

## UNRAVELING THE MULTI DIMENSIONAL ASPECTS OF 2019 WAGE CODE

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Best Citation - Bhoomija Pandey & Jigyasa Kumar,  
UNRAVELING THE MULTI DIMENSIONAL  
ASPECTS OF 2019 WAGE CODE, 1 ILE LLR 11, 2022

### ABSTRACT

Our country, India is a socialist country and focus on collective welfare of all. The new labour codes introduced by the legislature is a step to implement our DPSPs<sup>19</sup> and other ideals enshrined in our Preamble. The article aims to investigate the origins and vivid characteristics of the 2019 Wage Code. The authors hope to address many facets of Indian labour legislation in this exploration. Starting with the historical element, the writers move on to the social, legal, and economic issues before making final recommendations. The article is written in an analytical style, stressing upon numerous complexities.

Keywords- socialist, DPSPs', 2019 Wage Code, analytical

### INTRODUCTION TO THE HISTORICAL ASPECT

Workers' rights have gained popularity with the industrial revolution and the emergence of the philosophy of "Marxism". Soon after, numerous socialist countries, including the USSR, supported trade unionism. The spread of Socialism i.e ownership of means of production by the public sector, resulted in the formation of a three-way connection between employer, employee, and trade union. Both the employer and the employee had their own interests, resulting in a conflict of interests in society; also, labourers had a weak negotiating position because capitalism was prevalent in most industrialised nations.

<sup>19</sup> Directive principles of state policy.

Throughout the early stages of imperialism, the working class was vulnerable to exploitation. As a result of the exploitation of the proletariat class, several revolutions such as the Bolshevik Revolution occurred in Russia.

Therefore, to appease such labours' rising consciousness, The International Labour Organization [ILO] was founded in 1919 as part of the Versailles Peace Treaty<sup>20</sup>. The International Labour Organization's constitution begins with the assumption, "*Universal and lasting peace can be established only if it is based upon social justice*"<sup>21</sup>. Thereafter, international leaders recognised the necessity of labour welfare and labour empowerment as a method of preserving world peace. The ILO constitution also articulated unequivocally that labour shall not be regarded as solely an article of business. Furthermore, in Articles 23 and 24, the UDHR<sup>22</sup> recognised labour rights and their working conditions, despite the fact that the terms "human" and "all people and all nations" were used in the Preamble of UDHR which impliedly encompassed labour class as well. Such scrupulous attention to worker's working conditions demonstrate how sincere drafters were. These aspects culminated in current labour regulations in various nations.

During India's colonisation, Britishers exploited labour as a commodity. They created specific regulations to promote their interests as such enactments were only instruments to pursue their own selfish objectives. The views expressed by important nationalist leaders during the days of national freedom struggle, debates in the Constituent Assembly, provisions of the Constitution, and International Conventions and Recommendations all contributed to the origin, inspiration, and strength of independent India's labour laws. The discussions of the successive Sessions of the Indian Labour Conference and the International Labour

<sup>20</sup>History of ILO, <https://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm> assessed on 20-07-2022.

<sup>21</sup> ILO Constitution, Preamble [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_EN\\_TRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_EN_TRIE_ID:2453907:NO) assessed on 20-07-2022.

<sup>22</sup> United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> assessed on 23-07-2022.

Conference also had a significant impact on labour regulations.

The preamble of Indian constitution preaches social and economic justice, equality, and brotherhood. When read collectively, one can immediately discern the drafters' aim, which is to assure fairness, equality, justice, and equity in the treatment of employees, as well as to provide them humanitarian and socioeconomic rights. Article 43A<sup>23</sup> requires the state to guarantee worker's involvement in industrial management, while Article 39<sup>24</sup> attempts to establish an egalitarian and socialist society devoid of inequality and poverty. Article 39(d)<sup>25</sup> was elevated to the level of basic right in the case of *Randhir Singh v. Union Of India*<sup>26</sup>. Similarly, numerous articles in the Indian Constitution, such as Articles 41, 42, 43, 54, 23, 24, strive to empower labour. These Gandhian socialist provisions of the Indian constitution serve as the foundation for a variety of labour laws.

Labour is a concurrent subject, thus both states and the centre can legislate upon it, this has led to the complexity of labour laws in India. Until 2019, there were multitudes of labour laws. Moreover, many provisions of the labour codes traced their origin to British raj, hence, it was essential to "Indianise" them and bring them in line with the modern, global and dynamic world. Hence, the recommendations of second national commission on labour[2004] to codify all labour laws in 5 or 4 codes was considered in 2017. After incorporating various recommendations made by Standing Committee on Labour, the wage code bill, 2019 was finally passed on August 2, 2019<sup>27</sup>.

<sup>23</sup> Constitution of India, <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 22-07-2022.

<sup>24</sup> Constitution of India, <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 22-07-2022.

<sup>25</sup> Constitution of India, <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 22-07-2022.

<sup>26</sup> 1982 AIR 879, <https://indiankanoon.org/doc/1230349/> assessed on 28-06-2022.

<sup>27</sup> Ministry of Information and Broadcasting Government of India, *New Labour Code For New India*; [https://labour.gov.in/sites/default/files/Labour\\_Code\\_Eng.pdf](https://labour.gov.in/sites/default/files/Labour_Code_Eng.pdf) assessed on 25th March 2022.

## SOCIAL ASPECT

Even after 73 years of independence, more than 90% of employees are in the unorganised sector and are not entitled to full social security benefits<sup>28</sup>. The total number of employees in both the organised and unorganised sectors exceeds 50 crores<sup>29</sup>.

India, as a growing economy, owes a lot to the country's "labour sector." However, it is tragic to remark that these workers are one of our society's most disadvantaged groups, as they lack access to both the law and basic necessities. The 'web of legislations' that had entangled our country's labour law rendered it too complex for even the average citizen to understand. Understanding of labour rules by our country's labours is still a long way off.

On the optimistic side, we have made an attempt to codify our labour laws into 4 codes. As far as wage code, 2019 is considered, it subsumes payment of wages act, 1936; the minimum wages act, 1948; the payment of bonus act, 1948 and the equal remuneration act, 1976. It is enacted with the intent to boost economic growth, guarantee timely payment of wages and ensure ease of doing business by preventing 'inspector raj'<sup>30</sup>. Thus, a balance is attempted to strike between the interests of workers and the employers. This is ensured by inviting opinions and suggestions from the respective stakeholders.

In terms of the government's position, Prime Minister Narendra Modi launched "Shramev Jayate" on October 16, 2014, and at that time, while referring to the employees as "Nation Builders," he stated that the power of "Shramev Jayate" for the country's progress was equivalent to that of "Satyamev Jayate"<sup>31</sup>. However, in a country where illiteracy and ignorance are still dominating curses, triumph of labourers seems very idealistic. In order to make this *idea* a reality, strenuous efforts are needed for not just fair and effective implementation of the code but also for creating awareness and raising the consciousness of

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

the workers so that they can confidently claim their rights without any fear.

People pursue work for a variety of reasons, one of which is to obtain a respectable or dignified standard of life. The main criteria for ensuring one's quality of living is that wage earners utilise that specific wage or income to meet their basic wants or needs, and that wage earners receive a fair amount of salary for the share of labour that they have carried out for the benefit of the state's welfare. Thus, it is the state's responsibility to ensure that workers deserve a fair living wage to ensure a reasonable standard of living in order to support the development of human resources.

It is claimed by government that for the first time, around 40 crore workers of unorganized sector in the country have got the right to minimum payment of wages and equal remuneration. However, there is always a bridge between having something and effectively receiving it, it has to be seen how well do they receive it.

## LEGAL ASPECT

The Code strives to protect a wide range of rights and advantages guaranteed by the Indian constitution and other legislation. Many of the rights are guaranteed by the Indian *Grundnorm*, such as articles 14,15,16,42,43<sup>32</sup>, and so on, are enunciated in the code, incorporating the constitutional framework.

For example Article 16 of the constitution<sup>33</sup>, which prohibits gender discrimination is incorporated with respect to compensation and recruitment of employees for the same or comparable vocations and thus any sort of gender discrimination with respect to such vocations is prohibited by the code. Also, in the case of *Vishakha & Ors. v. State of*

*Rajasthan*<sup>34</sup>, the Supreme Court acknowledged the equal position of women at work.

Employee and worker are defined under Sections 2 [1] and [z]<sup>35</sup> of the code, respectively. A worker is someone who works in any industry and does manual, unskilled, skilled, or technical labour. An employee is someone who is paid to do work that includes skilled, semi-skilled, unskilled, technical, managerial, and administrative activities. However, the idea of employee is wider because it includes managerial and administrative activities. It is important to widen the definition as companies may discriminate between workers and employees due to a lack of consistency in the Code's terminology.

## Definition of employer

Section 2[1]<sup>36</sup> of the code defines employer. In order to reduce the difficulty in identifying the principal employer, the definition of the employer includes a person who employs, either directly or through any other person, one or more employees in his establishment. It includes the legal representative of deceased employer within the definition of employer<sup>37</sup>.

## Factors for fixing minimum wages

The competent government, according to section 6[6] of the code, must evaluate not only the worker's skill set but also their geographical location<sup>38</sup>. There was previously no

<sup>34</sup> AIR 1997 SC 3011

<sup>35</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

<sup>36</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

<sup>37</sup> *The Code on Wages, 2019: Comparison of the Code with recommendations of the Standing Committee and the Code on Wages, 2017 ; PRS* <https://prsindia.org/billtrack/prs-products/prs-comparison-table-3304> assessed on 26th April, 2022 .

<sup>38</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

<sup>32</sup> Constitution of India , <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 24-07-2022.

<sup>33</sup> Constitution of India , <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 24-07-2022.

requirement for frequent examination of minimum wages; however, the current legislation solves this issue by requiring the competent authorities to examine and change the minimum wage after every five years. This initiative is adopted in order to connect minimum salaries with current social and economic realities ; also ,accounting is made for their arduous nature of labour, such as high temperatures or humidity, risky professions or processes, or underground employment, in addition to such minimal pay rates for certain types of workers<sup>39</sup>.

### National minimum wage

The central government will establish a minimum salary that takes into account employees' basic living conditions and eliminates inequities. It also gives the *possibility* of creating numerous floor wages for different geographic regions. Before establishing a minimum wage, the federal government may seek input from the Central Advisory Board and consult with state governments<sup>40</sup>. "The minimum wages fixed by the appropriate Government under section 6 shall not be less than the floor wage, and if the minimum wages fixed by the appropriate Government earlier are more than the floor wage, the appropriate Government shall not reduce such minimum wages fixed by it earlier,"<sup>41</sup>states section 9[2] of the code.

### Central Advisory Board

The Code establishes a Central Advisory Board made up of (i)employers, (ii)employees in an equal number,(iii)independent individuals(no more than one-third of the total members),and (iv)five representatives of state governments selected by the central government.

<sup>39</sup> *The Code on Wages, 2019: Comparison of the Code with recommendations of the Standing Committee and the Code on Wages, 2017* ; PRS <https://prsindia.org/billtrack/prs-products/prs-comparison-table-3304> assessed on 26th April,2022.

<sup>40</sup> *Id.*  
<sup>41</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

### Appealing procedure

A new mechanism for appealing an order of authority to administrative appellate authority is also included in the code .It also requires the appellate authority to endeavour to adjudge the appeal as soon as practicable, i.e. within three months, if the delay was due to good reason.

### Work of similar nature

Gender discrimination in wage payments for similar labour is prohibited by the Code. Work of a comparable type requires the same level of talent, effort, experience, and responsibility[section 2[v]].The rule also abolished the idea of "*scheduled employment*," implying that minimum salaries must be paid in all industries.

### Mode of payment

Section 15<sup>42</sup> of the code mandates that salaries will only be paid by check or by crediting the company's bank account, not in cash, to prevent employers from misallocating income. This was done because employees who were paid in cash would display their pay in cash and may create an inaccuracy somewhere.

### Inspection

The fourth significant highlighting element is Section 45<sup>43</sup>,which indicates that an *inspector-cum-facilitator* would be appointed instead of an inspector. Also, the time limit for making a claim and filing a grievance will be expanded from six months to three years. An inspect-cum-facilitator has the advantage of guiding new users in following the rules and giving sound advise.

<sup>42</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

<sup>43</sup> The Code On Wages, 2019 No. 29 Of 2019, <https://egazette.nic.in/WriteReadData/2019/210356.pdf> assessed on 22-07-2022.

Penalties range from 10,000 to one lakh rupees, depending on the offence. The Code facilitates efficient enforcement of wage standards by introducing uniformity in definitions, methods for e-governance and transparency, an accessible grievance redressal procedure, the ability to appeal, and the composition of offences. As a result, Code's new pay standards will be a tremendous instrument for safeguarding employees, and they will undoubtedly revolutionise the way employers pay their staff.

### ECONOMIC ASPECT

The Code of Wages 2019, would alter the definition of 'wage.' In layman's terms, the new definition specifies that wages must account for at least half of an employee's total income. This might result in a change in basic pay, which could subsequently affect other components like as provident fund contributions and gratuities, which are computed using the basic salary definition.

The wage and social security codes will have an impact on the cost of employment. The government has put a cap on allowances at 50% of salaries, meaning that businesses will dole out more gratuities.

The new code guarantees every worker the "Right to Sustenance" and intends to increase the legislative protection of minimum wage from about 40% to 100% of the workforce, ensuring that every worker receives a minimum wage that is accompanied by an increase in the worker's purchasing power, thereby boosting economic growth.

However, the code alone would exclude 98.6% of all agricultural enterprises in India<sup>44</sup>. The code is seen as hurried legislation<sup>45</sup>, since it legalises the exceedingly

<sup>44</sup> The Code on Wages, 2019: Understanding the key changes to wages, remuneration and bonus, [https://economictimes.indiatimes.com/small-biz/legal/the-code-on-wages-2019-understanding-the-key-changes-to-wages-remuneration-and-bonus/articleshow/72913106.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/small-biz/legal/the-code-on-wages-2019-understanding-the-key-changes-to-wages-remuneration-and-bonus/articleshow/72913106.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) assessed on 27<sup>th</sup> June, 2022 .

<sup>45</sup> New wage code deferred: Your take-home pay, PF outgo, salary structure remain same for now, <https://economictimes.indiatimes.com/jobs/your-take-home-pay-pf-outgo-and-entire-salary-structure-will-change-from->

repressive and inhumane practise of bonded labour or debt bondage by allowing firms to offer unrestricted credit extensions to their employees at an unspecified (and hence usurious) interest rate. This weakens our Constitution's socialist guarantee and (likely) gives employers unrestricted negotiating leverage. It has been suggested that the new pay law will improve the income capacity and purchasing power of informal employees, hence driving starving salaries further lower<sup>46</sup>.

It is being envisaged that the new pay law will improve the income capacity and purchasing power of informal employees, hence driving starving salaries further lower. The new law allows for arbitrary pay deductions (up to 50% of monthly income) based on performance, damage or loss, advances, and other considerations<sup>47</sup>.

### CONCLUSION AND SUGGESTIONS

The code provides for dual wage rates—a binding floor wage and a non-binding minimum wage—so there should be a single differentiated wage rate that is established in order to avoid confusion and hastiness

The law permits an employer or employee who is dissatisfied with a labour department's decision to appeal to a competent authority, but it does not specify the credentials and experience necessary for the nomination of a competent authority.

The code vests the judicial role of penalising with the executive, which violates Art 50 of the constitution, which provides that the judiciary and the executive are separate. Because integrating both powers affects the essential framework of the constitution, thus things falling under the executive arena should be retained and tried by the

[tomorrow/articleshow/81772846.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/tomorrow/articleshow/81772846.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) assessed on 28<sup>th</sup> January, 2022 .

<sup>46</sup> Id.

<sup>47</sup> Id.

executive, while other judicial concerns should be tried by the judiciary.

The code exempts employers from some punitive restrictions, lessening the penalising authority of labour laws. However in the the case of "*People's Union For Democratic Rights And Ors. Vs Union Of India & Ors*,"<sup>48</sup> the Supreme Court strongly advocated for the rights of workers and labourers, according to the apex court, the ideals of rule of law , social justice and equality can come out of paper to the public only when every citizen especially trade unions are vigilant about the rights of each other, and through public interest litigations they need to bring the grievances of marginalised downtrodden before the judiciary. The court also stressed upon the need to increase the fine for violating labour laws as the violators should not be allowed to make profit by violating laws which would far exceed the amount of the fine<sup>49</sup>.

It is the need of the hour to honour the right to life and personal liberty<sup>50</sup> which as held in *Francis Coralie's case*<sup>51</sup> does not mean mere animal existence but the enjoyment of all the faculties through which life is enjoyed is protected under Article 21<sup>52</sup>. Thus, a wholesome welfare of the worker class should be included in the code which should insure not just their physical wellbeing but also mental wellbeing.

The similar has been stressed in the case of *Workmen of Reptakos Brett and Company Ltd. V. Management*<sup>53</sup>, in this case the apex court observed , "*the Worker's wage is no*

*longer a contract between an employer and employee. It has the force of collective bargaining under labour laws . Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today.*<sup>54</sup>"

India, as laid in our Preamble is a Democratic republic, this would be better reflected if government work for them by them of them.

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<sup>48</sup> 1983 SCR (1) 456, <https://indiankanoon.org/doc/496663/> assessed on 15 June, 2022.

<sup>49</sup> *Id.*

<sup>50</sup> Article 21 , Constitution of India, <https://legislative.gov.in/sites/default/files/COI.pdf> assessed on 24-07-2022.

<sup>51</sup> *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi*, 1981 SCR (2) 516, <https://indiankanoon.org/doc/78536/> assessed on 29 June, 2022.

<sup>52</sup> *Id.*

<sup>53</sup> 1992 AIR 504, <https://indiankanoon.org/doc/10143/> assessed on 1<sup>st</sup> July, 2022.

<sup>54</sup> *Id.* pp. 136 H, 137 A

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