



REVOLUTION IN LABOUR LAWS OF INDIA – ISSUE I
“Code on Wages, 2019”



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INTRODUCTION

Labour laws in the country have been vast and causing issues pertaining to interpretation. However, these central and state legislations are important to define the rights and obligations of the worker as well as the employer. With time arose the need of unification of laws for better administration.

The 2nd National Labour Commission of 1999 submitted its report in 2002 to the then Prime Minister Atal Bihari Vajpayee.

This idea behind the umbrella legislation for wages therefore, goes back to year of 2002, as the report suggested two major points:

1. **Rationalization of the existing laws** relating to labour in the organised sector; and
2. **Umbrella legislation** for ensuring minimum level of protection to the workers in the unorganised sector.

The Commission also discussed that the wide set of labour laws should be **grouped into four to five categories** i.e. wages, industrial relations, social security, safety, welfare and working conditions.

Years after such recommendations, the **Union Budget 2019** announced the decision of the Modi 2.0 government to **make four uniform labour codes** in order to streamline them.

During the Budget declaration, they even referred to how swiftly the authorities are working on the Code on Wages Bill.

Earlier, the Bill was introduced in the Lok Sabha in 2017 and was forwarded to the Parliamentary Standing Committee who submitted their report in December, 2018.

However, the dissolution of the 16th Lok Sabha, resulted in the Bill being lapsed.

Thereafter, a new revised Bill was then introduced in the Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on 23rd July, 2019 after making amendments in accordance with the suggestions by the Committee.

The Lok Sabha approved such Bill on 30th July, 2019 following with the Rajya Sabha's approval on 2nd August, 2019.

The 1st uniform code out of the targeted four, i.e. the **Code on Wages, 2019** ("Code") received its Presidential assent on **8th August, 2019**.





“The Code most importantly, does not discriminate between men, women and transgenders in getting wages as under Section 3(1) of the Code.”

Therefore, this Code has aimed to bring a revolutionary change in the labour laws of the country.

SCOPE & KEY FEATURES

SCOPE:

The Code will apply to the people working in the organised and unorganised sectors of the country. It comprises of 9 extensive chapters focussing on wages, bonus, constitution of advisory boards, appointment of an Inspector cum Facilitator, offences and penalties and other miscellaneous provisions.

KEY FEATURES:

The Code has cleared various terms and concepts by expressly defining them.

Wages:

Section 2(y) of the Code defines Wages and includes salary, allowances and other monetary components. It includes:

- i. Basic pay;

The plan is to not only **fix the minimum wages but also timely payment of wages** irrespective of the which unorganised sector the workers are engaged with.

Many sectors which were earlier not under the ambit of such protection are been taken care of by this Code like agricultural workers, dhabas, watchmen, etc.

Further, the Code shall put forth a **universal definition of ‘Wages’** unlike the earlier situation of a dozen definitions of wages under different central and state legislations.

This statute will benefit and improve the living conditions of more than 50 million workers of the country.





- ii. Dearness allowance; and
- iii. Retaining allowance, if any.

It however, does not include:

- i. House rent allowance;
- ii. Overtime allowance;
- iii. Commission payable;
- iv. Gratuity;
- v. Retrenchment compensation;
- vi. Conveyance allowance;
- vii. Sum paid under award of tribunal or order of the court; etc.

If the exclusions exceed one-half percent of total amount of wages, such exceeding amount shall be covered under the term 'wages'.

The Central government shall set minimum wages for employments like mines, railways, ports and others while the State government for all other employments.

Employee and Worker:

The Code has derived a distinction between the definitions of the term 'Employee' under Section 2(k) and 'Worker' under Section 2(z).

Employee includes any person employed on wages by an establishment for any skilled, unskilled, operational,

supervisory, clerical, etc. work for hire or reward or anyone expressly declared an employee by an appropriate government.

Worker includes anyone employed by any industry for any skilled, unskilled, operational, etc. work for hire or reward along with working journalists, sale promotion employees, people working under the Air Force or Army or Navy Act, Police officers, anyone employed in managerial or administrative capacity or anyone employed in supervisory capacity drawing wages exceeding Rs. 15,000 per month or any amount notified by the government.

The appropriate government shall take into account the following points for fixing the minimum wages as under **Section 6(6)** of the Code:





- i. Skill of the workers or geographical area or both;
- ii. Arduousness of work like **temperature or humidity, hazardous occupations or processes or underground work;**
- iii. Norms as may be prescribed of **such fixation.**

The minimum wages shall be revised or reviewed by the government at an interval not exceeding five years as under Section 8(4) of the Code.

The Central Government under **Section 9 of the Code** has been given the power to fix a floor wagetaking into account minimum standards of a worker keeping in mind the living standards of the workers. **Therefore, there may be different wages fixed for different geographical areas.**

It will help overcome the differences that exist under the current Labour legislations.

As a result of this change, the minimum wage is now not decided by their employment but by important factors like geographical location of the employment and skills of the worker.

The legislature has been considerate of all situations pertaining to payment of wages like Wages of employee who works for less than a normal working day under **Section 10**, Wages for two or more classes of work under **Section 11**, Wages for overtime work set two times the normal wages as under **Section 14**, etc.

The Payment of Wages Act, 1936 was applicable to employees whose wages do not exceed Rs. 24,000 per month.

But Chapter III "Payment of Wages" of the Code applies to all the employees.

It codifies the Mode of Payment under **Section 15** being in the current currency or cheque or transferring in their bank account and the **time limit for payment of wages under Section 17:**

- i. Daily basis, at the end of the shift;
- ii. Weekly basis, on the last working day of the week or before weekly holiday;
- iii. Fortnightly basis, before end of the second day after end of the fortnight;





iv. Monthly basis, before expiry of the seventh day of the succeeding month. Where an employee has been removed or dismissed from service, retrenched or has resigned from service or became unemployed before of closure of establishment, the wages shall be paid to him within two working days of such event.

Deductions:

The Deductions allowed from wages are listed under **Section 18** of the Code.

The Permissible deductions as under sub-clause (2) are:

- i. **Fines** as stated under Section 19 of the Code, under sub-clause (4) mentioned that such fine amount shall not exceed three percent of the wage amount;
- ii. **For absence from duty** as under Section 20;
- iii. **For damages or loss** as under Section 21;
- iv. For **house accommodations** provided by the employer;
- v. For **amenities and services** supplied by the employer; etc.

Bonus:

As under **Section 26** of the Code, any establishment having 20 or more employees shall be under the purview of this Chapter. Any employee whose wages are not exceeded by the government at any specific month as per the notification of the government and has put at least 30 days' work in an accounting year, **shall be eligible to get an annual bonus of 8.33% of the wages or Rs. 100, whichever is higher.**

The Code highlights the grievous nature of a dismissal because conviction for sexual harassment and adds it to be a ground for no statutory bonus along with the others being reiterated as under the Payment of Bonus Act, 1965. Further, under **the Payment of Bonus Act, 1965**, such payment was applicable to employments with 20 or more persons and for employees whose wages do not exceed Rs. 21,000 per month. However, the present Code makes the Bonus provision applicable to all employees whose wages do not exceed a monthly amount notified by the governments.





Miscellaneous:

In case of **death of an employee**, the person nominated by the employee shall get the arrears of the wages.

As per **Section 50** of the Code, it is mandatory for an establishment to maintain a register containing details of the persons employed, muster rolls, wages and such other details as may be prescribed.

*“Working of the Board–
This Advisory Board shall advise on revision of minimum wages, or other connected matters or provide increasing employment opportunities for women, etc. The Central Government can direct the State Government issues that they deem fit.”*

State Advisory Board:

This Board shall be constituted to advise the State Government on same or similar issues as the Central Advisory Board. It has same constitution as that of the Central Board. The State Government shall issue directions after taking into consideration the advice of the State Board.

The term of such Boards shall be as prescribed.

AUTHORITIES UNDER THE CODE

Section 42: Advisory Board

Central Advisory Board:

The Central Government has decided to constitute a Central Advisory Board nominating the following persons:

- i. Representatives of the employers;
- ii. Equal number of representatives of the employees;
- iii. Independent persons, not exceeding one-third of the total members;
- iv. Five representatives of the State Government as appointed by the Centre.

One – third of such members shall be women and one independent member shall be appointed by the Central Government as the Chairperson.

Section 51: Inspector Cum Facilitator

The appropriate government may appoint Inspector – cum – Facilitators for the purposes of this Code and exercise powers as conferred on them under sub-clause (4), (5) and (6). The jurisdiction of such inspector shall be





throughout State or throughout a geographical location or even specifically on one or more establishments.

The Inspector is deemed to be a public servant as under the meaning of Section 21 of the Indian Penal Code.

“The Inspector may:

- i. Advice employer and workers pertaining to compliance of the Code;*
- ii. Inspect establishments.”*

The Inspector may further:

- i. Examine any person, who is reasonably believed to be a worker, found in the premise of the establishment;
- ii. Obtain information;
- iii. Search, seize or take copies of register, record of wages or notices or portions,
- iv. Communicate to the government the defects of law;
- v. Other powers.

The Inspection shall be done based on an inspection scheme which will include a web-based inspection schedule as

decided by the Central or State Governments.

PENALTIES

i. Section 54 of the Code shall come into picture if the employer pays to the employee less than the amount due as per the provisions of this Code, such employer shall be punishable with **fine which may extend to Rs. 50,000.**

If the employer is a subsequent offender of the provisions of the Code, then he shall be **imprisonment for a term which may extend to threemonths or with fine extending to one lakh rupees or both.**

ii. If the employer, contravenes any provision of the Code, he shall be punishable fine which may extend upto **Rs. 20,000.** If the employer is found subsequently guilty of the similar offence then he shall be punishable with **imprisonment for a term which may extend to one month or fine extending to Rs. 40,000 or both.**

iii. However, the employer as under the Code, sub-clause (4) deserves a right to be heard before any action is taken





by the Inspector-cum-facilitator. And if any subsequent offender comes into picture, then prosecution shall be initiated in accordance with the Code.

Key Provisions
LABOUR CODE ON WAGES
Uniform minimum wage to be notified under the bill
This will be statutory; all states will have to follow
All 500 m workers will benefit; currently it is applicable to only **40% workers**
Payment of wages will be exclusively via digital mode
Minimum wage no longer based on employment | **It will be based on geography and skills**

Picture Source:
<https://diligentias.com/labour-code-on-mandatory-minimum-wages-notified/>

ANALYSIS

Looking at the remarkable initiatives taken by the Modi government, **Ease of doing Business in India** is one of those push. And this consolidation of the labour laws is one of such change to promote this plan.

This shall make the employers comply the labour laws in a better way and avoid the multiple authorities to approach like in the existing statutes.

This shall help the workers and employees of the country in knowing the law and their rights better, thereby promoting employment in the country.

However, the Code proves to be a mere consolidation of the earlier statutes by taking Sections as it is in the new Code.

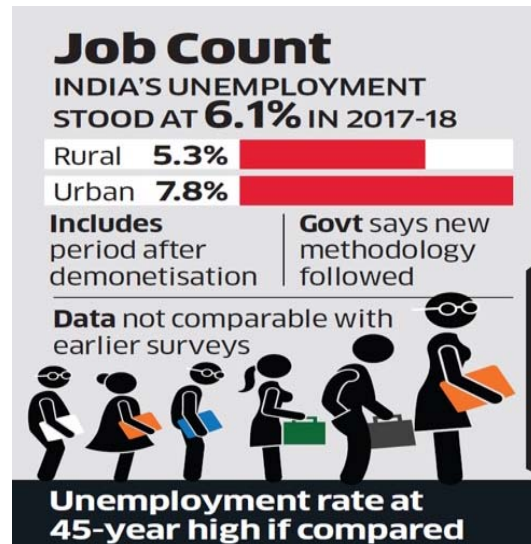
Loopholes exist in the present Code too, like bonus is made available to employees only on basis of salary and not on basis of their performance.





Interpretations like these need more clarity which shall be awaited.

No matter how much this unification shall help, there exists consistent changes that will be required to make this huge change turn out to be a positive one.



Picture Source:
<<https://economictimes.indiatimes.com/jobs/indias-unemployment-rate-hit-6-1-in-2017-18/articleshow/69598640.cms>>

Further, the Ministry of Labour & Employment released an Annual Report 2018-19, where they discussed the government notified increase in the basic rate of minimum wages for all sectors in the central sphere with effect from 19.01.2017.

Further, the Centralized Public Grievance Redress and Monitoring System (CPGRMS) is an online portal for aggrieved persons to raise their grievances to the Ministry. The Average disposal of such complaint is a period of 12 days only. In the duration of 01.01.2019 to 31.03.2019, a total of 10592 grievances were filed and

STATISTICS

The Ministry of Statistics and Programme

Implementation conducted a Periodic Labour Force Survey in 2017-18, according to which, the Unemployment rate in India hit 6.1% in the said years.





90.39% of the grievances were disposed of.

The Ministry of Labour and Employment in the year 2013, conducted a survey on the Working of the Minimum wages Act, 1948, the irregularities detected and prosecutions launched in some states as a result of inspections are:

State	Irregularities	Prosecution
Gujarat	Not Reported	1790
Mahara-shtra	37097	798
Bihar	Not Reported	Not Reported
Jharkha-nd	8519	8

After notification of the new Code, it was under the limelight in the news that in August, 2019, the Central Trade Unions were under protest of the Code, given the idea that the decision of the minimum floor wage has been completely kept under the realm of the government's discretion.

The Trade Unions believe that there were no negotiations held with them pertaining to the Bills introduced in the

Parliament and these Codes are anti-labour. They are of the opinion that, the worker's rights are being tampered.

However, they so far do not realise the effects of such universal Code and the changes it shall bring in the implementation of labour laws, which will come to light as time passes by.

HOW WILL UNIFORM LABOUR CODE HELP?

The Labour & Employment Sector was since years, looking for better distribution and reforms for review of the minimum wages.

Addressing labour welfare and rights of such workers were important to bring a revolution in the industry. And the Government taking a step towards such direction by introducing 4 uniform labour codes shall improve implementation at the ground level.

The Code recently understood the appropriate factors of revising minimum wages i.e. skill and geographical location of the employment.





A Uniform Code will help in reducing multiplicity of litigations on several authorities.

Furthermore, the Code shall clear various concepts which were misleading earlier because of existence of more than one definition.

It takes care of the centre point of most of the disputes coming forward under the Labour Law, i.e. Wages. By defining it under this Code, it will repeal all the four different definitions under the subsumed statutes.

any violation, whereas the new Code raised it to Rs. 50,000. The Code also, acknowledged the grievous nature of a subsequent offender.

Like in the Minimum Wages Act, 1948, the Code has no 'Scheduled List' of employment to set minimum wages for different employment.

Adding any new employment to the scheduled list, earlier, was a longer process as a notification had to be released by the Central or State Government for the same.

The Code, now has given the power to the State government to fix and also, revise the minimum wages for any employment after taking into consideration the suggestions of the Advisory Board.

“There is removal of the concept of inspectors and addition of facilitators to ensure compliance of the Code by carrying out surprise examinations, gather information, etc.”

The Code enhanced the penal provisions for the employers making it grave for them taking a step to prevent violations of the law. The Minimum Wages Act, 1948 imposed a penalty of Rs. 500 for

The Equal Remuneration Act, 1976 prohibited gender discrimination at the stage of recruitment and payment of wages. However, the Code, only





provides for no gender discrimination during wages.

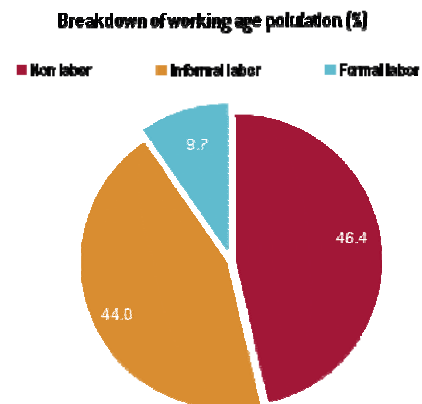
Further, there exists no intention to omit any area covered in any of the Acts but to retain all of them under one single Code. Therefore, the Uniform Code is considering the entire labour force of the country in order to improve their standard of living and promote social security of workers.

COMPARISON- INDIA & CHINA

As per the Report of the Working Group on “Labour Laws and other Regulations” for the 12th Five Year Plan (2012-2017), the employers were of the opinion that it is not easy to have uniform labour laws as the working and objective of every labour Act is different and the decent working should be the fundamental agenda of the Ministry. Where the State Government was of the view that the Codification should focus on evolving an employer-employee relationship. Further, tripartite mechanism and ADR system should be incorporated in law as strikes and shut outs will not resolve disputes.

“China’s labour market expanded to great level post the economic reforms in 1978 and with the increase in number of population and urbanization, the employment also reached its peak.”

The labour laws with time, became formal in China, whereas the Indian Labour legislations left out most of the labour force and workers under the informal economy i.e. unregulated by the Labour Acts.



Source: Ministry, ILO

However, India’s Labour Legislations have the potential to simultaneously also cover such informal sector like the Minimum Wages Act allows government





to regulate working hours and overtime wages for any categories of worker.

Some States in India particularly are working towards coming out with specific legislations governing the informal sectors.

India governs Labour under the **Concurrent List** giving power to both the Central and state governments to come out with legislations considering the workers, employees and trade unions.

The States have come out and formulated labour law through their own Shops and Establishment Acts.

However, on the other side, **China has given the Central supremacy to labour in their law** i.e. only understanding the National Labour Code was sufficient to understand the labour working and policies of that government.

China's labour standards are a recent development and demonstrate a single approach to all employment dealings in the country whereas, before codification, India was under patchwork of legislations, having multiple legislations covering different sectors

and establishments making the implementation an issue.

“However, with the new introduction of the four uniform labour codes, such differences can be curbed providing a uniform blanket of regulations across the country. This shall make India match the labour stance of China and make it more transparent in nature.”

It will make it easy for establishments to realise what laws and compliances apply to them like in China.

Despite the challenges, both the countries are working on the well-being of the work force as time passes.

India highlighted such need now with the enactment of the Code on Wages, 2019, and such further uniform codification of labour laws has no halt now.

CONCLUSION

Therefore, this Code on wages, will not only reduce the compliance costs for the employer but also ensure betterment of





the workers by timely payment of the minimum wages.

It shall reduce litigation in the country and protect interest of all the concerned persons at the very ground level. Such significant changes by the Code can only be decided after there is implementation of the Code.

Effects of such enactment will be noticed on the employment opportunities, industrial working, economic growth, efficiency of the workers, etc. and then, it shall prove to be a positive step towards unification.

labour regulations will take phenomenal turn.

This reform is a needed change in the modern economy and with further three Codes in line for industrial relations, social security and occupational safety, health and working conditions, the





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