

A Critical Analysis of the Wage Code Bill, 2017

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Abstract

In the backdrop of introduction of the Wage Code Bill on 10th August, 2017, it gains pertinence to discuss various provisions of the bill in details and further more evaluate this Bill in the light of the various existing Labour Law statutes of India. This article makes an endeavour to access the impact of the Bill on several important aspects of hiring and firing, trade unions, workmen, unorganised sector so and so forth. This paper also highlights the major challenges to this Bill. While considering all the stakeholders, this paper proposes few changes that can be made to the Bill and suit the needs of every stakeholder.

Keywords: Labour Law; Wage Code Bill; Unorganised Sector.

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Introduction

The doctrine of the wage had a focal position in dialogs of wage approach for the primary quarter of the twentieth century and, to a lesser degree, beyond it. The hidden thought was that the employer had a duty to accommodate the labourer some basic way of life—one that allowed the employee to keep up himself and his family at a level steady with prevailing ideas of sufficiency. In this definition, there are clear territories of ambiguity. Imprecision of significance offered ascend to contrasts of assessment about policies in this context [1]. The effect of the minimum wage permitted by law enactment has been generally talked about and has been a noteworthy worry among labour economists, particularly the impact of the minimum wage permitted by law on the work of various group of people [2].

On August 10, 2017 in Lok Sabha the Minister of Labour, Mr. Bandaru Dattatreya introduced the Code on Wages, 2017 [3] with a

purpose to consolidate and amend the laws relating to wages and bonus and matters connected therewith or incidental thereto [4]. It seeks to consolidate laws relating to wages *by replacing* for major codes dealing with issues of minimum wage: (i) the Payment of Wages Act, 1936 [5], (ii) the Minimum Wages Act, 1949 [6], (iii) the Payment of Bonus Act, 1965 [7], and (iv) the Equal Remuneration Act, 1976 [8]. The code deals majorly with minimum wage, payment of wages and payment of bonus. Basically, the Labour Code on Wages Bill, 2015, consolidates the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976, into a single statute. It is in line with the original intent for the much-desired labour reforms as the idea is to do away with the multiplicity of acts and replace them with one comprehensive legislation that is easy to understand, implement and comply with [9]. The good news first, if the new wage code Bill approved by the Cabinet on Wednesday is passed in its entirety by Parliament, it will certainly benefit an estimated 4 crore employees in the country across all sectors [10].

Concept of Wage and Minimum wage: Jurisprudential and Current Legal Scenario

In economics, the price paid to labour for its contribution to the process of production is called wages. Labour is an important factor of production. If there is no labour to work, all other factors, be it land or capital, will remain idle. Thus, Karl Marx termed labour as the "creator of all value". According to Benham "A wage may be defined as the sum of money paid under contract by an employer to worker for services rendered." With respect to wages A.H. Hansen stated that "Wages is the payment to labour for its assistance to production." And Mc Connell said that "Wage rate is the price paid for the use of labour."

One of the major enactments of this labour code is merging the definitions of wage as given in various statutes especially the Payment of wages Act, 1936 [11], Payment of Bonus Act [12], The minimum wages Act [13] and The equal remuneration Act, 1976 [14] into one to form a common definition for wages which includes salary, allowance, or any other component expressed in monetary terms and will not include bonus payable to employees or any travelling allowance, among others [15].

The Section 2(x) of the wage states that: "*wages 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 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. Any remuneration payable under any award or settlement between the parties or order of a court;
- ii. Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;
- iii. Any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;
- iv. 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;
- v. Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;
- vi. Any house rent allowance, but does not include--

- A. Any bonus payable under this Code, 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 or Tribunal;
- 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 travelling 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; or
- F. Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv):

Provided that, for the purposes of Chapter IV, "wages" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living, but does not include--

- i. Any other allowance which the employee is for the time being entitled to;
- ii. The value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- iii. Any travelling concession;
- iv. Any bonus including incentive, production and attendance bonus;
- v. Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- vi. Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
- vii. Any commission payable to the employee: Provided further that for calculating the wages under the first proviso for the purposes of

payment of bonus, if the payments made by the employer to the employee under clauses (i) to (vii) exceeds one-half of the all remuneration specified under the said proviso, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under that proviso.

Explanation.--Where an employee is given in lieu of the whole or part of the wages payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purposes of the first proviso, be deemed to form part of the wages of such employee"

The above definition aims at removing various ambiguities and lacunas which were developing due to the varying definition of wages in different statutes.

Section 2(r) of the Code states that "minimum wage" means the wage fixed under section 6 [16] of this code. Section 6 of the Act states that (1) Subject to the provisions of section 9 [17], the appropriate Government shall fix the minimum rate of wages payable to employees. (2) For the purposes of sub-section (1), the appropriate Government shall fix – (a) a minimum rate of wages for time work; or (b) a minimum rate of wages for piece work; or (c) a minimum rate of wages to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis. (3) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:-- (i) by the hour, or (ii) by the day, or (iii) by the month (4) Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed. (5) The appropriate Government may, by notification, fix factors by which the minimum wages so fixed be multiplied for different types of work. (6) For the purpose of fixation of factors referred to in sub-section (5), the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary.

According to the Bill the central government may notify a national minimum wage for the country. It may fix different national minimum wage for different states or geographical areas. The minimum wages decided by the central or state governments will not be lower than the national minimum wage. The central or state governments will not reduce the minimum wages fixed by them, if these wages are higher than the national minimum wage. The Code requires employers to pay at least the minimum

wages to employees. These wages will be notified by the central or state governments. This will be based on time, or number of pieces produced, among others. The Code specifies that the central or state governments will review or revise the minimum wage every five years.

But Section 9(1) of the Bill states that 'different national minimum wage may be fixed for different states or different geographical areas'. Hence, the 'national minimum wage' – even as the phrase is repeatedly used – is reduced to a 'state-level minimum wage' [18]. The Labour Ministry has cleared the air on national minimum monthly wage under the Code on Wages Bill. The ministry on Tuesday said the Centre has not fixed Rs 18,000 as national minimum monthly wage under the Code on Wages Bill. The Bill was introduced in the Lok Sabha earlier last month. According to a statement issued by the labour ministry, "Recently, some news reports have been published regarding the fixation of the minimum wage as Rs 18,000 per month by the Central government. It is clarified that the central government has not fixed or mentioned any amount as national minimum wage in the Code on Wages Bill, 2017 [19]."

Decoding the Code

- a. *Objective of the Code:* Four existing Labour Laws, i.e. The Payment of Wages Act, 1936, The Minimum Wages Act, 1948, The Payment of Bonus Act, 1965 and The Equal Remuneration Act, 1976, will be consolidated and integrated into a single code. Why is it done? Because all the four legislations govern various aspects of wages, therefore instead of referring to more than one definition of wage, its better to have a consolidated definition.
- b. *Structure of the Code:* The said Code is divided into various chapters, which respectively deals with payment of wages, minimum wages and payment of bonus, whereas provisions of equal remuneration has been incorporated in all these chapters as and when it finds a mandate to get mentioned. There is a separate chapter dedicated to advisory boards, dues and claims, offences and penalties, provisions related to establishment and powers of monitoring of various governmental, quasi-judicial authorities to implement the Code.
- c. *Salient Features of the Code:*
 - i. Providing a single definition of the wage. In contrast to the varied interpretation that wage has faced so far, this single definition will facilitate a consistent interpretation of it.

- ii. Introduction of Universal Minimum Wage.
- iii. Allowing Payment of Wages through electronic means such as bank transfer is a major breakthrough, this will even help the government in keeping track of the black money.
- iv. It will help in the consolidation of the compliance requirement, as a result of which the employer would just have to maintain a single record register for wages, bonus etc.
- v. This Code enables the State Government to establish one or more authorities to handle claims that arise under this code and to establish an appellate authority too.
- vi. This Code intends to replace the role of inspectors with that of facilitators, who will not only discharge the power of inspectors but also take up the role of providing information and advice to employers and workers on effective means of compliance pertaining to this Code.
- vii. This Code even intends to widen the ambit of the definition of 'industrial dispute' as compared to the one provided under the Industrial Disputes Act, 1947.

The Global Wage Report 2016/17 on Wage inequality in the workplace analyses the evolution of real wages around the world, giving a unique picture of wage trends globally and by region. The 2016/17 edition examines inequality at the workplace level, providing empirical evidence on the extent to which wage inequality is the result of wage inequality between enterprises as well as within enterprises. The report also includes a review of key policy issues regarding wages [20]. ILO finds women form 60% of lowest paid wage labour, but only 15% of highest wage earners [21]. The report revealed India had among the worst levels of gender wage disparity with men earning more than women in similar jobs and with the gap exceeding 30 per cent in contrast, Singapore had among the lowest, at 3 per cent. Among major economies, only South Korea fared worse than India, with a gap of 37 percent [22].

Impact of this Bill on Hiring and Firing

New wage code bill will hamper formal job creation in the country and impact the overall hiring scenario, say experts [23]. The new minimum wage norms would be applicable for all workers irrespective of their pay. At present, the minimum wages fixed by the Centre and states are applicable to workers getting up to Rs 18,000 pay monthly. The fact that the wage code bill got high jacked into universal minimum wage agenda is confusing.

Formal Job creation should be the only agenda that drives any labour reform in this country," said Rituparna Chakraborty, Executive Vice President and Co-founder at Team Lease Services. Chakraborty who is the President of Indian Staffing Federation, further [24] said, "This could mean that industries will start automating at a faster rate thereby further impacting job creation". Ramesh Gopalan, President - Healthcare and Head of India Business, Hinduja Global Solutions said if hikes are steep, they might have a negative impact on hiring in tier II and tier III markets [25] and further noted that people-centric sectors like Business Process Management (BPM) [26] have largely invested in semi-urban cities for domestic business due to availability of talent and infrastructure at significantly lower costs. If this cost advantage goes away, it may become difficult to sustain business in these centres [27].

According to a Financial Express report, the passage of the bill could bring bad news. The report mentioned that about 78% of Indian companies are smaller in size with less than 50 employees. Which means, these smaller companies may not be able to comply with the minimum wage rules particularly those firms which are based in economically backward regions. Also, considering the major announcements by the government like demonetisation, Goods and Service Tax migration, slowdown in economy has already shook the working of these small companies. Hence, passage of bill will again bring financial disruptions to them [28].

Impact of this Bill on Trade Unions and Individual Workmen

There are various anti-worker components in the Wage Code Bill. The first obvious problem is that the Bill makes a mockery of the idea of a 'national minimum wage' by providing for different national minimum wages to be fixed for different states - instead of providing for a uniform national minimum wage for the entire country. This has happened regardless of the Labour Ministry proclaiming its objective to get better upon the wage levels and ensure a minimum living standard to workers by fixing a national minimum wage, less than which no state government can fix its minimum wage.

But Section 9(1) of the Bill states that '*different national minimum wage may be fixed for different states or different geographical areas*'. Consequently, the 'national minimum wage' - even as the phrase is repeatedly used - is reduced to a 'state-level minimum wage'.

As the Centre for Indian Trade Unions (CITU) states in a document critiquing the Code on Wages Bill 2017,

this makes "the whole concept of 'National Minimum Wage' a deceptive ploy to mislead the people."

"Even if the disparity in price level in diverse states/geographical areas is taken into account, it can well be reflected in the rates of variable dearness allowances, as it subsists now. There is no justification of making 'national minimum' of the basic minimum wage different for different states," notes CITU [29].

"Hence the provision of 'national minimum wage' being projected by the government as an improvement in the present Bill is rendered meaningless for the workers by the provision of the Bill itself [30]."

In addition to that, as a memo on the Labour Code of Wages Bill 2017 by the New Trade Union Initiative (NTUI) points out, this could lead to a "race to the bottom" among states to lower wages.

The fundamental competitive federalism innate in this shift of responsibility severely weakens the coexisting character of 'labour' as sketched in Article 246, Schedule 7 of the Constitution. This will as well guide to competition among states to lower wage standards and escort to a race to the bottom, which pessimistically impacts boosts owing to reduced effective demand. The added prime problem is the issue of the fixation of the minimum wage.

Dr K Hemalata, president of CITU, told Newslick, "The government has completely ignored the formula for fixing the minimum wage as was recommended by the 44th Indian Labour Conference (ILC) in 2012, and reiterated by the 46th ILC in 2015, which was even inaugurated by Prime Minister Narendra Modi. This formula for minimum wage was adopted unanimously by the 15th ILC in 1957 and by the Supreme Court directions in the Raptakos and Brett case [31]."

Trade unions are insisting an identical minimum wage of Rs 18,000 per month for the entire groups workers. But the Wage Code Bill does not endow with that. In fact, the government was rapid to refute that it had any purpose to fix a Rs 18,000 monthly minimum wage [32].

The country's central trade unions have by now sketched a three day strike from November 9 to 11 in front of the Parliament in Delhi Street, to be followed by the indefinite country wide strike, against the anti-labour policies of the NDA government. They are demanding the adoption of a 12-point Charter of Demands put forward by them, which includes the issue of minimum wages [33]. "The formulation of minimum wage has been kept under the sole discretion of the government."

"Although the provision of Advisory Board is there both at state and central level, the Bill does not make even the recommendation of the Advisory Board mandatory for the state and central governments while deciding minimum wage." Another concern is that the Code has removed the Schedule of Employment, which lists the industries governed by labour laws. Extensively, the Code seeks to render trade unions toothless in a number of ways [34]. Some of them are enumerated as follows:

- a. The Code does away with the right of trade unions to legally access the audits of the establishment's accounts.
- b. The right of the workers or their unions to question the accuracy of the balance sheet of the company or demand clarifications, to ascertain 'allocable surplus' as defined in the Payment of Bonus Act, 1965, while bargaining for bonus above the minimum level, which is existing in the present Bonus Act is wholly done away with in the proposed labour code on wages as per section 31(2) wherein it has been stated that 'Audited accounts of companies shall not normally be questioned.
- c. It empowers the employers not to enclose any information contained in the balance sheet, if they so want. This is nonetheless abrogation of workers' right to collective bargaining in respect of bonus by the government.
- d. The Code deems workers who are participating in a strike to be absent.
- e. The Code confines the functioning of trade unions and workers organizations as it limits the scope of trade union members forming independent funds for their own welfare or other activities, removes right of trade unions to legally access audited accounts and balance-sheets of employers and restricts opportunity of scrutinizing the financial claims of the employer [35].

With regard to the revision of the minimum wages, the Code sets five years as the standard time for wages to be revised, whereas presently five years is the maximum period for the review of wages.

Impact of the Bill on the Unorganised Sector

The Code on Wages Bill that intends to fix a national minimum wage for all categories of over 40 crore unorganized sector workers and provide a fixed timeline for their payment, in some cases only through electronic means or cheque and 40 crore unorganized

sector workers can avail universal minimum wage. The Bill has a very large perspective [36]. Daily wages must be paid at the end of the shift whereas weekly payments to be made on the last working day of the week. Workers engaged in fortnightly employment should get wages before the end of the second day after the end of the working period. For the monthly earner, the payment will have to be made before the expiry of the seventh day of the succeeding month. Where an employee is removed or dismissed from service as also when he or she resigns, the wages payable shall be paid within two working days. The Code provides employers with authority to make deductions from the wages only in case of fines imposed absence from duty, damage or loss of goods expressly entrusted with the employee custody, housing accommodation and amenities and services. A bonus at the rate of 8.3 per cent of wage earned or Rs 100, whichever is higher, will be paid.

Any employer paying to any employee less than the amount due in wages or bonus or any other dues will be punishable with a fine of up to Rs 50,000, the Code said. Repeat offence within five years will be punishable with imprisonment of 3 months or fine of up to Rs 1 lakh, or with both [37].

Major Challenges of the Code that requires debate before enacting it into Law.

- a. The scope of overtime pay is diluted.
- b. Replacement of judicial appellate authority with an authority which may or may not be judicial is a regressive step.
- c. For the purpose of payment of bonus the code has limited the scope of employees and trade unions to raise a question upon the balance-sheet or the profit and loss account of the employer.

Conclusion

To conclude the Code is yet to become an Act and therefore come into force and operation. It is pending in Lok Sabha and then has to undergo the process of scrutiny and approval of the Rajya Sabha. It is highly possible that some of the problems listed in this article relating to mis-alignment between the current legislations and the Code may be resolved, though it is unlikely that other issues like easing the hiring fears of industries or addressing the issue of universal minimum wage mismatch with India's diverse topography, etc., will find a mention. We will gain clarity on this matter in the winter session of the Parliament. However, the Code is a highly positive move to simplify the process of doing

business in India. It also lives up to the statement made by the Union Finance Minister in his 2017 budget speech where he said the government is "*keen on fostering a conducive labour environment wherein labour rights are protected and harmonious labour relations lead to higher productivity*". It is reported that along with the Wage Code, the government may soon introduce the code relating to industrial relations as well as the social security and welfare. It is perfect time that India decides to take a strong step in the direction of revamping its labour laws and attunes them to India's present growth story.

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- 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 the State 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).
12. Sec 2(21) of Payment of Bonus Act defines wages as “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include (i) any other allowance which the employee is for the time being entitled to; (ii) the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; (iii) any travelling concession; (iv) any bonus (including incentive, production and attendance bonus); (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force; (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him; (vii) any commission payable to the employee. Explanation – Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.
13. According to Sec 2(h) of Minimum wages Act, 1949 “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 payable to a person employed in respect of his employment or of work done in such employment, 1*[and includes house rent allowance], but does not include— (i) the value of— (a) any house-accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate Government; (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance; (iii) any travelling allowance or the value of any travelling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge.
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