵ The insurance legislation, however, already barred any order covering a period beyond five years from the date the contribution became payable.⁷ Limitation is thus new to provident fund assessment alone, and even there it arrives in a different form. Second, the Code omits the powers of review and of escaped determination which sections 7B and 7C conferred.⁸ Third, it reduces the provident fund appellate deposit from seventy-five per cent to twenty-five per cent, but in doing so withdraws the discretion to waive it. Section 7-O conferred that discretion;⁹ section 23(3) does not.¹⁰

Three propositions are commonly advanced in commentary on the Code, and each is incorrect or incomplete. The first is that the Code introduces limitation where none existed; that is true

¹ Code on Social Security, 2020 (Act 36 of 2020) s 164(1).

² Ministry of Labour and Employment, Notification No S.O. 2060(E) (3 May 2023).

³ Ministry of Labour and Employment, Notification No S.O. 5319(E) (21 November 2025) Gazette of India, Extraordinary, Pt II, s 3(ii).

⁴ Ministry of Labour and Employment, Corrigendum No S.O. 5936(E) (19 December 2025), recasting the entries at serial numbers 2, 3, 7 and 8 of S.O. 5319(E).

⁵ Code on Social Security, 2020, s 125(1), proviso.

⁶ Employees' Provident Funds and Miscellaneous Provisions Act, 1952, s 7A.

⁷ Employees' State Insurance Act, 1948, s 45A(1), second proviso.

⁸ Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ss 7B and 7C.

⁹ *ibid* s 7-O and proviso.

¹⁰ Code on Social Security, 2020, s 23(3).

only of provident fund dues. The second is that the Code reduces the appellate deposit; that omits the withdrawal of the waiver. The third is that the Code modernises the assessment machinery of the insurance legislation; it does not.

A fourth matter has emerged since commencement: the transition itself. The repeal of the Act of 1952 was completed by a corrigendum whose temporal effect is disputed. Inquiries pending under the repealed Act have been given a fixed terminal date. A scheme framed under the Code has begun to abate proceedings and to avoid orders.

The paper is doctrinal and confined to contributions under Chapters III and IV. Part 2 sets out the pre-Code framework. Parts 3 to 5 examine section 125 and the remedies surrounding it. Part 6 examines commencement and transition. Part 7 offers a functional, rather than descriptive, comparison. Parts 8 and 9 draw the threads together.

2. The Pre-Code Framework

Part 3 sets out the machinery of the Act of 1952 alongside its successor, since section 125 reproduces most of it. What matters here is what has no successor.

Section 7B permitted review on application or on the officer's own motion. Review lay for a mistake or error apparent on the face of the record, on the discovery of new and important evidence, or for any other sufficient reason. Section 7C permitted reopening within five years of communication of the order, where an amount had escaped determination through the employer's non-disclosure or on information later received.¹¹ The Act thus provided four remedies for four defects: setting aside for the ex parte order, review for the erroneous order, escaped determination for the incomplete one, and appeal for the wrong one. Appeal lay on a deposit of seventy-five per cent, which the Tribunal might waive or reduce for reasons recorded in writing.¹²

Section 45A of the Act of 1948 was not a general power of assessment but a conditional one. It was available only where returns and records had not been furnished or an official had been obstructed, and no order could cover a period beyond five years from the date the contribution became payable.¹³ Appeal lay to a departmental authority within sixty days, on a deposit of

¹¹ Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ss 7B(1) and 7C.

¹² *ibid* ss 7-I(1) and 7-O.

¹³ Employees' State Insurance Act, 1948, s 45A(1) and provisos, read with ss 44 and 45.

twenty-five per cent of the amount ordered or of the employer's own calculation, whichever was higher. A further challenge lay to the Employees' Insurance Court on a deposit of fifty per cent, which that Court might waive.¹⁴

Three points follow. The absence of limitation was a feature of section 7A alone. The seventy-five per cent deposit was subject to judicial relief, a qualification that criticism of it rarely carries. And the twenty-five and fifty per cent deposits, commonly described as innovations of the Code, were already the law. Two judicial requirements survive, because the Code reproduces the language on which each turned: that a determination rest on material rather than conjecture,¹⁵ and that the contribution base turn on whether an allowance is paid universally, necessarily and ordinarily.¹⁶

3. Section 125

The Central Government may, by notification, authorise officers of the Central Board or the Corporation, not below the rank of Group 'A' officer, to decide disputes as to applicability, to determine amounts due, and to conduct such inquiry as they deem necessary.¹⁷

The officer has the powers of a civil court over the same four matters as under section 7A, and the inquiry is deemed a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.¹⁸ No order may be made unless the employer is given a reasonable opportunity of representing his case.¹⁹ Where any person required to attend fails to do so without valid reason, or fails to produce a document or to file a report or return when called upon, the officer may decide on the evidence adduced and the

¹⁴ *ibid* ss 45AA, 75(1) and 75(2B); s 45AA was inserted by the Employees' State Insurance (Amendment) Act, 2010.

¹⁵ *Food Corporation of India v Provident Fund Commissioner* (1990) 1 SCC 68, holding that the authority under s 7A must collect relevant evidence and collate material before determining the amount payable.

¹⁶ *Regional Provident Fund Commissioner (II), West Bengal v Vivekananda Vidyamandir* (SC, 28 February 2019), reported at 2019 LLR 339. Whether the reasoning survives the definition of "wages" in s 2(88) of the Code, which differs from "basic wages" in s 2(b) of the Act of 1952, is a separate question not pursued here.

¹⁷ Code on Social Security, 2020, s 125(1). The sub-section speaks of a Group 'A' officer "of that Government", although the officers to be authorised are officers of the Central Board or the Corporation, which are not departments of the Central Government. The phrase is best read as fixing a rank equivalence rather than a service.

¹⁸ *ibid* s 125(3). The Indian Penal Code, 1860 has since been repealed by the Bharatiya Nyaya Sanhita, 2023, s 358(1). By s 8(1) of the General Clauses Act, 1897 the references are to be read as references to the corresponding provisions of the Sanhita, which appear to be ss 229, 267 and 233 respectively. The text of s 125(3) has not been amended.

¹⁹ Code on Social Security, 2020, s 125(4).

documents on record.²⁰ An ex parte order may be set aside on an application made within three months, and not without notice to the opposite party.²¹

The extent to which this is a re-enactment is best shown by setting the sub-sections against their sources.

Table 1: Section 125 and its sources

Section 125	Act of 1952	Act of 1948
(1)(a), (b), (c)	s 7A(1)(a), (b)	s 45A(1), but conditional
Proviso to (1)	No equivalent	s 45A(1), second proviso, in a different form
(2) and provisos	No equivalent	No equivalent
(3)	s 7A(2)	—
(4)	s 7A(3)	s 45A(1), first proviso
(5)	s 7A(3A)	s 45A(1), as a jurisdictional condition
(6) and Explanation	s 7A(4) and Explanation	—
(7)	s 7A(5)	—
No equivalent	s 7B, review	—
No equivalent	s 7C, escaped determination	—

Five of the seven sub-sections are taken from section 7A with changes of expression only. The proviso to sub-section (1) is new to the provident fund chapter and a recast version of an insurance provision. And sub-section (2) is new to both. Two provisions of the repealed Act have no successor. On this evidence, the proposition that the Code has reformed the machinery of assessment reduces to three changes: the introduction of a limitation period, a time target for

²⁰ *ibid* s 125(5).

²¹ *ibid* s 125(6) and (7).

the inquiry, and the deletion of two remedies.

Three structural points deserve notice. The first concerns section 125(5), which is at once narrower and wider than its insurance predecessor. It is narrower because the determination must rest on evidence adduced and documents on record rather than on "information available". It is wider because what was a condition of jurisdiction under section 45A has become a mere consequence of non-cooperation.

The second concerns interest and damages, which section 125 does not reach. They arise under sections 127 and 128. The appeal provision for Chapter III covers only two of the three heads. It lies against a determination under section 125 and against a levy of damages under section 128, and the pre-deposit attaches to the first alone.²² Interest under section 127 is not an appealable head at all, which reproduces the position under the repealed Act, where no appeal lay against an order under section 7Q.²³ An order which quantifies contributions, interest and damages together is therefore three orders for the purposes of challenge. As to contributions, it is appealable on a deposit. As to damages, it is appealable without one. As to interest, it is not appealable under the Code at all. The distinction matters both for limitation and for the computation of the appellate deposit.

The third concerns the Explanation to section 125(6), which puts an employer to an election. An appeal must be filed within the prescribed time and requires a deposit. An application to set aside may be made within three months and requires no deposit. Once an appeal has been disposed of otherwise than on withdrawal, the application is foreclosed. This is not an innovation of the Code; the identical Explanation stood in section 7A(4).²⁴ What is new is its setting. The employer, facing an erroneous order, formerly had review as a third option; now he has only two.

4. The Inquiry Period and the Limitation Proviso

4.1 The two-year inquiry period

The inquiry is to be held, as far as practicable, on a day-to-day basis, and endeavour shall be

²² *ibid* s 23(1)(a) and (b) and s 23(3).

²³ *cf* *Arcot Textile Mills Ltd v Regional Provident Fund Commissioner* (2013) 16 SCC 1.

²⁴ Code on Social Security, 2020, s 125(6), Explanation; compare *Employees' Provident Funds and Miscellaneous Provisions Act, 1952*, s 7A(4), Explanation.

made to conclude it within two years. Where it is not so concluded, the officer records the circumstances and reasons and submits them to the Central Provident Fund Commissioner or the Director General, who may grant an extension of up to one year.²⁵ Inquiries pending immediately before commencement are to be concluded within a period not exceeding two years from that date.²⁶

The provision is commonly described as a two-year time limit, but it is not one. It imposes an obligation to endeavour, qualified by practicability, and attaches to failure a single consequence: the officer must write down why. The extension is granted by his own administrative superior, on reasons he himself supplies, without notice to the employer and against no stated criterion. The statute is silent as to what follows when the extended period expires. A time limit with no consequence attached is directory.²⁷

The third proviso is differently worded. It is phrased as a command ("shall be concluded"), fixes a single outer date for the whole legacy stock, and is not expressly subject to the extension machinery of the second proviso. It is the one deadline in section 125 with a plausible claim to be mandatory, although the statute is equally silent on the consequence of breach.

4.2 The limitation proviso

The proviso to sub-section (1) governs both limbs of that sub-section and supplies a different trigger for each.²⁸ The date on which an amount became due is an objective fact fixed by the scheme. The date on which a dispute arose is not. A dispute arises when somebody raises it, and in the ordinary case it is raised when the authority asserts coverage and the employer denies it. The limitation trigger for a coverage dispute is therefore within the control of the party the limitation is supposed to constrain. An authority asserting coverage in 2026 over an establishment covered in fact since 1998 will say, correctly, that the dispute arose in 2026. The alternative construction is that the dispute arose when the Chapter first became applicable. On that reading, an establishment which evaded coverage for more than five years can never be brought within the Chapter at all.

²⁵ Code on Social Security, 2020, s 125(2), first and second provisos.

²⁶ *ibid* s 125(2), third proviso. By s 1(3), "commencement" means the coming into force of s 125, that is, 21 November 2025. Excluding the first day under s 9 of the General Clauses Act, 1897, the period ends on 21 November 2027.

²⁷ *Sharif-ud-Din v Abdul Gani Lone* (1980) 1 SCC 403.

²⁸ Code on Social Security, 2020, s 125(1), proviso, applying to clauses (a) and (b).

The proviso also admits no exception for fraud, concealment, failure to register or failure to maintain records. The employer who has kept no register and filed no return stands in exactly the position of one whose accounts were open throughout.

Two further points confine the proviso's reach. First, it bars initiation. It therefore offers nothing to an employer whose inquiry was initiated under section 7A or section 45A before commencement; that inquiry is governed by the third proviso to sub-section (2) and by the repeal savings considered in Part 6.

5. The Withdrawn Remedies

Nothing in the Code corresponds to section 7B. An order containing an error apparent on the face of the record can be corrected only on appeal, and only on payment of a deposit. Two considerations suggest oversight rather than policy. First, no reason for the omission appears anywhere. Second, the Code does contain a rectification power five sections later. The authority issuing a recovery certificate may withdraw it or correct any clerical or arithmetical mistake.²⁹ That power operates on the certificate, not on the order. An Authorised Officer who has made an arithmetical error may therefore correct the document by which the error is enforced, but not the determination in which it was made. A draftsman who had decided against rectification would not have provided for it five sections later.

Nothing corresponds to section 7C either. An amount which escapes determination because the employer did not disclose it cannot be brought to charge once the period has run. Taken with the limitation proviso, the consequence is that finality operates in one direction only. The under-assessed employer is safe, and the over-assessed employer must pay to be heard.

The third withdrawal is the discretion to waive the pre-deposit. The position before the Code was as follows:

1. An employer contesting a provident fund determination deposited seventy-five per cent, and the Tribunal might waive or reduce the deposit for reasons recorded.
2. An employer contesting an insurance determination deposited twenty-five per cent at

²⁹ Code on Social Security, 2020, s 130(2).

the departmental stage, with no power of waiver.

3. Before the Court, that employer deposited fifty per cent, and the Court had a power of waiver.

Under the Code the provident fund figure is twenty-five per cent, and there is no power of waiver anywhere in Chapter III. The insurance figures and the insurance waiver are unchanged.³⁰

The reform is therefore real for one class of employer and illusory for another. For the employer who can find the money, a reduction from seventy-five per cent to twenty-five per cent is a substantial improvement, and it is the improvement the reform narrative describes. For the employer who cannot find any of it, the change is from a remedy available at judicial discretion to no remedy at all. The class whose access was most constrained under the old law is the only class made worse off by the new.

Whether this is constitutionally vulnerable is a question on which a narrow argument is stronger than a general one. A pre-deposit condition is not per se unconstitutional. *Mardia Chemicals* invalidated the particular seventy-five per cent condition before the Debt Recovery Tribunal because, in the circumstances there considered, it rendered the remedy illusory.³¹ The narrower argument runs as follows. Parliament conferred such a discretion in one forum of this Code, and withheld it from two others dealing with the identical liability under a single determining provision. No differentia has been offered.

Two further features aggravate the position. The deposit under section 126 is computed on the amount ordered or on the employer's own calculation, whichever is higher, so candour is penalised. And the deposit is a condition of the appeal being entertained rather than a substitute for recovery: it buys a hearing, not a stay.

The appellate forum itself is less securely defined than it should be. Section 2(84) defines "Tribunal" as the Industrial Tribunal constituted by the appropriate Government under section 7A of the Industrial Disputes Act, 1947. That Act has been repealed by the Industrial Relations Code, 2020. Section 8(1) of the General Clauses Act, 1897

³⁰ *ibid* ss 23(3), 126 and 49(2) and proviso.

³¹ *Mardia Chemicals Ltd v Union of India* (2004) 4 SCC 311.

answers the formal objection, since the reference is read as a reference to the corresponding provision of the Industrial Relations Code.³²

The substantive difficulty lies elsewhere. Section 23(1) confers the appeal on "the Tribunal constituted by the Central Government", while the definition embraces tribunals constituted by the appropriate Government, which may be a State. The two can be reconciled only by reading section 23 as confining the jurisdiction to Central Government Industrial Tribunals. The Employees' Provident Funds Appellate Tribunal, which formerly heard these appeals, has no successor in the Code, and the rules governing its members' conditions of service have been superseded.³³ The Tribunal (Procedure) Rules, 1997 have likewise been superseded by the Social Security (Central) Rules, 2026, and the form, manner, time and fees contemplated by section 23(2) must now be traced to those Rules. The appellate authority under section 126 is to be "provided by regulations". Until the Corporation makes such regulations, its existing regulations under the Act of 1948 continue under section 164(2)(a), so far as they are not contrary to the Code.

6. Commencement and Transition

6.1 The staged commencement

The Code did not commence on a single date. On 3 May 2023, provisions relating to the Employees' Pension Scheme were brought into force, and with them the repeal of the corresponding provisions of the Act of 1952.³⁴

The notification of 21 November 2025, as originally published, was a specified list with four material omissions:

4. sub-section (3) of section 15;
5. clauses (a) and (b) of section 16(1), which establish the Provident Fund and the Pension

³² Code on Social Security, 2020, s 2(84); General Clauses Act, 1897, s 8(1). Some doubt as to whether the Industrial Disputes Act has been effectively repealed has been expressed at first instance: *United Labour of Federation v Union of India* 2026 LLR 135 (Mad).

³³ Code on Social Security, 2020, s 23(1); Social Security (Central) Rules, 2026, G.S.R. 344(E) (8 May 2026), preamble, superseding inter alia the Tribunal (Procedure) Rules, 1997 and the Employees' Provident Funds Appellate Tribunal (Conditions of Service) Rules, 1997.

³⁴ S.O. 2060(E) (n 2).

Fund and fix the contribution;

6. item 3 of section 164(1), which repeals the Act of 1952; and
7. clause (b) of section 164(2), which continues the schemes under the repealed Acts for one year.³⁵

On that text Chapter III was in force as to its machinery but not as to its liability. The Act of 1952 remained unrepealed, and two assessment regimes for provident fund dues stood side by side.

The corrigendum of 19 December 2025 removed that anomaly. It recast the entries relating to sections 15 and 16, section 164(1), and section 164(2) and (3), so that each is in force except for the provisions already brought into force on 3 May 2023.³⁶ The Act of 1952 now stands repealed in full. Chapter III is in force as to both liability and machinery. The remedies described in Part 5 as withdrawn are, for proceedings begun under the Code, withdrawn.

6.2 The effect of the corrigendum

The corrigendum resolves the anomaly for the future but opens a question about the past: did the repeal take effect on 21 November or on 19 December 2025? A corrigendum is ordinarily issued to correct a mistake and relates back to the date of the notification it corrects. But a corrigendum cannot enlarge the scope of the original instrument or take away vested rights.³⁷ The omission of item 3 from the original notification was not typographical. The item was left out of a list that otherwise proceeded item by item. Its addition extended the notification to the repeal of an entire enactment and to the principal liability-creating provisions of Chapter III. There is therefore a respectable argument that the corrigendum enlarged the notification and

³⁵ S.O. 5319(E) (n 3), bringing into force ss 1 to 14, s 15(1) and (2), s 16(1)(c), ss 17 to 141, s 143 save as specified, ss 144 to 163, items 1 and 2 and items 4 to 9 of s 164(1), cls (a) and (c) of s 164(2) and s 164(3).

³⁶ S.O. 5936(E) (n 4). See Taxmann, '[Analysis] Pending Proceedings and Transition under Code on Social Security 2020' (Taxmann, 3 September 2026) <<https://www.taxmann.com/post/blog/analysis-pending-proceedings-transition-code-on-social-security/>> accessed 24 September 2026.

³⁷ Commissioner of Sales Tax, UP v Dunlop India Ltd (1994) 92 STC 571 (SC); Piara Singh v State of Punjab (2000) 5 SCC 765; State of Andhra Pradesh v Andhra Pradesh State Wakf Board 2022 INSC 155; discussed in Gaurav Kumar, 'The Question of Immediacy of Payment of Social Security Benefits as per the New Definition of "Wages"' (2026) LLR Journal 11.

operates only from its own date.

The point is not academic. It determines the footing of any determination of provident fund dues made under section 125 between 21 November and 19 December 2025. On the prospective view, the liability in that interval arose under the Act of 1952, and the schemes under that Act were not yet schemes "under" Chapter III for the purposes of section 125(1)(b). This is because section 164(2)(a) deems things done under an enactment "so repealed", and item 3 had not then been brought into force. The same point decides whether an inquiry initiated under section 7A in that interval was validly initiated.

It also moves the lapse date of the one-year saving. Section 1(3) construes a reference to the commencement of the Code as a reference to the coming into force of the relevant provision. On the retrospective view, the saving in section 164(2)(b) runs from 21 November 2025 and lapses at the end of 21 November 2026. On the prospective view, it runs from 19 December 2025.³⁸ No court has yet decided the question. Its practical importance is limited by the number of orders made in the interval, but it is not nil.

6.3 Pending proceedings

The repeal is subject to section 6 of the General Clauses Act, 1897, applied by section 164(3) without prejudice to the specific savings.³⁹ Section 6 preserves any investigation, legal proceeding or remedy in respect of a liability accrued under the repealed enactment, "as if the repealing Act ... had not been passed". It applies even where repeal is accompanied by re-enactment, unless a contrary intention appears from the new statute.⁴⁰

The third proviso to section 125(2) supplies some evidence of such an intention. It speaks of inquiries "pending immediately before the date of commencement of this Code" being concluded "by the Authorised Officer", which suggests that the legacy stock has migrated to section 125. It does not, however, say that those inquiries are to be continued under section 125. Nor does it displace the remedies attached to them

³⁸ Code on Social Security, 2020, ss 1(3) and 164(2)(b); General Clauses Act, 1897, s 9.

³⁹ Code on Social Security, 2020, s 164(3).

⁴⁰ T S Baliah v Income Tax Officer AIR 1969 SC 701.

under the repealed Act.

The better view is that a pending section 7A inquiry must be concluded by the date the third proviso fixes, but otherwise carries its repealed incidents with it. On that view, review under section 7B, reopening under section 7C, and appeal on a deposit subject to waiver under section 7-O all remain available in respect of it. If that is right, employers liable for the same class of dues will face different remedial regimes depending on whether the proceeding against them began before or after 21 November 2025. The "withdrawn remedies" of Part 5 are then withdrawn only prospectively, and the legacy stock will run on the old footing until the end of 2027 and, on appeal, beyond it.

6.4 Transition by scheme

The Social Security (Central) Rules, 2026 superseded twelve sets of rules made under the repealed Acts, including the Tribunal (Procedure) Rules, 1997.⁴¹ The Employees' Provident Funds Scheme, 2026, the Employees' Deposit-Linked Insurance Scheme, 2026 and the Employees' Pension Scheme, 2026 were notified on 29 June 2026, superseding their predecessors under the Act of 1952.⁴² For provident fund purposes, therefore, the one-year saving in section 164(2)(b) has been overtaken by replacement. What survives of the old instruments survives under section 164(2)(a), which carries no date.

The Annexure to the Employees' Provident Funds Scheme, 2026 contains three special provisions which bear directly on assessment:

8. **The Employees' Enrolment Campaign, 2026** ceases to operate on 31 October 2026. It is open to an establishment irrespective of any pending inquiry under section 125 or section 7A, and it requires the inquiry officer to take a declaration made under it into consideration. Where an inquiry is pending, however, both the employee's and the employer's contributions remain payable, and the benefit is confined to the damages.

⁴¹ Social Security (Central) Rules, 2026 (n 35).

⁴² Ministry of Labour and Employment, Notification Nos G.S.R. 525(E), 526(E) and 527(E) (29 June 2026). The Employees' Provident Funds Scheme, 2026 is made under s 15(1)(a) of the Code, and defines the Act of 1952 as the "Repealed Act".

9. **VISHWAS, 2026** settles damages for defaults relating to periods before 14 June 2024. It provides that appeals and pending proceedings abate on remittance of the recomputed damages, subject to full payment of interest and an undertaking not to litigate further.
10. **AMNESTY, 2026** regularises exempted establishments retrospectively. It provides that pending proceedings for the assessment of dues or damages stand abated and that completed orders are to be treated as void ab initio.⁴³

The reliefs are substantive and, for many employers, welcome. The vehicle is open to question. A scheme framed by notification under section 15 may take effect retrospectively, and may be modified retrospectively.⁴⁴ Whether it may also abate proceedings pending before a Tribunal constituted under section 23, or declare void an order made under section 125, is another matter. Those proceedings and orders owe their existence to the Code rather than to the scheme, and no provision of the Code expressly confers such a power. The point is unlikely to be taken by an employer who benefits from the relief. It may well be taken by an employee whose credit is affected by an abated determination, or by an authority seeking to resist a claim to adjustment of sums already recovered.

Two further gaps in subordinate provision remain. Section 127 leaves the rate of interest wholly to notification, removing the statutory rate and ceiling which the repealed provisions contained.⁴⁵ The appellate authority under section 126 depends, as noted, on regulations of the Corporation. It is now possible to state which law governs the assessment of a provident fund liability arising after 19 December 2025. For proceedings begun before that date, the answer still turns on the effect of the corrigendum and of section 6 of the General Clauses Act.

7. Comparative Perspective

This Part considers four jurisdictions on four questions. How long does the authority have? Does that period depend on the employer's conduct? What must the employer

⁴³ Employees' Provident Funds Scheme, 2026, Annexure, Pts A, B and C; see Taxmann (n 38). VISHWAS and AMNESTY each run for six months from 29 June 2026, extendable by up to six months.

⁴⁴ Code on Social Security, 2020, s 15(1)(e) and (3).

⁴⁵ Code on Social Security, 2020, s 127; compare Employees' Provident Funds and Miscellaneous Provisions Act, 1952, s 7Q and Employees' State Insurance Act, 1948, s 39(5)(a).

pay to be heard? And what becomes of the worker when the authority is out of time? The material on the United States and the United Kingdom is drawn from primary sources. The material on Japan and China rests on translations and secondary commentary and is stated with that caution.

7.1 United States

Employment taxes must generally be assessed within three years after the return is filed. Quarterly employment tax returns for a calendar year are deemed filed on 15 April of the following year. There is no limit at all in the case of a false or fraudulent return, a wilful attempt to evade, or a failure to file.⁴⁶ The six-year period for substantial omissions does not reach employment taxes, because it is addressed to income, estate and gift, and excise taxes.⁴⁷ Collection of an assessed liability is separately limited to ten years.⁴⁸

Three features are instructive. First, the limitation operates on the assessment itself rather than on the initiation of an examination, so the ambiguity discussed in Part 4 cannot arise. Second, the period runs from the filing of a return, which gives the taxpayer a means of starting the clock. Third, its expiry is a genuine bar upon the authority, which has no power to extend its own time by recording reasons.

A fourth feature bears on the coverage limb of section 125(1)(a). Where the revenue determines that workers are employees, the employer may have that determination reviewed by the Tax Court before the tax is assessed, and assessment is restrained in the meantime. This is an independent forum for the applicability question, available without payment.⁴⁹

7.2 United Kingdom

The United Kingdom is the closer structural analogue, because it separates the ascertainment of liability from its recovery and limits the second and not the first. Where a liability to contributions is disputed, an officer of HM Revenue and Customs gives a decision which confirms and quantifies it. That decision confers a right of appeal exercisable within thirty days

⁴⁶ Internal Revenue Code, 26 USC § 6501(a), (b)(2) and (c)(1)–(3).

⁴⁷ *ibid* § 6501(e).

⁴⁸ *ibid* § 6502.

⁴⁹ *ibid* § 7436.

without any deposit, and does not itself create an enforceable debt.⁵⁰

Recovery is by civil debt. Contributions fall outside the exclusion of Crown taxes and duties from the Limitation Act, so an action to recover must be brought within six years from the statutory due date, and the period runs afresh for each payment as it falls due.⁵¹ Where the employer has deliberately concealed a relevant fact, the period does not run until the concealment is, or could with reasonable diligence have been, discovered.⁵² The government is consulting upon replacing this scheme with behaviour-based time limits of the kind applicable to income tax.⁵³

7.3 Japan

The Japan Pension Service, under the Ministry of Health, Labour and Welfare, administers Employees' Pension Insurance and, for the relevant contribution functions, Employees' Health Insurance. The contribution base is not ascertained in adversarial proceedings. It is fixed periodically by administrative determination of a standard monthly remuneration for each insured person, based on notifications filed by the employer, and premiums follow arithmetically from the determined base and the notified rate.⁵⁴ The right to collect premiums is extinguished by prescription after two years, the shortest period among the jurisdictions considered.⁵⁵

Two points follow. First, a short limitation period is tolerable in a system that fixes the base prospectively and periodically, because occasions for retrospective inquiry are few. An inquiry into what an employer owes is exceptional in Japan. In India it is the ordinary means by which liability is ascertained. Section 125 carries a five-year period precisely because the Indian system has no periodic base-fixing mechanism and relies on the inquiry to do the work. The comparison therefore counsels caution about judging the length of the Indian period in isolation: it is long because the Indian design makes it do more.

⁵⁰ Social Security Contributions (Transfer of Functions, etc.) Act 1999, s 8; HMRC, Debt Management and Banking Manual, DMBM527150.

⁵¹ Limitation Act 1980, ss 9(1) and 37(2); HMRC, Debt Management and Banking Manual, DMBM527120.

⁵² Limitation Act 1980, s 32(1)(b); HMRC, Debt Management and Banking Manual, DMBM527140.

⁵³ HM Revenue and Customs, 'Aligning the Time Limits for Recovery of NICs with Income Tax' (consultation, 13 July 2026, closing 12 October 2026).

⁵⁴ Health Insurance Act (Act No 70 of 1922), arts 40–44; Employees' Pension Insurance Act (Act No 115 of 1954), arts 20–24, including the periodic determination in art 21. Official English translations are available through the Japanese Law Translation database.

⁵⁵ Employees' Pension Insurance Act (Act No 115 of 1954), art 92(1).

The second point is the more important for this paper. Large numbers of Japanese pension records were found to be unreliable. In response, legislation was enacted permitting an insured person's record to be corrected and his entitlement preserved, even though the employer's liability had prescribed, where the premium had been withheld from wages but not paid over.⁵⁶ The insight embodied in that separation is that the worker's accrued entitlement and the authority's power to pursue the employer are distinct interests which need not share a limitation period. No provision of the Code reflects it.

The point is not academic. When a limitation period defeats a tax demand, the State loses revenue. When it defeats a contribution demand, the loss falls on a worker who is not a party to the proceeding. That worker has no forum under Chapter III in which to assert his entitlement,⁵⁷ and he need not be identified in the determination made for his benefit. He must also establish his identity by Aadhaar before he may claim what the employer's default has left unfunded.⁵⁸

7.4 China

Employers must declare and pay social insurance premiums in full and on time.⁵⁹ Where an employer fails to declare as prescribed, the amount payable is provisionally set at one hundred and ten per cent of the amount paid in the preceding month, subject to settlement once the employer makes a supplementary declaration.⁶⁰ Where payment is not made on time or in full, the collecting agency orders payment within a prescribed period and may, after inquiry, have the amount transferred from the employer's bank account.⁶¹ A late fee accrues daily at five hundredths of one per cent of the outstanding amount from the due date. Continued default after an order attracts a fine of between one and three times the amount unpaid.⁶² Collection has been transferred in stages to the tax authorities under the 2018 reform of tax collection and

⁵⁶ Act on Special Provisions concerning Insurance Benefits and Payment of Insurance Premiums under the Employees' Pension Insurance (Act No 131 of 2007); Ministry of Health, Labour and Welfare, Annual Health, Labour and Welfare Report (2014), discussion of pension record correction.

⁵⁷ Contrast the position under Ch IV: Code on Social Security, 2020, s 49(1)(e) and (g), and s 51(1), first proviso.

⁵⁸ Code on Social Security, 2020, s 142(1).

⁵⁹ Social Insurance Law of the People's Republic of China (2010, amended 2018), art 60, cited from an English translation.

⁶⁰ *ibid* art 62.

⁶¹ *ibid* art 63.

⁶² *ibid* art 86.

administration.⁶³

Three comparisons bear on the Indian provisions. First, the default-declaration rule is a best-judgment power of a mechanical kind. It fixes a figure by formula rather than by inquiry, and it is corrected by the employer's own supplementary declaration rather than by appeal. Measured against section 125(5), it is a markedly cheaper answer to the non-filing employer, though a blunter one, and it presupposes a filing history from which the formula can work.

Second, the consequences of default are separated into an automatic charge and a penalty conditional upon disobedience of an order. The employer who pays when told is exposed to the charge but not to the fine. The Indian scheme exposes him to interest and damages together, and relies on administrative discretion to moderate the second. Third, enforcement proceeds directly against the bank account rather than through a certificate and a recovery officer.

A fourth point cannot be stated with confidence. It is frequently said that a two-year period under the labour security supervision regulations applies to recovering arrears. That period is addressed to administrative penalties, and whether it limits recovery of contributions is contested.⁶⁴ This paper takes no position on the question, but the uncertainty is itself instructive. A limitation rule which has to be inferred from a provision addressed to something else is the kind of rule that generates litigation. The Indian proviso, though expressly enacted, is open to the same objection for the reasons given in Part 4.

7.5 What the comparison yields

India alone among these systems limits the initiation of the proceeding rather than its determination or enforcement. It is that choice, rather than the length of the period, which produces the difficulties identified in Part 4. The United Kingdom resolves the ambiguity identified there, and it does so in the manner this paper prefers.

Of the jurisdictions on which the position could be verified, both the United States and the United Kingdom make the length of the period depend upon the employer's conduct; India does not. In both, the expiry of the period binds the authority. The Indian scheme, by contrast,

⁶³ General Office of the CPC Central Committee and General Office of the State Council, Plan for Reforming the Collection and Administration Systems of State and Local Taxes (July 2018); implementation in respect of enterprise contributions was phased by province through 2019 and 2020.

⁶⁴ Regulations on Labour Security Supervision (2004), art 20.

disciplines the employer's claim by prohibition and the authority's delay by exhortation.

On the cost of being heard, India is an outlier without comparison. None of the four jurisdictions conditions the hearing of a dispute about liability upon payment of a percentage of the sum in dispute. The United States goes further in the opposite direction, providing an independent forum for the coverage question before any liability is assessed.

Two cautions should be entered against over-ready borrowing. First, the self-assessment model of the United States and the default-declaration model of China both depend upon universal and reliable employer filing, enforced by a revenue administration with direct access to bank accounts. India's inspection regime is randomised in allocation, and facilitative in emphasis, and its power to determine on the record is exercisable only upon evidence adduced in an inquiry.⁶⁵ A formula which fixes liability upon the defaulter's own past filings assumes filings which exist. Second, the Japanese period is short because the Japanese base is fixed prospectively. Transplanting the period without the mechanism would leave the Indian worker worse protected, not better.

What can be borrowed without preconditions is the separation of the worker's record from the employer's liability. It costs the exchequer nothing at the point of assessment and requires no alteration of the limitation period.

8. Findings and Suggestions

The defects identified above fall into four classes. The classification matters because the remedy differs for each.

Errors of drafting. The proviso to section 125(1) limits initiation where it should limit reach, and it serves two jurisdictions of different character with a single trigger. Both defects were avoidable by using language which the statute being repealed already contained. The proviso should be recast so that no order is made under clause (b) in respect of a period beyond five years from the date the contribution became payable. Clause (a) should have a separate rule, under which a decision on applicability may be made at any time but has money consequences only within the clause (b) window. That disposes at once of the ambiguity, of the coverage

⁶⁵ Code on Social Security, 2020, s 122(2), (3) and (6); s 125(5).

problem and of the continuing-default question.

Three smaller corrections belong in the same amending instrument:

- the references in section 125(3) should be updated to the Bharatiya Nyaya Sanhita, 2023;
- the definition of "Tribunal" in section 2(84) should be aligned with section 23(1) and made to refer to the Industrial Relations Code, 2020; and
- the relationship between the limitation proviso and the three-year period in section 51(1) should be stated.

Matters that appear not to have been considered. The absence of any exception for concealment departs from the practice of both verified comparators, and it was adopted without discussion. No recommendation specifically addressing the assessment clause corresponding to section 125 has been located in the Standing Committee's published report. The objection to an exception is that a limitation period which the authority may escape by allegation will be escaped by allegation. That objection is met not by abandoning the exception but by structuring it on the model of the direct-tax reassessment regime, which requires the decision-maker to act on material on record and to obtain the prior approval of a specified superior authority. The proposed rule is an extended period of ten years, available only where two conditions are met:

- the Authorised Officer records his satisfaction that contributions have been concealed or that the prescribed records were not maintained; and
- the Central Provident Fund Commissioner or the Director General gives prior written approval.

Such a rule would meet the case of the concealing employer without exposing every employer to an allegation.

Changes that appear deliberate but are unexplained. The omission of review and of escaped determination is difficult to attribute to oversight when the rectification of clerical errors survives five sections later. The withdrawal of the waiver of pre-deposit is equally difficult to attribute to oversight when the same discretion is retained for a

different forum of the same Code. Each should be restored:

- a power of review for error apparent, exercisable within six months and carrying the safeguards of section 7B;
- a power of escaped determination, confined to non-disclosure and to five years from communication of the original order; and
- the proviso to section 7-O, reinstated in sections 23(3) and 126 in the terms in which it survives in section 49(2).

To these should be added an express provision barring recovery of the undeposited balance while an admitted appeal is pending. A deposit which purchases a hearing but not protection from attachment cannot have been intended.

Defects of transition. These are the most easily corrected, because the Code itself supplies the means. Section 163 empowers the Central Government to remove difficulties by an order not inconsistent with the Code, until two years from commencement, that is, until 21 November 2027.⁶⁶ An order under that section should declare three things:

- the date from which the repeal of the Act of 1952 took effect, and the status of determinations made and inquiries initiated between 21 November and 19 December 2025;
- whether inquiries pending under section 7A are to be concluded under that section, with the remedies attached to it, or under section 125; and
- whether an appeal against an order concluding such an inquiry lies under the repealed Act or under section 23.

The special provisions in the Annexure to the Employees' Provident Funds Scheme, 2026, so far as they abate proceedings and avoid orders, should be placed on a statutory footing, whether by that order or by amendment, rather than rest on the scheme-making power alone. The rate

⁶⁶ Code on Social Security, 2020, s 163(1) and proviso.

of interest under section 127 should be notified, and the regulations designating the appellate authority under section 126 made, if either has not been done.

Two further matters may be noted for completeness. First, Chapter IX imposes a contribution upon aggregators and leaves the collecting authority, interest on delayed payment and self-assessment to rules.⁶⁷ It provides no determination by an adjudicating officer, no appeal and no limitation period. Those gaps should be closed before the contribution is brought into force. Second, a determination under section 125 should be required to identify, so far as the material permits, the employees in respect of whom the amount is determined. An order which produces money in the fund and a credit in nobody's account does not achieve the purpose of the Chapter.

9. Conclusion

In five of its seven sub-sections, section 125 renumbers section 7A of the Act of 1952, and the insurance appellate provisions substantially re-enact provisions in force since 2010. Consolidation, in this field, has meant extending the machinery of 1952 to both chapters and transcribing what the insurance legislation already contained. Two provisions are genuinely new, and neither does what it is taken to do. The limitation proviso limits the initiation of a proceeding rather than the reach of a determination, and it gives one trigger to two jurisdictions of different character. The two-year inquiry period is an obligation to endeavour which the authority's own administrative superior may extend.

What the Code has actually changed lies in what it left out. The power of review, the power to reach an escaped amount, and, for provident fund dues, the discretion to relieve an employer of the pre-deposit have all gone. No explanation for any of the three has been identified in the Statement of Objects and Reasons or in the published Standing Committee report. The result is a scheme in which finality runs one way. The under-assessed employer cannot be reassessed. The over-assessed employer must deposit a quarter of the demand to be heard. And the employer who cannot deposit has no remedy, whereas under the repealed law he had one.

Two qualifications must be entered. First, the reading of the proviso adopted here is contestable. The first judicial consideration may hold that it caps the period a determination may cover, in which case much of the criticism falls away. Second, the reforms and omissions described operate only prospectively. Inquiries pending on 21 November 2025 carry the

⁶⁷ Code on Social Security, 2020, s 114(4), (5) and (7)(i); s 141(1)(ii).

repealed remedies with them, and the date on which the Act of 1952 ceased to govern depends on the unresolved effect of a corrigendum. For some years, therefore, two remedial regimes will apply to the same class of liability, and the regime that applies will be determined by the date on which a proceeding began. That yields a conclusion of method as well as of substance. A statute cannot be evaluated apart from the instruments which bring it into force and carry it across. Whoever undertakes the corresponding study of the other labour codes should begin with the commencement notifications and their corrigenda, not with the Act.

Subject to those qualifications, the assessment provisions of the Code are a competent re-enactment of a workable scheme, improved in two respects and diminished in three. The improvements require only that they be drafted to do what they are said to do. The diminutions require only that three provisions repealed in 2025 be restored. The transition uncertainties require only an order under section 163, which may be made until November 2027.