

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 1
2021

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The Evolution of the Principle of Fixation and Revision of Minimum Wages under the Code on Wage Bill, 2019

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ABSTRACT

The Second National Commission on Labour recommended that the existing labour laws must be amalgamated into five heads – Industrial Relations, Wages, Social Security, Safety and Welfare. According to the recommendation on Wages, the Code of Wages was promulgated to amalgamate, simplify and rationalize the provisions of four central labour enactments. The primary change is the evolution of the definition of wages under the Code of wages from the Minimum Wages Act, 1948. The List of remuneration not included in wages has been expanded for the benefit of the employees.

The Procedure to be followed for fixing the wages has also seen a shift towards a more worker-friendly process, to prevent exploitation of the workers which was a prevalent practice before. The changes to the procedure have also made fixing of minimum wages, simpler and more rational. Fixation and Revision of Minimum Wages form an intrinsic part of the Code. They determine the procedure and the provisions to be followed by the appropriate Government while determining the minimum wage rate for a particular set of employees. The Principle of fixation and revision of wages has also experienced a modification from the defunct Minimum Wages Act, 1948 (MWA) to the Code of Wages, 2019. The Legislature has tried to plug the loopholes present in the previous legislation on wages, which were used by the employers to exploit employees. The evolution of the law concerning fixation and revision of wages from the MWA to the Code of Wages, 2019 has been mapped out by this Research Paper.

I. INTRODUCTION

The Code on Wages, 2019 (from now on referred to as "Code") was introduced by Santosh Kumar Gangwar, Minister of Law and Justice on August 8, 2019. The Code seeks to consolidate four legislations that were dealing with the payment of wages and bonus to the employees. The Equal Remuneration Act, 1976, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936 and the Payment of Bonus Act, 1956, have been consolidated

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under the Code to ensure uniformity in the legal framework covering payment of wages and bonus for more straightforward and effective implementation. The Code focuses on making provisions about minimum wages universal and on ensuring timely payment of wages to the workmen and employees. The new Code applies to all employees employed in the organized and the unorganized sector. While the Central Government looks into the wages for the workers in railways, mines, oilfield and other scheduled employments, the State Governments are empowered to make decisions for other establishments, including private institutions. The Payment of Wages Act applies to employees drawing a salary below the statutory limit, whereas the Minimum Wages Act applies to employees of scheduled establishments. The 2019 Code integrates these two codes and provides for uniform applicability of the provisions of timely payment of wages and minimum wages to all employees irrespective of the wage ceiling and sector. For Fixation and Revision of Minimum Wages under the Code, we need to look at the now-defunct MWA to understand the evolution of these concepts.

India's new legislation is in line with the International Labour Organization's (ILO) Minimum Wage Fixing Convention, 1970.² The Convention encourages its member states, to establish a method by which the minimum wages would extend to all forms of employment. The inclusion of the informal sector under the Code is evidence of the same. The Convention recommends full consultation for fixing the minimum wage, as a balanced approach involving both employers and employees is key to fix effective minimum wages. The Indian Code has followed this procedure under Section 9 of the 2019 Code.

II. UNDERSTANDING WAGES UNDER THE NEW CODE ON WAGES, 2019

Wages have been defined under Section 2(y) of the Code, as all remuneration by way of salaries, allowances or otherwise, which is expressed in terms of money, which would, if the terms of employment were fulfilled be paid to a person employed in respect of his employment or of the work done in the course of such employment. Wages include –

- Basic Pay
- Dearness Allowance
- Retaining Allowance.

In the same manner, the Code has stated the forms of remuneration which would not be

² Nikhila Menon, *Yokohama and Xavier Estupiñan, "India decides to Act on wage inequality"*, EASTASIAFORUM, (Nov. 20 2020, 10:04 AM) https://www.researchgate.net/publication/336771533_India_decides_to_Act_on_wage_inequality.

included in wages for this Code.

- (a) Bonus payable under law, which does not arise out of the terms of employment,
- (b) The value of house accommodation, the supply of light, water, medical assistance and other amenities or services which are excluded from the computation of wages by the Government
- (c) Contribution to the pension or provident fund by the employer is excluded from the understanding of wages under the Code. In addition to this remuneration –
- (d) Conveyance allowance
- (e) Sum paid to the employee to defray extraordinary expenses.
- (f) House rent allowance
- (g) Remuneration payable by way of an award or settlement by order of a Court or Tribunal
- (h) Overtime Allowance
- (i) Commission payable to the employee.
- (j) Gratuity paid to the employee on termination of service.
- (k) Retrenchment compensation or retirement benefit paid to the employee.

The Proviso to the definition clause states that under clause (a) to (i), the payments made to the employees must not exceed one-half or the percent notified by the Central Government, of the total remuneration calculated under this clause. The amount exceeding one-half or the percent notified by the Government shall then be considered as remuneration and added to wages under this clause. Furthermore, to ensure equal wages to all genders and for payments of wages, payments specified under clauses (d), (f), (g) and (h) are considered for computing wages. The explanation to Section 2(y) states that in cases where an employee is given remuneration in kind by his employer, the value of such remuneration in kind which does not exceed 15 percent of the total wages payable to him, shall be included in the wages of the employee.

On a prima-facie comparison of the definition clause of wages under MWA and the Code, we can ascertain the Legislature's attempt to improve the understanding of wages. The Legislature has taken a pro-worker approach under the new law, by providing more clauses of forms of remuneration that would not be considered wages for minimum wage rate. Thereby ensuring that the unique benefits accruing to the workers out of employment are not

included in wages, for minimum wage. Instead, clause (a), (b), (f), (g), (h), (i) and (k) mentioned above would be provided to the employees, above and beyond the minimum wage fixed by the appropriate Government. Here it is pertinent to note the Legislature's attempt to prevent gender-based discrimination, for payment of wages. The inclusion of conveyance allowance, house rent allowance and overtime allowance in the computation of wages beyond the minimum rate, is to ensure equal wages to all genders, as Section 3 of the Code prohibits the discrimination relating to wages on the grounds of gender.

III. FIXING MINIM WAGES UNDER MINIMUM WAGES ACT, 1948

The procedure for fixing minimum rates of wages has been prescribed in the MWA under Section 3 of the Act. Section 3(1) lays down the procedure by which the Government shall fix the minimum rates of wages which must be payable to the employees in the course of employment specified under Part I and Part II of the Schedule, and in employment which has been added to either Part by notification under Section 27.³ For employment mentioned in Part II of the Schedule, the minimum wage rate cannot be decided for the entire State, whereas in the case of forms of employment under Part I, the minimum rate of wages must be fixed for the entire State.⁴ The High Court of Andhra Pradesh shed light on this Principle, by stating that the minimum rate of wages must be fixed for the entire State. However, it is not mandatory to have a uniform rate for the entire State. Different regions and zones can have different rates, as long as they have been fixed by the appropriate Government for the State, taking into consideration, the requirements of the region.⁵

Section 3(1A) further states that the appropriate Government cannot fix minimum rates of wages concerning scheduled employment in which there are less than one thousand employees in the entire State.⁶ However, as soon as the appropriate Government upon finding out that the number of employees in the scheduled employment in which it was refrained from fixing minimum wage rate, is over one thousand, then the Government will be empowered to fix the minimum rate of Wages, for that employment.⁷

Section 3(2) empowers the Government to fix minimum rate of wages for the following:

- (i) Time Work, referred to as Minimum Time Rate.
- (ii) Piece Work referred to as Minimum Piece Rate.

³ Section 3(1)(a) Minimum Wages Act, 1948.

⁴ The Proviso to Section 3(1)(a) Minimum Wages Act, 1948.

⁵ Basti Ram Narain Das vs State of Andhra Pradesh And Anr. AIR 1969 AP 22.

⁶ Section 3(1A), Minimum Wages Act, 1948.

⁷ *ibid.*

- (iii) "Guaranteed Time Rate", for securing a minimum rate of wages on a time work basis for those employed in piece work.
- (iv) "Over Time Rate".⁸

Section 3(3)(a) increased the power of the Government by empowering them to fix different minimum rate of wages for –

- Different Scheduled Employment
- Different Classes of work, falling under the same Schedule of employment.
- Adults, Adolescents, Children and Apprentices
- Different Geographic locations.⁹

Similarly, under Section 3(3)(b) the minimum rate of wages can be fixed for the following periods –

- Hourly
- Daily
- Monthly
- Any other such wage period, as prescribed.¹⁰

IV. FIXATION OF WAGES UNDER CODE OF WAGES, 2019

Section 6 of the Code provides for fixation of minimum wages by the appropriate Government. The appropriate Government is empowered to fix the minimum rate of wages for the employees, following the provisions of Section 8, subject to the provisions of Section 9.¹¹

Under Section 6(2) the Government can fix a minimum rate of wages for –

- (i) Time Work
- (ii) Piece Work.¹²

Further, in the same manner, as under the MWA, the appropriate Government shall fix a minimum wage rate for employees employed on piece work, to ensure wages on a time work

⁸ Section 3(2), Minimum Wages Act, 1948.

⁹ Section 3(3)(a), Minimum Wages Act, 1948.

¹⁰ Section 3(3)(b), Minimum Wages Act, 1948.

¹¹ Section 6(1), Code of Wages, 2019.

¹² Section 6(2), Code of Wages, 2019.

basis to them.¹³

Section 6(4) provides that the appropriate Government can fix wages for the following wage periods –

- By the Hour,
- By the Day,
- By Month.¹⁴

Section 6(6) enlists the factors for consideration by an appropriate Government while fixation of the minimum rate of wages –

- Primarily the skill of the workers required for working under the categories of unskilled, semi-skilled and highly skilled or the geographical area in which they are in employment or both.
- The arduousness of work like temperature or humidity typically tricky to bear, hazardous occupations or underground work as may be prescribed by that Government.
- The norms for fixation of wages in an abovementioned manner shall align with prescribed norms.¹⁵

The Government must endeavour to keep the number of minimum wage rates under subsection (6) at a minimum.¹⁶

V. COMPARATIVE ANALYSIS OF FIXATION UNDER MINIMUM WAGES ACT, 1948 AND CODE OF WAGES, 2019

On a bare perusal of the provisions under MWA and the Code about fixation, it is understood that the nomenclature used for the provision under the MWA is Fixing of minimum rates of wages, whereas the Code's provision is for Fixation of Minimum Wages. The First departure from the Old Act, is that under the provisions of Section 6(2) and 6(3) the appropriate Government cannot fix a minimum "Overtime Rate" of wages. Under the new Code, Overtime allowance has been taken out of the computation of wages, and hence there can be no fixation of a minimum wage rate for this remuneration. However, again, we see a pro-employee approach being adopted by the Parliament, as they have excluded overtime

¹³ Section 6(3), Code of Wages, 2019.

¹⁴ Section 6(4), Code of Wages, 2019.

¹⁵ Section 6(6), Code of Wages, 2019.

¹⁶ Section 6(7), Code of Wages, 2019.

allowance from the ambit of minimum wages. The employee will now receive the same minimum rate of wages as before and also receive overtime allowance up to half of the wage amount above and beyond the wages. This change in provisions will help curtail the illegal practice of non-payment of overtime allowance, owing to the minimum wages being paid, thereby ensuring that the employees are remunerated for their overtime work.

The scope of the Government for fixing the minimum rate of wages has been narrowed down under the Code. The appropriate Government must now only fix wages hourly, daily or monthly, and not any other period. The limitation on fixing wage period would curtail the Government from creating any wage periods which would be prejudicial to the workers and beneficial to the employers.

The MWA empowered the Government to make different rates of wages for different scheduled employments, different classes of work under the same Schedule of employment, different age groups and different geographic locations. On the contrary, Under the provisions of the Code, the Government must take into account – the skill of the workers required for the work as – unskilled, semi-skilled and highly skilled, instead of whether a person is an adult, an adolescent or a child, thereby ensuring merit and effort-based system of wages rather than an age-based wage system. Wages based on skill provides an incentive to the workers to further hone their skills in the quest for higher wages. Further, the Minimum Wages Act, empowers the appropriate Government to make different rates of wages for different geographic regions, different schedule employments and different classes of employment under the same Schedule. Instead, the Code states that the Government must take into account the arduousness of work like the temperature, humidity, whether it is a hazardous occupation or if it classifies as underground work. The latter basis for determining and giving different rates of wages is a more pragmatic and honest approach to determining the rate of wages, as compared to the former. Thus, a comparison between the two provisions for fixation reveals that the Government has adopted a worker-friendly approach, by trying to meet the needs of the employees, by amending the provisions of the MWA for the benefit of the workers.

VI. PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES UNDER THE MINIMUM WAGES ACT, 1948

Section 5 of the defunct MWA deals with the procedure for fixing and revising minimum wages. Section 5(1) of the Act, states the appropriate Government while fixing minimum rates of wages concerning scheduled employment for the first time under the Act, or while

revising the minimum wages should follow either one of two steps.¹⁷ They are –

- (a) Advise as many committees and sub-committees as it may deem necessary to advise them regarding fixation and revision of wages.¹⁸

The Supreme Court shed light on the nature of these advisory boards in *Edward Mills Co. v State of Ajmer*.¹⁹ They held that the Committees appointed under Section 5 (3) would be an advisory board and its recommendations did not bound the Government.²⁰

Further, the composition of these committees is given under Section 9 of the Act, that the committees shall consist of persons representing the employees, employers equally and independent persons not more than 1/3 of the total number of members by the appropriate Government.²¹

- (b) Notify in the Official Gazette the proposals and specify a date, two months from the date of the notification, when the proposals would be considered. The Government then considers these representations and then constitutes an advisory board under Section 7 and after that fix or revise the wages through a notification in the Official Gazette.²²

Under Section 5(2) the appropriate Government after considering the advice of the committees and sub-committees and all the representations made before the date specified in the notification referred to in Section 5(1)(b), fix or revise the minimum rates of wages for the scheduled employment, which shall come into force three months from the date of its issue, unless provided for otherwise.²³ Provided where the appropriate Government chooses to follow the mode under clause (b) of sub-section (1), the Government should consult the Advisory Board also.²⁴

VII. PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES UNDER THE CODE OF WAGES, 2019

The procedure for fixing and revising Minimum Wages under the Code of Wages, aligns with the MWA, except for Section 8(2) and Section 8(4). Section 8(2) states that the committees

¹⁷ Section 5(1), Minimum Wages Act, 1948.

¹⁸ Section 5(1)(a), Minimum Wages Act, 1948.

¹⁹ *Edward Mills Co. v. the State of Ajmer*; 1955 AIR 25.

²⁰ *ibid.*

²¹ Section 9, Minimum Wages Act, 1948.

²² Section 5(1)(b), Minimum Wages Act, 1948.

²³ Section 5(2), Minimum Wages Act, 1948.

²⁴ The Proviso to Section 5(2), Minimum Wages Act, 1948.

shall consist of persons, representing employees and employers equally, and independent persons not exceeding one-third of the total number.²⁵ Section 8(4) provides for the appropriate Government to review and revision of the minimum rate of wages in intervals not exceeding five years.²⁶

Under the Code of 2019, the Legislature has introduced the concept of floor wages under Section 9. The Central Government is empowered to fix floor wages after considering the living standards of a worker. The Floor wage may vary based on geographic area.

Section 9(2) provides that the minimum rate of wages fixed by the appropriate Government under Section 6 should not be less than the floor wage.²⁷ In cases where the minimum wage rate fixed by the appropriate Government is more than the floor wage, the appropriate Government cannot reduce the minimum wage rate fixed by it earlier.²⁸

Under Section 9(3) the Central Government may seek the advice of the Central Advisory Board constituted under Section 42(1) and consult the State Government in the prescribed manner.²⁹

VIII. COMPARATIVE ANALYSIS OF THE PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES UNDER THE MWA AND THE CODE OF WAGES, 2019.

The procedure for fixing and revising minimum wages under the Code is in line with the MWA. The provisions of MWA have been incorporated in the Code. Section 9 of MWA which provided for the composition of the advisory committee has been included in Section 8 of the Code, which enlists the procedure for fixing and revising minimum wages. The Code also provides for revision and review of the minimum wages by the appropriate Government in intervals, not more than five years. The addition of this provision is a welcome step from the point of the employees because every five years the minimum wage rate would be raised based on the increase in the cost of living conditions, thereby ensuring a fair wage and removing the scope of exploitation by employers by using an age-old wage rate.

The Code has also introduced the concept of floor wage to be determined by the Central Government. The concept of floor wage is further evidence of the employee-friendly legislation envisaged by the Legislature, as it provides a minimum level of wages that need to be adhered to by the appropriate Government while fixation of rate of wages. Since the

²⁵ Section 8(2), Code of Wages, 2019.

²⁶ Section 8(4), Code of Wages, 2019.

²⁷ Section 9(2), Code of Wages, 2019.

²⁸ *ibid.*

²⁹ Section 9(3), Code of Wages, 2019.

appropriate Government cannot set the rate of wages less than the floor wages, the employees are assured the floor wage remuneration. Floor wage helps provide the workers with a sense of financial security in its humble capacity.

IX. CONCLUSION

The aggregation of four pieces of legislation into the Code of Wages, 2019 is a welcome measure, as it brings all the provisions and rules about wages under one roof. The Code has tried to balance the power between the employees and the employers, by adding and repealing provisions of the MWA with an employee-friendly approach to plug the gaps in the MWA, which were used to exploit the employees. The Code has also adopted a pragmatic approach concerning fixation of minimum wages, as compared to the greater autonomy of fixing the wages with the appropriate Government. The factors for determining different rates of wages like skills, arduousness of the work and the geographical location, would be more important for fixing the minimum wage as compared to the age or Schedule of employment. Similarly, the requirement under Section 8 (4) of the Code to revise the rate every five years, further shows the Legislature's consideration for the employees. The Code has gender equality as one of its salient features and hence has altered the definition of Wages and included Section 3. The Code is well-intentioned legislation which aims to strike a balance between employers and employees. It remains to be seen if the Code will be successful in achieving the desired results.
