

LEGALFOXES LAW TIMES

Code on Wages: A Disguised Bargain with the Aggrieved Workers

BY: Aarushi Kapoor, Hidayatullah National Law University

Abstract

The forefathers of Indian Constitution had always visualized India becoming a 'Socialist' in economic and democratic terms. It qualifies that the benefits of the economic growth must be shared by all the factors which contributed to it. With an aim to fulfill this objective, Code on Wages, 2019 has been enacted to reform the existing labour laws in the country. This aims for the legitimate protection of the foremost requirements of timely and equitable payment of wages, peaceful industrial relations, social security measures and safe working conditions for the working hands behind the industrial growth. Therefore, it becomes imperative to analyze the salient features of this newly simplified and codified enactment to the core and understand its role in the realization of the broader objectives of equitable distribution amongst those who have always been vulnerable to the exploitation of their employees. This paper highlights the most important characteristics of this bill and seeks to critically examine the provisions which divert this Code from its intended purpose.

Keywords: Labour Laws, Socialist, Exploitation, Employers.

I. INTRODUCTION

The Code on Wages Bill, 2019 is one of the most phenomenal initiatives to extend the legislative coverage of labour law reforms to about 48 crore workforce of the country, which as of now are in the want of fulfillment of their basic human rights. This Code is one of the four proposed codes, which has emerged as a result of amalgamation, simplification and codification of the existing 38 Labour Acts. This is in tune with the recommendations of the Second National Commission on Labour, 2002 wherein it was held that the existing set of Labor Laws should be

grouped into four or five major Labour Codes on functional basis.¹ Hence, a simultaneous effort has been made by the Ministry of Labour & Employment to draft four codes based on four subjects namely: (i) Wages; (ii) Industrial Relations; (iii) Social Security and Welfare; and (iv) Safety and Working Conditions.² The draft Code on Bill Wages, is an end product of amalgamation, simplification and codification of the four Central Labour Acts:

(i) The Minimum Wages Act, 1948³

(ii) The Payment of Wages Act, 1936⁴

(iii) The Payment of Bonus Act, 1965⁵

(iv) The Equal Remuneration Act, 1976⁶

II. BROADER OBJECTIVES OF THE CODE

This Code aims to guarantee a minimum basic wage to every employee irrespective of being from either scheduled, unscheduled, organized or unorganized employments, hence thereby securing the basic Right to Sustenance to the combined workforce of organized and unorganized sectors, which was earlier restricted to mainly scheduled and organized employments comprising a meager fraction of 8 crore out of 47 crore.⁷ The timely payment of wages will anyhow help the majority chunk of the unorganized workers to dilute the poverty line to which they are being currently subjected to.

This provision has another added benefit since it proves to be an effective tool for fighting hunger as well. The Rangarajan Committee estimated that 363 million people in 2011-12 live below poverty line and are the direct victims of starvation and hunger.⁸ In absence of a minimum wage provision or the absurdity which surfaced around the exact definition of minimum wage due to multiplicity of labour laws, a major fraction of the population remained aloof of their

¹Report on the Second National Commission on Labour, MINISTRY OF LABOUR AND EMPLOYMENT (2002).

²The Code of Wages Bill, 2017, 43rd Standing Committee On Labour, MINISTRY OF LABOUR AND EMPLOYMENT (2018).

³The Minimum Wages Act, 1948, No. XI of 1948, Acts of Parliament, 1948 (India).

⁴The Payment of Wages Act, 1936, No. 4 of 1936, Acts of Parliament, 1936 (India).

⁵The Payment of Bonus Act, 1965, No. 21 of 1965, Acts of Parliament, 1965 (India).

⁶The Equal Remuneration Act, 1976, No. 25 of 1976, Acts of Parliament, 1976 (India).

⁷Report of National Sample Survey Organization, 2011-2012.

⁸Report of Rangarajan Committee, 2011-2012.

rights. This Code makes an attempt to enlarge the scope of minimum wages to all the employments by incorporating the recommendations of Indian Labour Conference, 1957⁹ and ensuring the availability of 3 consumption units for one wage earner and consumption of 2700 calories by every Indian adult. Hence this promises a meaningful earning as well as adequate consumption patterns to achieve the dual Sustainable Development Goals of eradicating poverty and hunger.

The Code on Wage Bill which has now been drafted into an Act, ensures the nation-wide realization of the sustainable goals by reducing the disparity in minimum wages across the country. These differences for the time-being arise on account of differences in the minimum wages across the States in various sectors. Until this enactment came into force, the minimum wages were fixed, revised and enforced by the appropriate governments¹⁰ for employments notified in the Schedule by them. However, this Code has now ensured that the statutory right of getting wages not less than the minimum wages is applicable across the length and breadth of the country and hence assures a basic standard of living to all the employees across the country in complete satisfaction of Article 21 of the Indian Constitution.

Apart from the above mentioned salient features, the Code incorporates further safeguards in the Country by ensuring a timely payment of the guaranteed minimum wages and authorized deductions for all the employees.¹¹ This will in turn help in the sustained growth of per capita income and productions, leading to an invincible economic growth for a labour intensive economy of India.

The Code is multi-faceted and makes it obligatory for all the establishments to do away with gender discriminating practices amongst their employees in matters related to wages and recruitment.¹² A sustained effort to eradicate wage disparity will pave way for the ultimate aim of achieving gender equality.

This fruitful effort of ensuring multi-dimensional equality in gender and wages, will pave the way to redistribution of resources that would in turn promise an inclusive economic growth, with

⁹Report of Indian Labour Conference, 1957.

¹⁰The Industrial Dispute Act, 1947, No. 14 of 1947, Acts of Parliament, 1947 (India), § 2(a)(i).

¹¹The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 3(1), 3(2), & 3(3).

¹²The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 5.

its ultimate benefits being shared with the whole economy. In an effort to realize these objectives, the government is adamant over the stance to simplify the complexities of doing business by doing away with the rudimentary hurdles which made achieving 'ease of doing business' a distant dream. Therefore, rationalization and simplification of the existing labour laws is a welcome step in this stead.

This Code subsumes the multiplicity of definitions to simplified combination of words, which is in tune with the emerging economic scenario of the country. Furthermore there is a reduction of multiple authorities and an addition of transparency and accountability in enforcement of Labour Laws. This definitely would spur the growth of new production and manufacturing units, thereby enhancing the opportunities of employment with an inherent security and welfare of the otherwise vulnerable class of workers.

III. SALIENT FEATURES OF THE BILL

After having discussed the broader objectives of this Code, this paper shall now unravel the salient features of the Code, which mark the purpose for which it has been brought to being.

(i) The enactment of the Code of Wages, will subsume within itself the four Central Laws of the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the payment of bonus Act, 1965 and the Equal Remuneration Act, 1976. As a consequence these four National Laws would be repealed.

(ii) The multiplicity of Labour Laws in India have been the reason of plentitude of definations of various terms, which in turn results in ambiguity and immense litigation. This Code makes an effort to bring uniformity in the interpretation of various words, the most important of them being 'wages'. This has been modified to include allowances, concessions and incentives for the purpose of calculating bonus if the total of such allowances, concessions and incentives exceed 50% of the wage (excluding of these allowances).¹³

(iii) The provisions of Minimum Wage of the Code apply to all the employments covering both organized as well as unorganized sector,thereby extending the benefits on the principles of

¹³The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 2(y).

universalization irrespective of the wage threshold of Rs.18000, which exists as per the provisions of Payment of Wages Act.¹⁴

(iv) The Central Government has the power to fix by notification, the 'National Minimum Wage' for the country which though might differ for different geographical areas. Thereafter, the power lies with the appropriate government to fix and revise the wages for their states with an added obligation of the wages being not less than the 'National Minimum Wage' fixed by the Central Government. By no means can the existing wages be reduced by the appropriate government, if they already happen to be more than the notified wage.¹⁵ The government will be considering it for revision at an interval of 5 years.¹⁶

(v) The appropriate government will fix and revise the wages for the employees while considering a number of factors like skills required for different kinds of employment, the arduousness of the work assigned, geographical location of the workplace and the other factors which are considered appropriate by the government.¹⁷

(vi) The Code contemplates the constitution of Advisory Boards at the State and Central Levels for the purpose of seeking out advise in the matters related to wages as well as increasing employment opportunities for the women.¹⁸

(vii) Also, in a welcome move, the limitation period of filing of the claims have been enhanced to 3 years as against the existing period varying from 6 months to 2 years.¹⁹

(viii) To ensure effective compliance, the Code envisages the change in the designation and the role of the "inspector" from mere inspection to that of "facilitator" who would also guide and advise the employers and workers about the effective implementation of laws. Also to address the arbitrariness and malpractices, a web based transparent inspection scheme.²⁰

(ix) Penalties for different types of violations under this Code have been rationalized with the amount of fines with the amount of fines varying from Rs. 1000/- to Rs. 1,00,000/- as per the

¹⁴The Payment of Wages Act, 1936, No. 4 of 1936, Acts of Parliament, 1936 (India), §6.

¹⁵The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 9.

¹⁶The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 8(4).

¹⁷The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), §6(a) & 6(b).

¹⁸The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 42(1).

¹⁹The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 51(1).

²⁰The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 54(1)(b).

gravity of violations and repetition of the offence. However the penalty of imprisonment is for the repeat offenses only.²¹

With all the salient features of the above Code being highlighted, it is evident that it has all the traits of bringing a revolutionary change in the Indian labour market. However, it isn't even that simple. The Code despite being a landmark enactment in itself, fails at certain grounds, thereby making the entire legislative process to be hoax. Various stakeholders like workers and employees express their discontent over this enactment, because in accordance with their views, this is nothing more than an enactment which is cumulative of the loopholes of the existing laws, without there being any attempt made to amend them.

IV. ANALYSIS OF THE PROVISIONS

So far the landmark Labour Code on Wages, enacted in August 2019 has been celebrated immensely, overlooking the omissions or absence of important provisions of previous legislation. The belowmentioned analysis will be used to show case as to how this bill is an utter failure and hardly serves any purported objective for which it was enacted.

1. The Ambiguous Wage Structure

It has already been noted that this bill serves the purpose of simplifying the multifarious definitions and authorities which existed in the constituent enactments. This turn would be helpful in a better enforcement of compliance resulting in the benefits reaching out that faction of the labour workforce which has always been deprived of their legitimate rights. However, many of the draconian interpretation impose a hurdle in this regard. The most talked about definition is that of the 'Wages' around which revolves the entire Code. Section 2(y) of the Code, defines wages in a combination of 66 lines, which make it quite difficult and confusing at the same time.

The definition suffers the want of simplification and clarification. Various ambiguities emerge when, one restricts oneself to the literal meaning of the term. Some of them are as follows:

²¹The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 54(1)(b).

(i) The most apparent defect which the definition suffers is its division in two parts which have provisions contradictory to each other. The second part of Section 2(y) which enlists certain remunerations which are excluded from the calculation of the wages. However, under Section 2(y)(a), the first part excludes any bonus payable under the statutory law for the time being in force, for the purpose of calculating Wages. In an utter contrast, the second part makes 'bonus payable under the terms of the employment', a constituent of wage calculation. Their remains uncertainty as to how will the bonus payable under the terms of the employment be distinguished from the one which is statutorily paid, in the event, a given employment enumerates the terms which are statutorily mandated. Also, the Code fails in including a suggestion from the employers wherein, inclusion of bonus in the wages was sought in case the Establishment concerned did not earn profit.²²

(ii) The definition of the Wage as given in Code, restates the components of minimum wage which were already its constituents from previous legislation. Apart from a basic cost and cost of living allowance, it fails to enumerate a method for fixing it. The Indian Labour Conference in 1957 recommended a unanimously agreed upon method for the calculation of the Minimum Wage.²³ The similar formula was the basis of the landmark judgment of the Supreme Court in the case of **Workmen v. Management of Raptakos Brett**,²⁴ wherein needs based criteria was used to fix minimum wages.²⁵

The five norms which were formulated for this purpose are:

- (i) Three consumption units for one earner disregarding earnings of women, children and adolescents²⁶
- (ii) minimum food requirement based on net intake calories;²⁷
- (iii) clothing requirement at 72 yards per annum for an average working family of four; ²⁸
- (iv) house rent corresponding to minimum area provided for under the Government's

²²The Code of Wages Bill, 2017, 43rd Standing Committee On Labour, MINISTRY OF LABOUR AND EMPLOYMENT (2018).

²³Report of Indian Labour Conference, 1957

²⁴2008(2) MhLJ 229.

²⁵Ibid.

²⁶Express Newspapers (P) Ltd. v. Union of India, (1956) SCR 229.

²⁸Standard Vacuum Refining Co. of India v. Its Workmen, (1960) SCR (3) 466.

Industrial Housing Scheme;²⁹

(v) 20% of total minimum wage for fuel, lighting and other miscellaneous items.³⁰

Keeping in view the socio-economic aspect of the wage structure the following additional component has also to be taken into account.

(vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage.³¹

This criteria took into consideration the expenses on adequate and optimum levels of nutrition, fuel, lightning, clothing, education and healthcare, old age provision as well as the social costs such as marriages, funerals, festivals and recreations for three consumption units per worker.³² This approach valued a worker as a true human asset instead of being a mere factor of production.

This structure is in consonance with the aim of becoming a Socialist country wherein the produce of the economy is equally and equitably distributed amongst the factors of production. However, in utter disregard to what was the aim of the Constitution Framers, this Code fails to bring to light any such pragmatic approach for the fixation of the minimum wage. Instead it leaves such a sensitive issue to the discretion of administrators and turns a blind eye to the need of the workers to live a dignified life.

There isn't any clarity as to the authorities or the procedure which to be looked upon at for enforcement of this provision. The Code merely states that wages would be fixed by the Central Government and revised accordingly by the appropriate governments.³³ Such use of ambiguous language is likely to invite discrepancies like that of just few months back, wherein the government set the national floor for the minimum wage under the Wage Code to be at a mere

²⁹Ibid.

³⁰Ibid.

³¹Ibid.

³²Ibid.

³³Ibid.

Rs. 178, which is just Rs. 2/- higher than the existing rate.³⁴ This amount of wage rate barely qualifies as a 'starvation wage'.

(iii) Further, in order to accentuate the complexities in Wage Calculation, the appropriate governments take into consideration factors such as skill of the workmen, arduousness involved in the performed work and the geographical location of the workplace and the other factors completely left on the government discretion, for the revision and fixation of wages. Such specific factors can be arbitrarily used in absentia of any calculative approach to measure them.

(iv) Ambiguities have been gathered around the mechanism via which minimum wage would be fixed by the Central Government. Would it be a sum which will be generic to all the employments and would serve as a minimum floor which the states would need to take into consideration and according fix wages (not less than the minimum wage) for the various employments which are carried in its jurisdiction? Or would the Central Government announce different minimum wages of different states in accordance with their geographical area?³⁵ In the latter case, confusion brims as it would lead into multiple minimum wages as against the proposed single minimum wage for the country.

2. Lack of Enforcement and Compliance

No law can gain its glory until and unless there are efficient mechanisms available to enforce the same. This Code on Wage Bill, is one of those kinds. Below are the reasons mentioned as to why this enactment fails to bring the reforms, it was expected to.

(i) The provisions for the central and state level advisory boards are basically oriented towards maintaining a system of checks and balances to drive away the possibilities of any arbitrary behavior and ensuring a representation to all the stakeholders. However, these boards aren't independent in any way since their recommendations merely hold a persuasive value on the government. At the same time, the number of its members have been reduced to three. Moreover, this Code reduces the women representation in the boards to one-third from 50%. This is in sharp contrast to the gender equality claims of this code.

³⁴RashmiPradeep, *Code on Wages Bill, Simplification or Confusion*, THE BLOOMBERGQUINT (March 25, 2019, 11.20am); <https://www.bloomberquint.com/opinion/code-on-wages-2019-in-simplification-confusion>.

³⁵The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 6.

(ii) Under the provisions of the earlier labour laws, inspectors were given the responsibility of making inspections and prosecutions. They had the power to arrest the defaulters and command obedience. However, in a complete mockery of the enforcement mechanism, this Code defines inspectors to be ‘facilitators’. Their main function has been reduced to “supply information and advice to employers and workers concerning the most effective means of complying with the provisions of the code.”³⁶ This clearly shows how this Code provides a protective shield to the all the employers from the stringent compliance rules. Further the binding character of the provisions of inspections have been completely diluted.³⁷

Moreover the facilitator would be a government appointee and shall be a public servant under Section 21 of Indian Penal Code, 1860 and is authorized to search or seize documents from the employer as per the provisions but shall not have any power to take action against the defaulting employer. Instead the facilitator like the aggrieved employee will have to file application before the authority for fructifying the claim. The move which has come with the intention of doing away with the ‘inspector raj’ is likely to make the enforcement and compliance more cumbersome.

(iii) The Code proposes a web-based self-certification scheme,³⁸ wherein the employers themselves makes the effort to certify them as being complaint to all the mandates of the Code. This is likely to be an addition to the already strong bargaining power of the employers. This also takes away the power of the facilitators to conduct surprise checks to unravel any suspected violations and hence now will have to function in accordance with the web based system.

(iv) The Code also suffers from various lacunas when it comes to serving apt penalties to the law-breakers. The penal provisions have now been replaced by mere guidance inspections. Under the existing statute like Minimum Wages Act, the punishment of imprisonment was served to an employer if he dared to pay wages which were lesser than the one prescribed by the Act. In **Sanjit Roy v. State of Rajasthan**,³⁹ the Hon’ble Supreme Court very specifically held that non-compliance with the minimum wages amounts to forced labour, which is

³⁶The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 54(1)(b).

³⁷Ibid.

³⁸Ibid.

³⁹1983 A.I.R. 328.

constitutionally prohibited.⁴⁰ The present Code is in utter disregard to this judgment since the criminal liability has been done away with to make way for civil liability ranging from Rs.1,000 to Rs. 1,00,000.⁴¹

(v) This Code also seeks to limit the jurisdiction of Courts. The aggrieved workers will now have to approach the quasi-judicial body and appellate body set up by the provisions of this Act, for the enforcement of their rights. For the time being it is speculated that these courts could assume the supreme role in labour law matters while taking away the power of review by the higher courts existing in the country.

3. Pro-Employer Provisioned

The Indian Government since Independence has been struggling hard to discover the balancing line between the interests of the Capital and Labour. However, things have always favoured the industrialists, the employers, the manufacturers. This is a sheer violation of the rights of the workers which have been exploited at the behest of their employers. This Code instead of curbing these provisions, lends a helping hand to accentuate the same.

(i) The Code is silent on the inclusion of Contract Labours in its provisions. Their inclusion is possible only when one resorts to the liberal interpretation of the law. However, the employers are likely to make use of such a draconian provision and stick to the literal use of law, which is ambiguous as to their inclusion. By the vice of this provision, the liability of the principal employer to pay wages to the workers in the event the contractor has failed to pay is omitted. This would leave majority of the workmen who are employed via contractors in a more vulnerable position and are more prone to be cheated in absentia of any accountable or responsible employer.

(ii) No matter the Code permits legitimate deductions, thus saving the vulnerable class from the wrath of employers, however the mechanism or the due process which should be followed remain in limbo. There is again a possibility of misuse of power. There have been instances wherein the employer sometimes misuses his powers and deducts the salary of the employees for any reason which appears legitimate to him. Hence, it is essential that the government takes

⁴⁰INDIA CONST. art. 17.

⁴¹The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 54(1)(b).

cognizance of this and states the grounds on the basis of which such a step by the employers be legitimized.

(iii) The provisions of the Wage Code Bill, somehow bestow the employer which unleashed power. This is well evident from the provision which states that the employer has the power to deduct eight days wages for one day strike, in the event of ten or more employees acting in concert absent themselves without due notice and without reasonable cause.⁴²This means that if by the matter of coincidence, ten or more employees absent themselves on a particular day, they will be liable for illegal strike which would cost them their eight days wages.

Therefore, it is unfortunate to realize that despite an attempt being made to reform the existing condition of labour in our country, we again have met with failure to let the poor laborer get his legitimate rights. However, since such step has been already taken in the form of Wage Code Bill, there is an urgent need to reconsider certain provisions and re-do what appears to be arbitrary on the face of it. India being bestowed with the second largest population in the world, is expected to make the most of its workforce. However, such enactments with draconian provisions leave o stone unturned to convert our socialist economy into a capitalist one.

V. CONCLUSION

Our forefathers always wanted to equally distribute the produce of the economy between the capital and labour. The protection of wages is considered to be one of the means with the help of which it can be assured that the benefits of the industrial growth are being shared by their legitimate owners. Hence, this Code can be devise, which if amended to a certain extent can acknowledge the existing inequalities and make the structure as fair which is in compliance into ILO norms and Supreme Court Judgments.

There is an inherent need to strengthen the collective bargaining of the workers, push up their wages, and provide them the fair share in the economy. The corruption in offices, lack of compliance and enforcement mechanisms needs to be done away with for the realization of this goal. This could only be achieved if one realizes the struggle behind the previous labour legislations and instead of repealing them altogether, one needs to combine the best of every

⁴²The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India), § 20.

provision so that the existing compliance and enforcement strengthens. The judiciary needs to play an active role in this regard. It is only by this rhetoric simplification and inclusion that current labour laws could fulfill a socio-economic function, rather than being a tool in the hands of the industrialist.



LEGAL FOXES

"OUR MISSION YOUR SUCCESS"