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COMPARATIVE STUDY OF THE CODE OF WAGES 2019 AND THE WAGES ACTS

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ABSTRACT

In conformance with the commendations of the second national commission on labour and with a view to streamline various acts relating to wages, the Code of Wages was first introduced in the Lok Sabha in 2017, however, it lapsed due to the dissolution of the house. It was then re-introduced last year, and passed in August 2019, following approval from both houses.

The Code of Wages seeks to introduce a 'national minimum wage' in the organised and unorganised sectors, in addition to other features such as ensuring equal remuneration between men and women workers, timely payment of wages, and payment of bonuses.

However, the Code was met with mixed reactions, while it was seen by some as a positive move towards ensuring betterment of workers; others have referred to it as a complex policy with no clear cut instructions regarding determination of national minimum wages, thereby lacking a clear policy outcome. Also, while the code claims to have expanded the definition of "employer" and "employee", the trade unions argue that apprentices have been excluded from the new definition, unlike the previous definition. The code has also been critiqued on the grounds that it's impossible to arrive at a uniform national minimum wage.

Through this paper, the researchers' aims to examine the Code, in comparison to the Minimum Wages Act and Payment of Wages Act; study the extent of the benefits that it bestows upon the workers as well as the shortcomings that the code suffers from.

CHAPTER 1: INTRODUCTION

“Wages” are understood as remuneration for the services of labour or payment made by an employer to his workers/employees as remittance for their services.

Concept of Wages in India: A Timeline

- **1860:** Employer’s and Workmen’s (Disputes) act passed contained penal sanctions and secured settlement of wage disputes. (Replaced in 1932)
- **1929:** The Indian Trade Disputes act for settlement of industrial settlements via courts of inquiry and boards of cancellation.
- **1936:** Passing of Payment of Wages act.
- **1946:** 5 year programme for legislative and administrative actions in September 1946 by the interim government which had the following essentialities:-
 1. Minimum wages in Sweated industries with Statutory Prescription.
 2. The determination of differentials in wage rates as between various occupations in an industry and standardization of wages and occupational terms in all major industries.
 3. With due regard to the capacity of the industry to pay, and further there was promotion “Fair Wage” agreement¹.
- **1947:** Industrial Truce resolution embraced and a tripartite conference held.
- **1948:** Industrial policy resolution announced and which further emphasized:-
 1. In sweated industries fixation of statutory minimum wages.
 2. In organized industries there is promotion of Fair Wage agreements.²
- **1948:** Tripartite Committee on fair wages set up with employees, representatives of employers and govt. to look into the matter of fair wages.

In conformance with advice of the committee, the govt. designed guidelines for wage structure and its computation. Its suggestions set forth essential notions of “living wage”, “minimum wages”, “fair wage” and rules for fixing wages. (Discussed later on)

In the Indian constitution, *Art.39 sub-sections (a), (d), (e) and (f)* are directed towards securing the working conditions:-

¹ Report on Working of Minimum Wages Act 1948 (2006), p.27

² Sanjay Upadhyaya, (2012),” Evolution of Minimum Wage Policy and Regulatory Framework: An Inter Country Perspective”, V.V. Giri National Labour Institute, pp.12-14.

- (a) That the citizen, men and women equally shall have the right to an adequate livelihood and
- (d) That there is equal pay for equal work for both men and women;
- (e) That the health and strength of workers, men and women, and the tender of age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.³

Article 43 of Indian Constitution states “living wage, etc., for workers- The State shall endeavour to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual and cottage industries on an individual or co-operative basis in rural areas.⁴

The three Acts that are in focus in this project are the Minimum Wages Act, 1948; the Payment of Wages Act, 1936 and the Code of Wages, 2019. All have varying yet somewhat similar concepts of wages, which would be discussed in the successive chapters.



CHAPTER 2: PAYMENT OF WAGES ACT

Evolution of the Act

The Payment of Wages Act, 1936 was enforced on 23rd April 1936. The act seeks to secure industrial employees who don't have high salaries. Applicable on all workers in factories, employed via sub-contractor or railway administration or industrial sector mentioned in the act.

WAGES SECTION 2(vi)

"Wages"⁵ means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of

³ Art 39, The Constitution of India

⁴ Art 43, The Constitution of India

⁵ Section 2 (vi) of Payment of Wages Act, 1936

employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include—
 - (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
 - (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 14 [appropriate Government];
 - (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
 - (4) any travelling allowance or the value of any travelling concession;
 - (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
 - (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

Salient features:

- 1) Employer are liable to pay the wages to the persons employed by him as required under this act.⁶
- 2) Every person liable to pay wages shall fix the wage periods within which the wages are to be paid provided the wage period cannot exceed one month.⁷
- 3) Authorized mode for payment of wages: Coins, Currency notes or both.⁸
- 4) The employer is allowed to make certain deductions (authorized deductions) from salaries or wages of the workers such as fines, deductions for absence from duty, deductions for damage or loss of goods in the custody of the worker, deductions for house accommodation supplied by the employer, etc.⁹
- 5) *Sections 9-13* talks in detail about the deductions made under *section 7*.
- 6) Every employer shall maintain a register containing relevant details of the employees, wages paid, deductions made, etc. Such a register or record is to be maintained for 3 years after the date of the last entry made.¹⁰
- 7) *Section 14* talks about the powers, duties and jurisdiction of the inspector.
- 8) *Section 15* deals with the claims which arise out of deduction from payment of wages and penalty for malicious claims.
- 9) A single application in respect of claims of any number of unpaid persons belonging to an unpaid group.¹¹
- 10) The authorities appointed under *section 15(1)* of the act shall have the same powers as that of a Civil Court.¹²
- 11) Penal provisions laid out for contravention of this act with fine ranging from Rs.1,500 to Rs. 7,500.¹³

⁶ Sec 3, Payment of Wages Act,1936

⁷ Sec 4, Payment of Wages Act,1936

⁸ Sec 6, Payment of Wages Act,1936

⁹ Sec 7, Payment of Wages Act,1936

¹⁰ Sec 13A, Payment of Wages Act,1936

¹¹ Sec 16, Payment of Wages Act,1936

¹² Sec 18, Payment of Wages Act,1936

¹³ Sec 20, Payment of Wages Act,1936

CHAPTER 3: THE MINIMUM WAGES ACT, 1948

A Brief History: Timeline

- **1928:** A draft convention regarding minimum wages taken up.
- **1929:** The Royal Commission on labour (minimum wages) embraced.
- **May 1943 and January 1944:** Successive dialogues by the Standing Labour Committee.
- **September 1943, October 1944 and November 1945:** Successive meetings of the Tripartite Labour Conference.
- **April 1946:** The Minimum Wages bill presented.
- **March 1948:** Act entered into statute book.

According to *section 2(h)* of the Act, 'Wages' means all remuneration, capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied were fulfilled, be capable to a person employed in respect of his employment, or of work done in such employment and include house rent allowance, but does not include –

1. The value of:-
 - a) Any house accommodation, supply of light water, medical attendance;
 - b) Any other amenity or any service excluded by general or special order of the appropriate Govt.
2. Any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;
3. Any travelling allowance or value of any travelling concession;
4. Any sum paid to the person to defray special expenses entailed on him by the nature of him by the nature of his employment.
5. Any gratuity payable on discharge.¹⁴

Further the Act talks of “living wage”, “fair wage” and “minimum wage”¹⁵. The term “living wage” has not been explained under the act. But it has an explanation in the South Australian Act 1912, as “a sum sufficient for normal and reasonable needs of the average employee living in a locality, where the work under consideration is done or is to be done¹⁶.” In the Fair Wage

¹⁴ Sec 2(h), The Minimum Wages Act, 1948

¹⁵ Minimum Wages Act, 1948

¹⁶ South Australian Act 1912

committee report, it was stated that owing to the low level of national income it's unfeasible to define a living wage. Thus, living wages are those without which workers cannot survive or carry out their duties as citizens.

“Fair wages” have been defined as more than minimum wage, but less than living wage. There are certain aspects in place to compute the same:

1. Productivity of labour
2. The current rates of wage in the same industry for similar occupations in same neighbouring locality
3. The level of national income and its distribution
4. Place of the industry in the country's economy

The term “minimum wages” also has not been clearly explained in the Act, but it's the lowest wage in the scale below which the efficiency of a worker is likely to be impaired; consists of bare necessities and a modicum of comfort (conventional necessities). The appropriate govt. is authorized to fix the minimum wages and the employer is bound to pay the same notwithstanding their profit/economic position and availability or workers ready to work for lower wages.

Salient Features of the Act:

1. Act applicable to employment that has been mentioned in the Schedule of this Act.
2. The appropriate govt. (central/state) has to proclaim minimum wages, overtime wages, no. of hours of work per day, provide weekly holiday.
3. The appropriate govt. can add any employment to the list if 1,000 or more workers are working in that State.
4. Minimum wage implies all payments in cash including HRA, i.e. declared minimum wage and special allowance.
5. Different types of fixing of minimum wages:
 - A minimum time rate
 - A minimum piece rate
 - A guaranteed time rate
 - A time rate/ piece rate pertinent to overtime rate.
6. Classes for fixing minimum rate of wages:
 - Different scheduled employment

- Different classes of work within the same scheduled employment
- Adults, adolescents, children and apprentices
- Different localities (Zone wise)

7. Rules to be regarded for fixing minimum wage: Standard family of 4- three consumption units (2 adults and 2 children) for one earner. Minimum food requirement computed based on net intake of calories. Clothing a total of 72 yards. The rent relative to the minimum area (one room). Other regular expenses 20% of the total minimum wage; social expenses comprise 25% of the total minimum wage.

8. Minimum wages revised at regular intervals after every 5 years.

9. The appropriate govt. enabled to declare special allowance after every 6 months under the Act.

10. Claims made in sec 20 of the Act, before the labour authority for payment of minimum wages.

11. Authorities under the act:

- Advisory Board (*section 7*)
- Central advisory Board (*section 8*)
- Inspectors (*section 19*)

12. Act requires all payments to be made in cash; or either wholly or partly in kind in certain cases.

The Transition: From Wage Acts to the Code of Wages, 2019

Timeline Explained:

10th March 2015: Draft of labour code reviewed in the first tripartite meeting.

21st March 2015: Said draft set out in public domain for 30 days.

13th April 2015: 2nd tripartite meeting.

10th August 2017: Code of wages bill introduced by Ministry of Labour and Employment in Lok Sabha.

21st August 2017: Bill assigned to parliamentary standing committee.

18th December 2018: Committee gives its report; bill expired following dissolution of Lok Sabha.

23rd July 2019: Bill re-introduced by the Ministry in Lok Sabha.

30th August 2019: Lok Sabha passes the bill.

2nd August 2019: Rajya Sabha passes the bill.

CHAPTER 4: THE CODE OF WAGES, 2019

Salient Features of the Act:

- The code seeks to replace 4 laws: The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; The Equal Remuneration Act, 1976.
- **Definition of Wages:** *Section 2(y)* of the Act defines wages as all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment 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—

- (a) 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;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;

- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. As may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. So notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.



Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent of the total wages payable to him, shall be deemed to form part of the wages of such employee;¹⁷

- **Applicability:** Will be applicable to all employees/workers. The central govt. will decide for employments like railways, mines and oil fields; and state govt. will decide for other State governments will make decisions for all other employments.
- **Bars gender inequity:** Bars gender inequity in terms of wages paid by the same employer for 'same work or work of a similar nature done by any employee.'¹⁸
- **Floor Wage:** Floor wage is a new concept introduced in the Code, to be decided by the Central govt. after taking into consideration minimum living standards of the workers and the

¹⁷ Sec 2(y), The Code of Wages 2019

¹⁸ Sec 3, Code of Wages 2019

geographical areas¹⁹. Based on the floor wage and its consistency with the MWA, the appropriate govt. is to fix the minimum rate of wages to be paid²⁰. If the floor wage is lower than the prevailing minimum wages, then it cannot be decreased. The minimum rate of wages is to be reviewed in an interval of 5 years.²¹

- **Working Hours:** The appropriate govt. shall fix the no. of hours to comprise a normal working day.²²
- **Overtime:** If employees work more than that of normal working day, then entitled to overtime wage that is at least twice the normal rate of wages.²³
- **Mode of Payment:** Includes wages in coin or currency notes or cheque or crediting wages digital mode to the employee except in those industrial establishments as notified by the appropriate govt.²⁴
- **Permitted Deductions:** Can be made on following grounds (i) fine, (ii) Absence from duty, (iii) accommodation given by the employer, (iv) recovery of advances given to the employee, among others.²⁵
- **Bonus:** Applicable to establishments having 20 employees or employs 20 employees on any day in an accounting year; annual bonus calculated at rate of eight and one-third per cent of wages earned or Rs.100, whichever is higher.²⁶ An employee can receive max bonus of 20% of their annual wages.²⁷
- **Disqualification of Bonus:** Conviction for sexual harassment is an added criterion for disqualification.²⁸

¹⁹ Sec 9, Code of Wages 2019

²⁰ Sec 6, Code of Wages 2019

²¹ Sec 8(4), Code of Wages 2019

²² Sec13, Code of Wages 2019

²³ Sec 14, Code of Wages 2019

²⁴ Sec 15, Code of Wages 2019

²⁵ Sec 18, Code of Wages 2019

²⁶ Sec 26(1), Code of Wages 2019

²⁷ Sec 26(3), Code of Wages 2019

²⁸ Sec 29, Code of Wages 2019

- **Death of Employee:** Code enables disbursement of dues of employees in the event of their death, to the persons nominated by the employees or to be deposited to prescribed authority under the code for the same.²⁹
- **Records, Returns and Notices:** Code requires maintenance of registers with relevant details of the employees, muster rolls, wages; provides for display of notices on display board of establishment with abstract of code of wages and its relevant details and details of the inspector-cum-facilitator; additionally, provision for issuance of a wage slip.³⁰
- **Inspector-cum-Facilitator:** Appointed to eliminate malpractices and conduct inspection and to provide details to employees/employers for effective pliability.³¹
- **Offences:** Code states penalties for contravention of provisions of the Act; penalties are of varied nature, maximum penalty is imprisonment upto 3 months and/or with fine of Rs.100,000.³²
- **Limitation Period:** Period of limitation for filing of claims increased to 3 years.³³



²⁹ Sec 44, Code of Wages 2019

³⁰ Sec 50, Code of Wages 2019

³¹ Chapter VII, Sec 51, Code of Wages 2019

³² Chapter VIII, Code of Wages 2019

³³ Sec 45(6), Code of Wages 2019

CHAPTER 5: COMPARATIVE STUDY

Figure : Geographical regions as determined by the Expert Committee on determining the methodology for fixing the National Minimum Wage, 2019



Source: Expert Committee on determining the methodology for fixing the National Minimum Wage, 2019

Why Code of Wages?

- The code seeks regulation of wage and bonus payments in all sectors.
- The code seeks to modify the old labour laws to make them more accountable and clear.
- Aimed at discarding multiple definitions and authorities provided in various labour laws.
- Aimed at appointment of Inspectors-cum-Facilitators to avoid arbitrariness and malpractices.
- Most importantly, seeks to fix a uniform floor wage.

The economic survey laid emphasis on the complex nature of the wage system that's prevailing in the country; in the background of this confusion the Code of Wages has been welcomed by many as a positive step towards streamlining the labour laws by bringing them under a single roof.³⁴

The industry has welcomed the move. Chairman of the CII National Committee on Industrial Relations, says this will help in addressing violation of minimum wage provisions and exploitation of labour. However, he cautions that the state governments should desist from

³⁴ <https://www.businesstoday.in/opinion/columns/code-on-wages-bill-2019-universal-minimum-wage-enforced-organised-sector-workers-unorganised-workforce/story/367641.html>

competitive populism to inflate minimum wages to an extent that it would make industry unviable and uncompetitive. "We have to be competitive and viable as business enterprises and should not lose sight of that", he warns.³⁵

However, the Code has been met with criticism and uncertainty by the very people it was intended for. In the interest of achieving uniformity across these four statutes, the Wage Code seems to be taking a complex approach, which appears to be creating some odd outcomes.³⁶ For instance, the present minimum wages act includes HRA within the definition of wages, however, it has been excluded from the Code, creating confusion and ambiguity. Further, without any explanation the code has removed "remuneration payable under any award or settlement between the parties".³⁷

In addition, by defining 'employee' and 'worker' differently, it has left everyone confused as both explanations appear to be the same, thereby overlapping each other. Many believe that the computation of minimum floor wage is a matter of concern.

Overall, the act has very few changes that can be called remarkable since most of its aspects have been borrowed from the very 4 acts that it's striving to replace.

However, one must realise that the Act is yet to be implemented. The Act has obtained clearance only from the parliament, it's yet to be enforced, and therefore most of the confusion surrounding the act will be cleared only when steps for implementation are taken.

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³⁵ <https://www.businesstoday.in/opinion/columns/code-on-wages-bill-2019-universal-minimum-wage-enforced-organised-sector-workers-unorganised-workforce/story/367641.html>

³⁶ <https://www.bloombergquint.com/opinion/code-on-wages-2019-in-simplification-confusion>

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