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Analysis of the concept of wages under the Labour Code and its development with time

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The Code on Wages was originally drafted in the year 2017 as an effort toward simplifying and rationalizing the labour laws of the country. The enactment was the first of four labour-related codes of laws that received the president's assent in the year 2019. The four codes are to substitute the 29 laws that were previously made with regard to various aspects of the labour legislation. The purpose of this enactment is to simplify and consolidate the existing labour laws of the country. The Code has broadened the definitions of employer and employee to include both the organized and unorganized sectors within its scope. When it comes to the overall growth of an economy, the focus of development must be on both the organized and unorganized sectors in order to prevent the development of one sector at the expense of another. According to Article 43 of the Indian Constitution, workers must be paid a living wage in order to facilitate the socio-economic development of the working class and if a worker is satisfied, he/she will play a significant role in the development of that particular industry. As a result, industrial democracy is a prerequisite for a socialist society. In this paper the author analyses the constitutional validity of the said code of 2019 and the impact of the definition of wages provided in the code in the current pandemic situation.

Keywords: *labour code 2019, wages, constitutionality, wage ceiling, code on wages.*

INTRODUCTION

The “Payment of Wages Act¹”, “Minimum Wages Act²”, “Payment of Bonus Act³” and “Equal Remuneration Act⁴” were all consolidated under one, and with the passage of the “Code on Wages 2019⁵”, the four statutes stated above were repealed. Regardless of the wage ceiling or the industry, the law envisions the uniform application of rules and prompt payment of workers' salaries and minimum wages. The Code's implementation has a wide range of ramifications for the majority of businesses, thus it's critical to comprehend the essential features of the code. The basic motive for enacting the wage code was to modify outdated legislation in order to make it more relevant to modern times. Another purpose for enacting the code was to remove the conflicting definitions of the same terminology that existed in several legislations. As India comes to grips with its wage problem that has a substantial impact on the lives and livelihoods of the Country's unskilled/informal labour community. “According to reports, around 90 percent of the workforce falls in the informal sector i.e. the sector that is unregulated by the prevailing laws⁶” and the wage code has been created to address several key challenges. It is an irrefutable reality that salaries/wages and productivity are interlinked and of utmost importance for both employees' and entrepreneurs' well-being. People pursue work for a variety of reasons, one of which is to obtain an acceptable or dignified quality of life. The regulatory structure controlling labour regulations in India is complicated. The planned introduction of four Labour Codes (including the Wage Code), which would consolidate and simplify several central labour regulations is, therefore, an essential step towards simplifying and consolidating the laws. The harmonization of the various definitions of wages is one of the most important changes made in the four new Labour Codes. Numerous definitions in various statutes have been provided for the purposes of determining the same phrases, resulting in practical issues in the administration of salary

¹ Payment of Wages Act, 1936

² Minimum Wages Act, 1948

³ Payment of Bonus Act, 1965

⁴ Equal Remuneration Act, 1976

⁵ Code on Wages, 2019

⁶ ‘Coronavirus Crisis: 40 Cr Informal Sector Workers in India Will Become Poorer, Says ILO’ (*Business Today* 7 April 2020) <<https://www.businesstoday.in/latest/economy-politics/story/coronavirus-crisis-40-cr-informal-sector-workers-in-india-will-become-poorer-says-ilo-254081-2020-04-07>> accessed 10 June 2022

structures, etc. Moreover, the meaning of terms such as wages, basic wages, and so on has always been a point of contention for businesses. As a result, an attempt has been made to harmonize and simplify the basics of calculating the amount and qualification of various benefits that are related to social security.

KEY PROVISIONS OF THE WAGE CODE AND ITS IMPACT

The code aims to provide a unified wage definition that was previously inconsistent across all laws. “The Workers Code on Wages Act, 2019, was introduced by amalgamating the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976.”⁷ While this consolidation enhances compliance, implementation, and uniformity, the final success will only be determined as time passes. It is critical to comprehend the revisions brought by the code in terms of definitions, amendments, and exclusions. It's important to remember that the Wage Code presently encompasses all employees and the same was accomplished by removing the eligibility criterion which was previously imposed by the “Payment of Wages Act of 1936.”⁸ Further, scheduled employment has been completely abolished by the new wage code which implies that all industries must pay minimum wages to their employees/workers. It is important to note that the approach used by the Appropriate Government to calculate minimum wages is in accordance with the terms of the “Minimum Wages Act”⁹. As a result, in this case, “the wage decided shall not be less than the Central government's floor rate. Similarly, if the appropriate government's existing minimum pay is higher than the floor wage, they cannot reduce the minimum wage”¹⁰. Another notable reform is the introduction of the notion of floor wage¹¹, which is a benchmark for state minimum wages that are set by the central government and vary by geographical location. Minimum wages are reviewed and

⁷ Aanchal Singh & Gauravjeet Narwan, ‘Code on Wages Creates Maze for Workers’ (*The Leaflet*, 17 February 2021) <<https://theleaflet.in/code-on-wages-creates-maze-for-workers/>> accessed 10 June 2022

⁸ Payment of Wages Act, 1936

⁹ Minimum Wages Act, 1948

¹⁰ Ministry of Labour and Employment, *Report on the working of the Minimum Wages Act, 1948*

<http://labourbureaunew.gov.in/UserContent/MW_2013_final_revised_web.pdf> accessed 10 June 2022

¹¹ Code on Wages, 2019, s 2

revised every five years, according to the Wage Code. In addition, unlike in the past, the payment period and time constraints for paying wages have now been expressly established.

In accordance with the Equal Remuneration Act, “the code prohibits discrimination in salaries for employees engaged in the same or similar job of nature by employers, as well as discrimination in recruiting by employers for employees engaged in the same or similar work of nature.¹²” Furthermore, it is important to note that the definition of remuneration under the Act was unclear as remuneration in relation to employment or work done included wage or salary as well as other forms of compensation payable in cash or in kind to a person hired. The components that are to constitute wages for the object of payment of equal remuneration regardless of gender as per the code, allow a slight scope for uncertainty in this respect.

CONSTITUTIONALITY OF THE CODE ON WAGES, 2019

“The Directive Principles, which runs supplementary and complementary to the Fundamental Rights are embedded in the constitution of India which provides the foundation for the social welfare legislations.¹³” The employer, or jointly the employer and employee, carved out interests for both groups with the goal of facilitating social welfare. “The role of the state has shifted dramatically from laissez-faire, when it just performed police and post office services, to a contemporary welfare state, whose functions now encompass and constitute an integral part of a person's life from birth to death.¹⁴” Because of the many duties the state currently fulfills, it acts as a guardian for the welfare of the citizens. The country's industrial jurisprudence is based on socio-economic equality, with the “goal of eliminating socio-economic socioeconomic inequalities and conflicting claims between workers and employers by resorting to fair, and equitable solutions to resolve their conflicts, resulting in peace, harmony, and economic growth and progress.¹⁵” The Supreme Court of India has shown serious concern for the welfare of employees, citing “Article 42 and Article 43 of the Indian

¹² Equal Remuneration Act, 1976, s 4

¹³ *Minerva Mills Ltd. & Ors v UOI & Ors* (1980), AIR 1789

¹⁴ *State of Mysore v Workers of Gold Mines* (1958), AIR 923

¹⁵ Mahesh Chandra, *Industrial Jurisprudence in Labour law and Labour Relations* (2nd edition, Bombay Tripathi 1976)

Constitution.¹⁶ Article 42 not only guarantees the state's nondiscrimination in employment affairs but also paves the path for the protection of employees' humane circumstances. Article 43 states that the state should attempt to achieve a certain living wage for employees by suitable legislation or any other means in order to provide them with the opportunity for leisure and social needs. When “Article 42 of the Constitution (The Directive Principles)¹⁷” is read with “Article 21 of the Constitution¹⁸” has been given the fullest meaning possible, encompassing the right to live in dignity. The court in the case of “Hydro (Engineers) P Ltd. v Workmen, held that the *minimum wages rate must ensure not only the mere physical needs of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman*. It should, therefore, provide for some measures of educational, medical requirements, and amenities.¹⁹ The Concurrent List, “Entry 22 and 24, grants authority to enact legislation to improve labour conditions²⁰”, whether they are connected to an industry or non-industrial issue. The ability to impose a minimum wage is based on the Constitution. This type of federalism is built into the Constitution's core framework and cannot be changed. Furthermore, under a quasi-federal government like India, this type of federalism is a component of the Constitution's essential framework, and it cannot be changed. Because there is no review system for setting a floor wage, the Central Government has undoubtedly been given broad discretionary powers. Nonetheless, it falls well within the scope of the legislation, and claiming that the same would make it difficult for employers to carry out their business on their own established principles is grossly inadequate to declare the provision irrational. The question of the constitutional validity of the floor wage cannot be raised in this case since the government has the authority to adopt such legislation under the concurrent list. Furthermore, the quasi-federal system of government chosen by our Constitution protects the discretionary authority of such a broad scope. Furthermore, “a minimum pay and a floor salary were required to avoid employee exploitation²¹” and “to give

¹⁶ Constitution of India, 1950, art.42 and art.43

¹⁷ Constitution of India, 1950, art.42

¹⁸ Constitution of India, 1950, art.21

¹⁹ *Hydro (Engineers) Pvt. Ltd., v The Workmen* (1969), AIR 182

²⁰ Constitution of India, 1950

²¹ *Edward Mills Co. Ltd., Beawar v State of Ajmer* (1955), AIR 25

enough for them to sustain a basic standard of living²²". Since the said concept of fixing a floor wage is in the public interest, thus even if a floor wage under the new Code would infringe on the "right to freedom of contract²³" it cannot be held unconstitutional.

IMPACT OF THE DEFINITION OF WAGES IN THE PANDEMIC TIME

The Wage Code of 2019, supersedes the Acts that it has replaced. The new Code defines the term 'employee' with a broad scope and it also defines the phrase 'establishment', which was never defined in the Minimum Wages Act. These broad definitions lead to the inclusion of domestic workers, thus providing them with the legal protection that they lacked previously.²⁴

"Section 2(y) of the Code on Wages defines wages as inclusive of basic pay, dearness allowance, and retaining allowance, all expressed in terms of money or capable of being so expressed, and meant to create expressed or implied employment.²⁵"

The new legislation arrives at a vital juncture and has the potential to save the impoverished. According to experts, the aftermath of the pandemic would have a major impact on the economy as people lost their livelihood. There will be a massive supply of labour versus a little demand as the unemployment rate rises and this disparity leads to a decrease in the market wages. However, due to the wider ambit of the Wage Code 2019, the informal sector will now be protected in the event that market wages fall below the minimum wage and this protection was not possible under the Minimum Wages Act of 1948. Domestic employees are now covered by the Wage Code, which gives them the right to receive their wages promptly and this would help ensure that they are not exploited during the pandemic. For example, *"employees now have a legal right under Section 17(2)(ii) of the Code to be paid their rightful wages within two days of becoming unemployed.²⁶"* Domestic workers and daily wage labourers, who were previously excluded from the scope of the Payment of Wages Act, will now have a legal claim to their unpaid wages.

²² Constitution of India, 1950, art.43

²³ Constitution of India, 1950, art.19(1) (g)

²⁴ Aanchal Singh & Gauravjeet Narwan (n 7)

²⁵ Code on Wages, 2019, s 2(y)

²⁶ The Code on Wages, 2019, s 17(2) (ii)

Even though the Wage Code is a step forward from the ones it replaced, it only replaces four legislations among the multitude of other labour legislations. The majority of current labour laws continue to exclude workers in the informal sectors, this arbitrary exclusion of the informal sector will have serious class repercussions. In essence, the poor are denied protection, but those who are financially secure are given additional privileges and the same would become more visible in the long run.

CONCLUSION

With a plethora of wage-related legislation in India, it was imperative that these laws be consolidated into one legislation. With the implementation of the Code, employers will no longer be required to go before various authorities with regard to compliance and the Code also eliminates the myriad of definitions. This will lead to the business running efficiently, and the employer will have a clear understanding of the law. Moreover, the Code has eliminated the obligation of maintaining registers under four other legislations. Unlike previous laws, this Code has a broad scope of application and protects employees in the unorganized sector, which means they cannot be paid less than the minimum wage set by the appropriate government. Furthermore, the inclusion of white-collar employees demonstrates the goal of the code to provide legal protection to every single employee is a positive development in India's labour law framework. But, one issue with the code with respect to employees is the “20% bonus ceiling as this implies that now the highest-performing employee in a company might lose his performance-based incentive.²⁷” The creation of a floor wage that is to be set by the Central Government, is another significant move made under the Code as now employees will be able to receive a basic minimum wage based on their geographical region. In addition to this, the Code has increased the time restriction for submitting claims to three years and this ensures that justice cannot be denied on the ground of delay in filing for claims. An in-depth examination of the Wage Code's sections reveals that there is still a need for more clarity and simplification. There definitely is a scope for a lot more harmonization and rationalization with the previous labour legislations and thus the wage code will continue to be a work-in-

²⁷ Aanchal Singh & Gauravjeet Narwan (n 7)

progress to have its current attempt at labour law changes succeed. The Code is expected to eliminate not just employer-employee conflicts, but also conflicts between implementing agencies and, as a result, employers. However, there are a number of issues that the government must address immediately such as the wage thresholds that will be imposed across India in respect of qualification norms for the bonus in order to make sure that the code does not reverse the advantages that were brought in by its enactment.