



CHANGES BROUGHT BY THE CODE ON WAGES, 2019

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Abstract

India became an independent country in the year 1947. Today, India stands at par with world giving other nations a direct competition in terms of economic growth. People of our nation have become liberalised and are ready to face the world. We all have witnessed the exponential rise in the scrutiny by the Government when dealing with the women security. Justice Malimath Committee¹ has shown whole nation that India is open to changing its law and practices in order to provide a better living environment to its citizens. But what about the working environment? India do have comprehensive laws governing the labour and employee regime of the nation. But, these laws were formed a long time before the Independence and the changes that have been brought by various reforms since then are remarkable. These new changes makes these labour laws obsolete and in capable of dealing with the current circumstances. For a long time a demand for making changes to these laws were being made which was finally answer in the year 2019, when government decided to consolidate and make changes in the existing labour laws of India. This was done with an intent to makes labour laws less complex, free from ambiguity and provide an ease while compliance of such

law. This paper deals with the major changes brought by the Code on Wages, 2019 and the international stance over the existing labour laws of India along with a comparative analysis of provisions of previous act and the new code.

Keywords: Wages, Economic Growth, Labour, Compliance, Consolidate, Employee.

Introduction

India is a diverse nation having a population of around 135 crores. As per the report of CIA², India has a labour force of 529 million among which 22 per cent labours are engaged in Industrial work, 31 per cent in services and a remarkable amount of labour is involved in agricultural employment, i.e. 47 per cent. Therefore, an inference can be drawn that almost half of the labour force in India is engaged in farming /agricultural activities. Still, these people were not covered under the protection of labour laws such as the Minimum Wages Act 1948, Payment of Wages act 1936 etc. As a result, they have been facing exploitation from their employers and society in general. Apart from this, another pertinent point to note here is that most of the labour laws in India were formed in the pre-independence era. Without any doubt, these laws were beneficial at that time, but with the rapid development of industries post-independence period, most of the provisions in labour laws have become obsolete. Some typical examples of it are the provisions of penalties in labour laws. For instance, maximum fine prescribed in Minimum Wages Act, 1948 for non-payment

¹ Committee on Reforms of Criminal Justice System, mha.gov, Committee on Reforms of Criminal Justice System, Accessed on October 21, 2020.

² <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html>



of minimum wages to the employee was Rs. 500 which considering the modern scenario is insignificant and unjustifiable, so the same penalty in the new Wages Code, 2019 has been increased to a maximum fine of Rs. 50,000.

Similarly, there are various other changes introduced by Wages Code which gives the provisions of the code an efficient application. Further, various new provisions are being introduced in the Wages Code, 2019, which removes the ambiguity caused by the previous act. Before looking into these changes and new provisions introduced by the Wages Code, 2019, let us look into what International organisations said about the Labour Laws of India. Further, the real test of the effectiveness of this Code can be witnessed at this time of pandemic, when various states are making changes in their schemes to boost up the production and revenue of industries. Which is a fairly justified step taking in view the situation faced by these industries. In such a turmoil, these codes ensure that the interest of a labour, employee or worker stays protected and doesn't scum under the pressure of greater revenue generation demand.

International stance on Provision of Wages as per International Labour Organisation India Wage Report, 2019

The Report of ILO³ brings out to the notice that India has different variations in minimum wages for the same occupation across states, and this is a reflection to the disparities in living costs between different states. Furthermore, there was no provision on how the differential rates between skilled,

semi-skilled, and unskilled workers is to be applied in practicality.

Due to multiplicity of acts, and provisions, coming to a consensus and deciding which provision to apply has been mentioned in the Report as a highly inconvenient, for instance fixing minimum wage in contract labour falls under both the Minimum Wages Act, 1948 and Contract Labour Act, 1970 creating such instances where it was difficult to decide which act to follow, the new act consolidates and clear the same issue.

The ILO report observed that the complex minimum wage system of India needs to be simplified and extended to all wage workers. For the same purpose, a national floor level minimum wage had been recommended by National Commission on Rural Labour in 1991 and timely, but unfortunately even for more than two decades of the introduction of the recommendation by the Central Government in 1996, the same has stayed as non-binding and without statutory backing. The efforts at the state level to simplify and rationalise the fixation of wages based on skill levels have not been implemented either.

The variation in wages of different states and different occupations, no uniformity in the wage structure and other issues have been rectified in the Wages Act, 2019. For instance, some consolidated both the Basic Pay and the Dearness Allowance (DA) while paying the wages, others consider DA as a separate component, to address these inconsistencies the present act clearly defines all the elements inclusive or exclusive of the wages to be paid. The aforementioned requirement of statutory backing of Floor

³ INDIAN WAGES REPORT, ilo.org, <https://www.ilo.org/wcmsp5/groups/public/---asia/--->

ro-bangkok/---sro-new_delhi/documents/publication/wcms_638305.pdf



wage has also been addressed by the Government in the new Wages Act, 2019 to ensure dignified living standards to the workers. Furthermore, the multiplicity of definitions and increased confusion and the bulkiness has been consolidated in one act.

The Report also specifies the requirement of establishment of a fast track system of minimum wages, which includes consultation with social partners to design a better and operational minimum wage system, although in practise the minimum wages are set statutorily by the decision of competent authority, wage boards, industrial and labour tribunal. The procedural aspect of fixing the minimum wage in India, takes sometimes as long as 5 years, rendering the change, not up to the current living standards and to base the minimum wage revision only on price inflation does not improve the purchasing power of the wage earners either, the report recommends to make it effective by the revision of such wages on a regular basis, while keeping in regard the cost of living, GDP growth and growth in Labour productivity. There is an emphasis on universalization of the minimum wage, statutorily covering workers in all sectors, industries and areas to make the system more effective.

The change in the method of payment of wages, i.e. the inclusion of using the electronic mode of payment is based on the Kerala Model, which is in turn based on the United Arab Emirates Model (United Nations, 2012), as mentioned in the report. Under this the State of Kerala adopted the electronic system that logs the wage payment directly into the bank accounts, and the labour department monitors it to ensure compliance. Similarly, the same payment system is exercised in MGNREGA,

whereunder the workers are also paid directly in their bank accounts, this kind of system eases the labour inspection system. To further improve the compliances, the report suggest reform in Penalties and Sanction to be set at an appropriate level with effective institutions, procedure and enforceability, this change can be noted in the Wages Act, 2019, as the penalties and sanctions which were previously low has been significantly increased, and provisions with respect to repetition of offences has been introduced.

The report suggested strengthening the powers of the labour inspector to enforce the legislation. However, the current act does widen the scope of the labour inspector with defining the work of an “inspector-cum-facilitator”, who will inform the appropriate govt about such defects and abuses not covered by the law in force, providing certain protection against victimisation. There is a significant emphasis on equal pay for work of equal value which has also been addressed by the Wages Act, 2019.

Therefore, there is no harm in saying that, changes and the new provisions incorporated in the recent act seems like a result of the recent report published by the International Labour Organisation (ILO) in 2018 (to which India is a founding member), as the report made some significant suggestions in the same line.

Consolidation and Changes found in new Wages Act, 2019

Wages before the 2019 Act were defined in different labour legislations including the minimum wages, payment of wages and payment of bonus act. The code now in **Sec**



2(y)⁴ prescribes a consolidated definition of the wage as all the remunerations given on the fulfilment of terms of employment by the person employed in terms of money or consideration by way of salaries, allowances or otherwise. The wage includes (i) Basic pay, (ii) Dearness Allowance and (iii) retaining allowance if any.

The definition excludes a list of certain items such as conveyance and house rent allowance from the ambit of wages although such excluded components cannot exceed 50% or other percent (apart from gratuity and retrenchment compensation), of all the remuneration payable to the employee and in case if the amounts exceeds the specified percent of the remuneration then it shall be considered as Wage.

Further to support the equal wages to all gender and payment of wages, the considerations under clause (d) Conveyance allowance; (f) House rent allowance; (g) Remuneration payable under any award or settlement (h) overtime allowance will also be considered for the computation of wages.

Employee⁵ [Sec 2(k)]

The act clarifies the definition of the employee and widens the scope of the persons covered under employee, as it includes all the people employed on either express or implied terms of employment on wages by an establishment for performing any skilled, semi-skilled or unskilled,

manual, operational, supervisory, administrative, technical or clerical work.

Workers⁶ [Sec 2(z)]

To differentiate the same with worker the Wages Act, 2019 clarifies that workers include all the people employed in industry for performing the manual, unskilled, skilled, technical operational, clerical or supervisory work however a person employed for managerial work or administrative capacity or a person employed in supervisory capacity for a monthly wage exceeding Rs. 15000 or other amount as specified by the central government shall be excluded from worker.

Therefore, the present act made the definition of the employee broader than the workers, although now workers expressly includes the working journalists and sales promotion employees.

Contract Labour⁷ [Sec 2(g)]

Contract labour under the Wages Act, 2019 is defined as the worker who are regularly employed by the contractor by mutually accepted standards of the conditions of the employment, for the purpose of performing any activity in the establishment. However, it excludes the part time worker, worker who get periodical increments, social security coverage and other welfare benefits.

⁴ Section-2(y), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

⁵ Section-2(k), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

⁶ Section-2(z), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

⁷ Section-2(k), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>



Employer⁸ [Sec 2(I)]

The definition of the employer has been widened under the current act as Employer means any person who employs, directly or indirectly one or more employees in the establishment on his behalf or on behalf of another person, or in case of Central Government or State government the authority so specified by the head of the department or himself. It includes (i) Occupier of the factory, person named as manager of the factory, in relation to the establishment,

(ii) Person who has ultimate control over establishment affairs as entrusted to a manager, or managing director, in relation to the establishment,

(iii) contractor,

(iv) legal representative of the deceased employer.

Fixation of Minimum wage⁹ [Sec 6]

To keep up with the changing living cost the Code further prescribes the minimum rate of wages shall be reviewed and revised in intervals not exceeding 5 years by the appropriate government.

The fixation of minimum wages further provides that the wages period now applies only to minimum wages fixed on the work

time basis, it is a very important step as earlier the provision was also used to fix the overtime wages. Further the power to fix the minimum wages were given to the person authorised to pay wages, in the present act only the appropriate government and the employer can fix the wage period.

Overtime¹⁰ [Sec 14]

The code also provides that if an employee works for an excess of hours constituting a normal working day, then the employer has to pay the employee at the overtime rate which should not be less than twice the normal rate of wage for every hour or part of the hour which is in excess. This provision is amalgamation of the applicable overtime rate across the board. There is no different provision anymore for the Factory workers and the same provision will be applicable

Time period of wage¹¹ [Sec 17]

The employer can under the Code now fix the wage period of the employees on a daily, weekly, fortnightly or monthly basis, this is a welcoming change from the provision of the Payment of wages Act which mentions two different time limits for the payment of wages based on the number of employees, and that the period of payment shall not exceed one month.

Deductions¹² [Sec 18]

⁸ Section-2(I), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

⁹ Section-6, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁰ Section-14, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹¹ Section-17, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹² Section-18, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>



In the previous act i.e. the Payment of Wages Act, 1936 the maximum amount of deduction which was permissible for the payment of cooperative society, was 75 percent. Now in the new code, the amount of deduction in no case can exceed 50 percent of the wages. This ensures a security of wages to the employee.

Disqualification for Bonus¹³ [Sec 29(d)]

With the increase in the offences against women in various walks of life. The Wages Code, 2019 has taken a small but significant step towards making the workplace more secure for the women by incorporating Section 29(d), which disqualifies any employee from receiving the bonus if convicted for sexual harassment.

Mode of Payment of Bonus¹⁴ [Sec 15]

According to the new code, bonus shall be credited to the account of the employee. Intent for bringing change in this particular section can be well understood in the present situations of pandemic. Where transactions in cash are avoided. However, this promotes the interest of employees as employees cannot delay paying wages on the pretext of insufficient cash reserves.

Offences by Company¹⁵ [Sec 55 (explanations)]

Companies under this include LLP as well.

Composition of Central and State Advisory Board¹⁶ [Sec 8]

In the new code advisory board will not be chaired by an Independent person but the respective governments will be heading the advisory boards.

Penalties for Offences¹⁷ [Sec 54]

It can be classified into three types-

- **Offences regarding Wages:** Any employer who is found paying its employee less than the minimum wages shall be liable for a maximum fine of Rs. 50,000 and if found guilty so same offence within 5 years of previous conviction, he shall be liable for a maximum fine of Rs. 1,00,000 or imprisonment for one month or both. In previous act it was fine which extended to Rs. 500 in previous act i.e. The Minimum Wages Act, 1948.
- **Offence of Non-Maintenance of Register:** Any employer found guilty of non-maintenance or improper maintenance of records shall be fined a maximum amount of Rs. 10,000. Earlier the fine for such offence ranged from Rs.1,500 to Rs. 7,500.
- **Contravention of Provisions under this Code:** Any employer found guilty of any activity in contravention of provisions and rules laid down in this code shall be punished with a maximum fine of Rs. 20,000. If any employer is found guilty so same offence within 5 years of previous conviction, he shall be liable for a maximum fine of Rs. 40,000 or imprisonment for one month or both.

¹³ Section-29(d), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁴ Section-15, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁵ Section-55, Explanations, Code on Wages, 2019, available at

<http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁶ Section-8, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁷ Section-55, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>



New provisions Introduced in the Wages Code, 2019

This Wages Code has provided various new provisions to facilitate the compliance with this code, protecting the interest of employees and effectively removing the ambiguity of any kind. Some of the new provisions introduced are:

- **Floor Wages¹⁸ (Section-9):** Provides for fixing of floor wages taking into consideration standards of minimum living for a worker. This ensures a dignified life worker. Further it is stated by the code that minimum wages fixed provided by employers shall not be less than floor wages.
- **Fixation of Minimum Wages¹⁹ (Section-6):** Provides for fixing min. wages while taking into consideration the skills, working conditions. Also, gives assurance that the government shall keep such a rate of wages to as minimum as possible.
- **Compounding of Offences²⁰ (Section-56):** This code now provides for the combining of the same offence which brings the person repeating the same offence within the radar of this code.
- **Inspector-cum-facilitator²¹ [Section-2(r)]:** Term “Inspector” is replaced by inspector-cum-facilitator as now inspector not only inspects the compliance by the employer but also facilitates/ helps the employee to get his claims and complaints addressed in front of appropriate authority.

Conclusion

The Wages code, 2019 can be considered as a big relief for labourers considering the unfortunate Labour law reforms being brought by multiple states following the Covid-19 crises, lockdowns and restrictions. It has been said that these reforms are necessary, as they provide for more flexibility to the employers, and facilitate them in ease of business, kick start the economy. In the pretext of health crises arising from the Pandemic, the State Governments are making use of their powers to introduce these reforms which are not only violative of Human rights, but can be said as exploitation of the Labours in industry. Multiple State governments to reform labour laws are increasing the working hours of the workers, restricting their wages to the level of minimum wage, further reducing their social benefits, permitting the engagement of contract labour for any kind of work, easing norms for firing workers, restricting the trade union rights and cutting down the labour inspections.

The labour departments of the State of Gujarat, Madhya Pradesh, Himachal Pradesh invoking the public emergency have notified under section 5 of the Factories Act, the extension of the working hours of the factory workers to maximum 12 hours a day and 72 hours a week. The new working hours are valid for a period of 180 days. The same trend has been followed by the Labour Department of the Governments of Odisha, Maharashtra, Goa and Punjab. The Punjab Government

¹⁸ Section-9, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

¹⁹ Section-6, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

²⁰ Section-56, Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

²¹ Section-2(r), Code on Wages, 2019, available at <http://egazette.nic.in/WriteReadData/2019/210356.pdf>



under sec 65 of the Factories act according to which factories are provided exemption on stipulating the daily and weekly working hours under the act considering the work load.

The Government of Uttar Pradesh have gone overboard with the reform, and has in the month of May has cleared the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 it is applicable on the operation of all the labour laws which are applicable to the factories and manufacturing establishments in the UP, for a period of three years. Although it is not applicable on provision related to women and children, Bonded Labour System (Abolition) Act, Employees Compensation Act, The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act. The ordinance require the employers to pay the minimum wages as notified the state government, its implication would remove the obligation on the employer to pay workers any more wage than as prescribed by the State Government, neither the employers need to adhere to existing wage related collective bargaining agreement, the hour of work is extended to 11 hours and workday to 12 hours, employers are divested from their social security obligation, but they have to provide the safety as required under the provisions of Factories Act.

The temporary exemption also provides the flexibility to employers to fire workers without paying them compensation, as it has become easier for ten to engage the contract workers for the same kind of work. The exemptions have not only taken away the rights of Trade Unions but has also made sure that new trade unions cannot be registered in the state till the ordinance is in force. Moreover, the workers are not provided any

access to redressal mechanisms to address their grievances. It is also pertinent to note that the UP government was initially forced to retract the order on increasing the workday hour to 12 hours after a PIL was filed in the High Court of Allahabad.

The measures not only violate fundamental rights, constitutional obligations, international agreements such as International Covenant on Civil and Political Rights, International Covenant of Social and Cultural Rights and International Labour Organisation obligation to promote equity, security and dignity, but also endanger the health and safety of workers.

Observing the above-mentioned changes, the Wages code, 2019 is the need of the hour, as it positively consolidates, simplifies and codifies the rather bulky and complicated labour laws. Otherwise, the multiple provisions of different acts would have added on the austerity of the exemptions made in the light of Pandemic and economic reboot.

The codification of the 4 acts in the Wages code removed several confusions and multiplicities of definition and authorities. The amalgamation of the acts resulted in the better understanding and compliance of the provision, which in-turn made enforceability of the labour laws for the benefit of more than 500 millions of labour workforce easier. The Wages Act, 2019 also provides on clarity on the elements which are inclusive of wage, and the payment of overtime rate which should not be less than twice the normal rate of wage for every hour or part of the hour which is in excess. The act has also introduced increased penalty on non-compliance with the provision, such as if employers pay wages below the minimum wage, then shall be liable for Rs.50,000 in the previous act it was



Rs. 500. The code also provides for compounding of offences.

For a labour-intensive country like India, the inclusion of the unorganised sector and provisions of implementing the floor wages for the minimum wages is a milestone in itself. The code further recognised the latest trend of digitalization by incorporating provisions of the online wage transfer, web-based inspection scheme etc. Overall, the code will act as a catalyst for better changes in terms and conditions of the employment.

