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The Code On Wages 2019: A Reform Or An Illusion

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Abstract: Labour law is the most vital legislation as it regulates the industrial relations in every legal system across the globe. India's labour laws are decades old and are said to suffer from rigidities and loopholes. Therefore, the reforms were the need of the hour for the changing scenarios in the industrial structure. Taking note of the same, Parliament recently has passed the Code on Wages 2019, which has repealed four central legislations: Minimum Wages Act 1948, Payment of Wages Act 1936, Equal Remuneration Act 1976 and Payment of Bonus Act 1965. The whole idea of codifying the laws was to bring reform and uniformity. Although the Code was passed with an objective to simplify the earlier laws and reduce complexities in various aspects, but it has reproduced the flaws that were existing in repealed legislations. The primary focus of the present paper is to discuss the significance of the Code on Wages 2019 and its impact on labour and industrial relations. The authors also aim to highlight the reforms brought by the Code, the issues and challenges in the Code and suggest some recommendations.

Keywords: Labour law, Minimum wages, Equal remuneration, Bonus, Code on Wages.

I. INTRODUCTION

In the year 1999, the Second National Commission on Labour (NCL) recommended streamlining current labour regulations pertaining to the organized sector and creating a general legislation to guarantee an adequate level of protection to employees in the unorganized industry.¹ The NCL, which submitted in its report in June 2002, suggested that the current labour regulations be largely combined under the following categories²:

- a) Industrial relations
- b) Wages
- c) Social Security
- d) Occupational Safety, Health, and Working Conditions

Codification of labour laws will, among other things, lessen the multiple definitions provided under earlier wage laws, make it easier to implement and use technology to enforce labour laws, and bring transparency and accountability to enforcement. It would encourage the establishment of industries by loosening the labour market's restrictions and making compliance easier, opening the door for Atmanirbhar Bharat to become a reality. It will simultaneously balance the needs of industry and labour and prove to be a significant turning point for worker welfare.

II. THE CODE ON WAGES 2019: ABOUT AND NEED

The Code on Wages 2019 (hereinafter ‘the Code’) has been passed by Parliament with the purpose of bringing reforms in laws relating to wages, to bring uniformity and reduce complexities. It has “repealed the following four laws:

- a) The Payment of Wages Act 1936 (hereinafter ‘PWA’),
- b) The Minimum Wages Act 1948 (hereinafter ‘MWA’),
- c) The Payment of Bonus Act 1965 (hereinafter ‘PBA’), and
- d) The Equal Remuneration Act 1976 (hereinafter ‘ERA’).”³

The above-mentioned laws have certain loopholes that need to be fixed. To begin with, the laws is not applicable to the unorganized sector. The unorganized sector constitutes 92.4% of the population⁴ and it needs protection in terms of wages. Wages being one of the most essential requirements to fulfil the basic needs, for sustenance and maintain decency and efficiency of workers. The PWA is applicable only to certain factories, railways, establishments like mines, plantations, ports, tramways, construction of roads, bridges⁵ and few employments wherein the applicability may be extended by the appropriate government.⁶ Similarly, the MWA applies only to certain scheduled employments and did not cover the entire workforce in unorganized sector. The appropriate government however has a discretion to extend the applicability of the Act to any employment including unorganized sector too. Also, the Act does not apply to any scheduled employment where less than one thousand people were engaged. It applies to employees, the definition of which is very narrow and does not cover people engaged in semi-skilled, managerial, or administrative related work. Likewise, the PBA also is applicable only to factories and in those establishments more than 20 workers were employed. Thus, given the importance of these wage laws, it has a very limited applicability. Furthermore, ERA is applicable only to workers and not employees. The term worker is narrower and does not cover the nature of duties in the form of managerial or administrative.

Apart from the above limitation, the definitions of various terminology provided under these laws is different which creates a lot of complexities for the employers as well as workers. For example, the definition of persons (i.e., employee/worker) to whom the law applies, is different. In the MWA, the law applies to employees, however, the definition of employees includes out workers and workers engaged in skilled, unskilled, manual, technical and clerical work. It does not apply to managerial and administrative work. Likewise, the PWA does not have a clear definition of on whom he Act is applicable. It provides that the law will be applicable to employed person whose salary is less than Rs. 24000 per month. So, presumably the Act is be extended to any person engaged in any “factory, railways, or establishment” on whom the Act extends regardless of the nature of work but subject to the condition that the wage of the employed person is less than Rs. 24000 per month. Similarly, the PBA applies to employees which was defined as a person employed on a wage not more than Rs. 21000 per month in any industry to do any “skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work.”⁷ Here, it is clear that the Bonus law will not be applicable on those people whose salary is more than 21000 per month as opposed to Rs. 24000 per month set under the PWA. Therefore, from this example it is evident that the although the purpose of these laws is to protect the wages of a person, but their applicability is different which undoubtedly creates a lot of confusion and complexities for not only the workers but the employers as well. Likewise, the definition of wage is also not uniformly defined under the four repealed laws.

In addition, the employer, as per the above laws, is also required to maintain registers and records. Therefore, if the definition of employee/worker on the law is different, the records will also be different and create hurdles in maintaining such records. It was thus affecting the ease of doing business.

Furthermore, the ERA does not apply to transgenders, The objective of this act is to ensure equal remuneration and no discrimination in terms of sex for same work or similar work. It is the duty of an employer to pay equal wages for same or similar work. It does not cover the transgender as it uses the term sex which is limited to biological orientation. The transgenders needed protection for matters related to recruitment.

The punishment provisions for contravention of the laws is not very stringent. It provides a punishment for paying less than minimum wages with a fine up to Rs. 500 or with imprisonment for up to six months.⁸ MWA, being a welfare law, the punishment for the contravention is not that severe, and violations is common. Similarly, for the contravention of Payment of Wages Law the punishment is fine of minimum Rs. 3500 and maximum Rs.7000.⁹

Finally, with respect to enforceability and implementation, the provisions of inspection, filing of claims etc. required amendment and reforms. For example, the inspectors has a very limited jurisdiction and could inspect only within a state in a particular geographical limit. Given the fact that the number of inspector appointments is very low compared to the number of industries and factories, the implementation of the Act appears to be a sham. Similarly, any worker aggrieved by the employer cannot file a complaint unless a sanction is taken from the appropriate government.

All the above issues in the laws mandated reform in the labour laws and codification will certainly to some extent resolve the issues.

III. SIGNIFICANCE OF THE CODE ON WAGES 2019

With respect to the issues mentioned above, the Code appears to bring the following reforms on the areas mentioned below:

Applicability

The applicability of law relating to wages has been extended. It aims to cover the workers in the unorganized sectors, thus benefitting the marginalized and sweated labours. It will apply to establishment which is defined as “any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment.”¹⁰ This Code aims to apply to the maximum number of workers of the country working in organized as well as unorganized sectors. Irrespective of the number of persons employed in any establishment, the Code will be applied.

The Code is applicable to employees which is defined as “any person (other than an apprentice), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.”¹¹ This will ensure that, whether the nature of jobs is skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work, the Code will be applied. Apart from this, irrespective of any wage ceiling, the Code will be applied to the employees. The repealed legislations like the MWA and PWA do not apply to a certain nature of jobs like semi-skilled, administrative, managerial or supervisory (applicable up to a certain salary limit).

Many unorganized sector workers who are not covered as per MWA, including painters, chowkidars, employees of restaurants and dhabas and agricultural workers, will now be protected under the Code.

Uniformity and reduce complexities

The Code will bring uniformity and reduce complexity. One definition is provided which will be uniformly applicable to all the laws that it has repealed. Multiple definitions of wage is provided in the laws repealed by the Code. Like, in the PWA the wage includes overtime allowance, retrenchment compensation, but the same was excluded from the definition in the PBA. Similarly, dearness allowance is included under the Bonus Act, the same is not mentioned in the other laws. This undoubtedly creates a lot of issues for the employers and employees.

The Code has now provided a uniform definition of wages. As per Section 2, clause (y) of the Code, wages include basic pay; dearness allowance or retaining allowance (if any). However, it shall not include the following allowances like bonus, house rent allowance, house rent accommodation, conveyance allowance, any services, provident funds etc.¹²

The Code, apart from bringing uniformity in definition of wages, will resolve another issue. Earlier, the employers would pay to its employee's other allowances (not necessarily in the form of money like HRA, Conveyance, PF etc.) which is more than basic wage and it affected the in-hand salary of a person. The Code has now introduced the concept of conditional inclusion, wherein if the other allowances are more than 50% of the total remuneration, the excess amount will be included in the wages. For instance (See Table 1), wages payable to Mr. X is as under:

Table 1: Example of Conditional Inclusion¹³

SL.	Particulars	Amount (In Rupees)
1.	Basic	10,000
2.	Dearness Allowance	5000
3.	Bonus	1000
4.	Conveyance allowance	7000
5.	Contribution to EPF	1800
6.	House Rent Allowance (HRA)	8000
	TOTAL	32800

In the above table, the total remuneration paid to Mr. X is Rs. 32800. Fifty per cent of the total remuneration is Rs. 16400. The excluded portion of remuneration (SL. No. 3-6) exceeds fifty per cent of the total, that is Rs.17800. Thus, in this case Rs. 1400 is in excess and will be added to the wages. Therefore, the in-hand salary in this case to be paid to Mr. X will be Rs. 16400.

The minimum wage, which once only included basic pay plus DA will increase because of this updated definition of wages. The burden on employers is going to increase if they are required to pay leave encashment, bonuses, and gratuities at a higher rate. The employer can no longer fix the other allowances more than the basic salary. Apart from this, the wages will include both basic pay as well as dearness allowance.¹⁴ Adding dearness allowance to the definition of wages will improve the condition of labour as dearness allowance is an additional amount based on the cost-of-living index of a state, which will rise every year depending on inflation. Now, the employers will be able to avoid ambiguity and adopt a uniform and consistent approach. This new, more straightforward definition should result in fewer lawsuits and lower compliance costs for employers.

Likewise, the other important definitions like employer, employee, appropriate government, contractor is provided under the Code and will reduce complexity and bring uniformity.

Reduce Disparity in Minimum Wages

The Code to some extent will resolve the problem of disparity in minimum wages. The MWA is applicable only to certain scheduled employments and the minimum wages are fixed by the appropriate government. The appropriate government can be the central government or the state government, depending on who has the control over the industry/scheduled employment in question. Due to this, each state and central government fixes its own minimum wages, and it results in disparity in wages. In some states like Kerela, Maharashtra and Union territory of Delhi, minimum wages are comparatively higher than other states like Rajasthan, Nagaland, Meghalaya. Wages are also fixed based on the skill and nature of work. The disparity in wages leads to many issues and one common issue is inter-state migration. The disparity in wages has arisen due to the factors such as nature of employment, category of worker, geographical location weather, rural, urban, metropolitan, non-metropolitan etc.

To reduce this disparity, the concept of National floor wages was introduced by the National Commission on rural labour in the year 1991.¹⁵ Presently, the National floor wage is set to be Rs. 178 per day.¹⁶ National floor wages act as a ceiling below which no government shall fix its minimum wages. However, this concept is just a policy, and the states are not bound to follow it and is entirely their discretion. The Code has although provided this concept under Section 9, but since this Code is not enforced yet, therefore states are not yet bound to follow the national floor wage.

The Code has through section 9, inserted provision related to floor wage and regional level floor wages which shall be fixed by the Central government. This section clearly says that the central government shall fix the floor wage and if required based on geographical location regional level floor wage and no state will set its minimum wages below the floor wage.¹⁷ Also, in case any state if already provided a minimum wage which is above the floor wage, it shall not reduce the wage.¹⁸ The insertion of the concept of floor wage and regional floor wage will to some extent reduce the disparity in wages and reduce distress migration. The concern regarding varied minimum

wages set by different states resulting into complexities has also been taken care of, by the Code by incorporating this concept to be statutory and compulsory.

The Code applies to all genders

The Equal Remuneration Act was passed in 1976 to provide gender equality in industries regarding remuneration, hours of work, and working conditions. This Act was passed as India ratified the Equal Remuneration Convention, 1951, (No. 100), in 1958. Another Convention India ratified in the year 1960 was the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The objective of this act is to ensure equal remuneration and no discrimination in terms of sex for same work or similar work. It is the duty of an employer to pay equal wages for same or similar work.¹⁹ The act also ensures that in cases of recruitment, promotion, transfer or training there shall be no discrimination based on sex of the workers or the same or similar work.²⁰ The Code on Wages has now repealed the ERA.

The provisions of equal remuneration under the Code are applicable to all persons irrespective of gender and in all the establishments, which is defined under section 2(m) of the Code. It provides for the prohibition of discrimination in establishments among employees on the grounds of gender in respect of wages/remuneration.

Section 3 of the Code provides that in matters of equal remuneration there shall be no discrimination on the grounds of gender. It thus uses the word *gender* instead of men and women in matters related to equal remuneration. The ERA protected only men and women. Thus, it may be surmised that it is progressive as now the transgender may be deemed under the purview of the Code. The Code has thus brought an amendment in this regard.

Reforms in areas of wage-period, time-limit, and mode of payment of wages

Under the PWA, the wage period is not fixed. This gives a lot of discretion to the employer to fix any wage period as per their own convenience. It can be daily, weekly, monthly or any other wage period. However, wage period cannot exceed thirty days.²¹ This issue has been resolved by the Code under section 16. It says that the employer may fix a wage-period which must be any of the following: daily, weekly, fortnightly, or monthly. The wage period cannot exceed thirty days.

Likewise, the time period provided under the Act is very unreasonable and results in a delay in payment of wages. Section 5 of the Act provides for different time period for employees employed in railways, factory or industrial establishments where less than one thousand people are employed and in those where more than one thousand persons are employed. The time-period for the persons employed in the former case is wages shall be paid before the end of the seventh day after the last day of wage-period and in later case, wages shall be paid before the expiry of tenth day from the last day of wage-period.²² This means that a daily wage worker has to wait for seven days to get his wage. In such a situation a worker who is very poor and wholly dependent on wages will be affected along with his family. They are just paid bare minimum for the sustenance of life. These workers may be chained with the creditors as they may be dependent on them due to such delayed payment of wages. Thus, the whole purpose of the law may stand futile because of this statutory delay in payment of wages. The purpose of a law should be for the upliftment of the people who not only play an important role in the development of the country but also in making India one of the fastest growing economies in the world.

The issues regarding the unreasonable delay in the time period of payment of wages will be resolved by the Code. As there is no wage period fixed under the PWA, it gives a discretionary power to the employer to fix any wage period. So, whatever wage period is fixed, the time limit for payment of wages is within seven days or ten days from the last working day of the wage period depending on number of workers working in an establishment. This is a problem majorly for the daily wage worker who entirely depends on the daily wage. The Code has fixed this problem by providing time limits for different wage periods under Section 17.²³ The time limit is as follows (also see Table 2)

- a) Daily wage period: Wages to be paid at the end of the shift.
- b) Weekly wage period: Wages to be paid on the last working day of the week before the weekly holiday. For example, considering Sunday as a weekly holiday, a worker who is employed on weekly wage period and who works from Monday to Saturday, will be paid for the work done in that week on Saturday.

- c) Fortnightly: Wages to be paid at the end of the fortnight before the end of the second day from the end of fortnight. Fortnight generally means a period of two weeks or 14 days. Supposedly, a worker works from 1st June to 14th June 2023, time limit for the payment of wages is before the end of 16th June 2023.
- d) Monthly basis: The time limit for the payment of wages is within seven days after the end of the month. Supposedly, a worker employed from 1st June to 30th June 2023, will be paid before 7th July 2023 after the month ends.

Table 2: Time-Limit of Payment of Wages²⁴

SL. No.	Wage-Period	Time-Limit
1.	Daily	End of the Shift.
2.	Weekly	Last day of week, before the weekly holiday
3.	Fortnightly	Before 16 th day after the end of fortnight.
4.	Monthly	After month ends, within seven days of succeeding month.

The Code also provides that, in case a worker resigns, he shall get the wages for work done before such resignation within 2 working days.²⁵ This resolves the issue in PWA where no timeline is provided for the workers who resigned from the establishment.

Therefore, the time-limit fixed by the Code on Wages has tried to resolve one of the major issues faced by the workers under the PWA. This statute in this way will provide wages in a timely and reasonable manner. With respect to mode of payment of wages, the Code has introduced payment through electronic mode (UPI, NEFT etc.,) other than cash, cheque or crediting in bank account.²⁶

Enforcement and inspection

The MWA and PWA provides that for the purposes of inspection and proper implementation, Inspectors shall be appointed by appropriate government. The jurisdiction of the inspectors shall be decided by the appropriate government. They may be appointed for all factories within local limits as assigned, or specified local limits assigned for establishments. The jurisdiction of the inspectors is limited under the repealed legislations. The Code has brought several changes regarding the jurisdiction, powers and duties of inspectors. It has firstly, changed the nomenclature of inspectors to inspector-cum-facilitator and has extended and broadened its jurisdiction. The jurisdiction will extend throughout the state or one or more establishment in a state or one or more establishment in any geographical limit of that state or one or more establishments irrespective of geographical limits. They shall inspect those establishments assigned to him by the appropriate government.²⁷

The inspectors, under the MWA and PWA, can enter and inspect any premises at any reasonable time. Its role is also to supervise the employed person regarding payment of wages. The role of inspector-cum-facilitator under the Code on Wages, is more of a facilitator and an advisor. It must advise the workers and employers for the compliance of the Code. Regarding surprise checks and inspection, the Code is silent about it. Provisions regarding surprise inspection at any reasonable time may be provided in the rules to be framed by the appropriate government. The Inspector-cum-facilitator has the following powers under the Code²⁸:

- a) Can examine any person who is believed to be a worker.
- b) Require any person to give any information related to name and address.
- c) Can search, seize or take copies of such register, record of wages, notices.
- d) Any defect or abuses not covered by law may be brought into notice.

The does not provide for Web-based inspection, randomized inspection, or collection of information electronically. The Code has introduced the concept of Web-based inspection and information can be gathered electronically also. All these reforms will help in proper enforcement of labour laws with transparency and accountability.

Time-limit for filing of claims extended

The MWA and the PWA provides that the claims must be filed within 6 months or 12 months respectively from the day the minimum wages are payable or any amount is due or deducted. However, the Code has extended the time-limit of filing of claims before the authority to three years from the day the claim has arisen.²⁹ Due to the shorter limitation period, it created a lot of difficulties to the workers in filing claims. To safeguard employee interests, the period of limitations has been extended now. Any such claims can be filed by any of the following persons³⁰ within three years:

- a) Employee concerned; or
- b) Registered Trade union (under Trade Union Act 1926), on which the employee is a member; or
- c) Inspector-cum-facilitator.

The employee has the right to file claims before an authority appointed by the appropriate government who shall be a person not below the rank of Gazetted officer. It shall have all the powers of a civil court with respect to collecting evidence, compelling witnesses for examination or production of documents.³¹ Under the MWA and PWA the authority is appointed only when a person is holding the position as a labour commissioner, or regional labour Commissioner with certain years of experience or any officer or judge of Industrial tribunal or civil court.

No Sanction required to file a complaint.

As per the MWA and PWA, before filing any complaint for the contravention of law, sanction from the appropriate government or inspector is required and such complaints has to be filed within one month or six months respectively of the grant of sanction. Such a complaint can be filed only by any legal practitioner, official of a registered trade union, Inspector under the Act or other person acting with the permission of the Authority acting on behalf of an employed person. A complaint can be filed before any court.

The Code has removed the need for sanction for filing any complaint. Such complaint can be registered by any employee, registered trade union, inspector-cum-facilitator, by or under authority of appropriate government.³² Such complaints can be filed before court not inferior to metropolitan magistrate or judicial magistrate of first class.³³

Ease of doing business

The objective of the Code is to reduce complexities to help the employer in their business. This will be possible as under the new code the employer will not have to maintain separate registers and records which creates hurdles in the business of the employer.

The digital initiatives under the Code through the web-based inspection scheme, the electronic maintenance of records and registers as well as the electronic submission of returns by employers will result in “ease of compliance” and will encourage the incorporation of more new businesses, which will accelerate the creation of more job possibilities in the nation.

Compounding of offence

Prior to the Code, only some States had introduced provisions for compounding offences in their respective States. The Code makes this opportunity to compound uniformly available and is a step forward in the direction of ease of doing business. Composition/Compounding is allowed in case the offence is punishable with fine only. Compounding will be done by Gazetted officer and the maximum sum for which compounding shall be allowed is fifty percent of maximum fine provided for the offence.³⁴ Also, no such composition of offences is allowed for any similar offences which was compounded earlier or for which the person was convicted earlier.³⁵

IV. CRITICAL ANALYSIS OF THE CODE

After an in-depth study of the provisions of the Code, it has been found out that the Code has certain inherent pros and cons which merits an analytical discourse.

Applicability of Code Vague and Ambiguous

After going through the provisions of the Code, it can be said that the applicability of the Code lacks clarity. Even though the intention of the legislature in passing the Code is to cover the unorganized sector, since the provisions lack clarity in terms of its scope and applicability, it makes the objectives of the Code futile. The code applies to establishments and an establishment is defined as any place where any industry, trade, business, manufacture, or occupation is carried on and includes Government establishment. However, these terms have not been specifically defined. For proper implementation of laws, it is essential that certain concepts must be clearly defined so that there is no room for vagueness.

Similarly, in some instances, the terms “employee” and “worker” both have been used interchangeably under Chapter II of the Code (which deals with provisions of minimum wages). The term employee is wider than worker as it includes managerial and administrative kinds of work. Upon reviewing the chapter’s provisions considering the distinct definitions assigned to employee and worker, it seems that there is a discrepancy regarding the true comprehension meant concerning the minimum wages of employees in comparison to workers. As per Sections 5 and 6 of the Code, minimum wages apply to employees, however in a few sections like sections 6 and 9 wherein the term worker is used, it creates a confusion regarding applicability of provisions.

Criteria for Fixing Minimum Wages Not Provided

Another loophole of the Code is that the Code has failed to provide any criteria for fixing or calculating minimum wages in the establishments. This is one of the major drawbacks of the MWA, which the Code has reproduced again. The appropriate government generally fixes the minimum wages by taking into consideration the norms fixed by the Indian Labour Conference in 1957³⁶ and the additional norm added to it by the Supreme Court of India in the case of *Workmen v Reptakos Brett Co.*³⁷ However, it is not mandatory to follow these norms and government may set their own norms for fixing the minimum wages. The Code thus gives the wage-fixing authorities discretionary power to decide the criteria in fixing the minimum wages. This may lead to an adversarial situation affecting the workers who are the beneficiaries of the minimum wages.

Code Emphasizes Similar Work Over Equal Value

In terms of the matters in which equal remuneration is applicable, the Code has reproduced the loopholes of the ERA. It requires the employers to pay employees irrespective of gender, equal wages for performing “the same work”, or “work of similar nature”. The Code could have opted to use the language of “work of equal value” as used in the ILO Convention. ILO convention uses the term “work of equal value” under Article 2 of the Equal Remuneration Convention, 1950.³⁸ The term “work of equal value” is much wider in scope than the term equal remuneration to men and women for the “same work or work of similar nature.” Equal pay for work of equal value is a broader concept that includes circumstances in which men and women perform different kinds of labour. For example, a pilot (mostly male) and flight attendants (mostly female); caterers and cleaners.

The term “same work” or “work of similar nature” is limited in its application as it does not consider the work of equal value; instead, it focuses on work of similar nature. It is believed that for the upliftment of women and for providing them with equal opportunity, it is necessary that they must be paid equally to that of men irrespective of the fact whether it is of similar nature or not. Therefore, India, even though being a signatory of the Equal Remuneration Convention, 1950, it has not made the law in accordance with the international standard set by ILO.

Code Fails to Safeguard Transgender Person in cases of Recruitment

The Code has used the word gender instead of men and women for equal remuneration. It is progressive as transgender will also come under the purview of the Code. However, for the purposes of preventing discrimination in cases of recruitment, the term “sex” is used for same or similar work.³⁹ The Code protects the transgender only on matters related to equal pay and does not incorporate provisions to prevent discrimination in cases of recruitment. Therefore, it is believed that the Code on wages is a step back to the principles of equality and equal treatment.

Code Lacks Equal Treatment in Promotions and Conditions of Service

The ERA prevents discrimination between men and women in matters related to conditions of service like promotion, training, or transfer.⁴⁰ However, the Code focuses only on equal pay and does not incorporate provisions to prevent discrimination in conditions of service, and thereby downgrades the protection against discrimination offered under the ERA.

The Code is Employer Centric

The present Code seems to be archaic in nature and is more employer centric rather than maintaining an equilibrium. It has merely reiterated the old laws with little or no mechanisms of enforcement. The punishment provisions under the Code do not provide for imprisonment as a form of punishment except when the offence is committed subsequently. It is indeed a fact that, imprisonment as a way of punishment will affect the business as well as reputation of the employer and will deter him to commit such offences. Removing imprisonment as a form of punishment is thus not welcoming. For example, the employers who do not pay minimum wages are punished with a fine which may extend to Rs.50000. Only if such employer commits an offence subsequently, he may be punished either with imprisonment which may extend to 3 months or with a fine up to Rs.1 Lakh or with both. A fine of Rs.50000 or Rs.1 Lakh may not affect an employer much. However, if the employer is imprisoned, it may definitely deter him from not paying less minimum wages, as his reputation is very crucial for his business.

Furthermore, after going through the penalty provisions under the Code and comparing it with the ERA, it is observed that the punishment provided under Section 54(1) clauses (c) and (d) of the Code is very clement in this regard. It punishes the employers who do not comply with any provision of the Code with penalty up to 20,000 and for subsequent offence; the employer may be punished with imprisonment up to 1 month or a fine up to Rs.40000 or with both. Whereas, Section 10(2) of the ERA punishes an employer for committing such an offence for the first time, with a minimum fine of Rs. 10,000, which may extend to Rs. 20000 or with imprisonment for a term that shall be not less than three months but may extend to 1 year or with both.⁴¹ For subsequent offence, the employer may be punished with imprisonment, which may extend to two years.⁴²

Moreover, the Code provides for composition of offences in cases where an offence is punishable with fine only. The provision of composition will further reduce the impact of the punishments mentioned under the Code.

Apart from the above issues, with respect to implementation and enforcement of the Code, earlier laws provided for the provision of surprise checks by inspectors for the purposes of compliance of labour laws. However, as the present Code uses the term inspector cum facilitator, who will act as the advisor and facilitator in the compliance of the Code and such provision of surprise checks and visits is not mentioned in the new Code. Thus, before the inspection, the employer shall be notified about the inspection which dilutes the purpose of an inspection as now this will give an opportunity to the employer to create a false scenario in his establishment where he might show to the inspector that everything is under control, and he has conformed to each compliance.

V. CONCLUSION AND SUGGESTIONS

The authors in the present article have analyzed so many shortcomings of this Code concerning the minimum wages, which the legislators could have avoided as this Code is among the three other labour codes whose basic objective is to reduce complexities, bring uniformity in-laws and to do away and fix problems which are there in the existing labour laws. After going through the provisions of the Code, it is found out that although in some areas Code has tried to fix certain problems like bringing uniformity in wages across the country (through the concept of national floor wage), protecting transgenders on matters related to equal wages, providing minimum wages to unorganized sectors and bringing many other reforms as already discussed, however in various aspects it has reproduced the flaws that were in existence in the repealed legislations. The present Code seems to be archaic in nature and is more employer centric rather than maintaining an equilibrium.

The Code lacks clarity in respect to its applicability, as the definition of establishment is not clearly defined. Therefore, the Code requires amendment in this area specifying as to where it will be applied. The Code, even though it provides for raising claims with respect to wages, however, the workers in the unorganized sector are mostly uneducated and unaware of their rights. The workers will be able to claim minimum wages only when they have a piece of knowledge regarding the same. Therefore, there must be some authority delegated only for the

purpose of making sure that the workers know their rights and the procedure in such cases where they are paid less than the minimum wage.

The Code is a step back to the principles of equality and equal treatment. The legislature should adopt a policy that will generate the employment potentiality of women workers and measures to protect the transgenders not only in matters related to equal wages but also in matters related to recruitments, promotions, training, and transfer. Women must be provided with equal opportunity to work with men. Its primary objective must be to provide equal pay for work of equal value rather than focusing on equal pay for similar work.

Reform will come only if the concerned issues are dealt with and implemented properly. Enforcing labor laws presents significant challenges, and the purpose behind enacting the Code on Wages 2019 is to safeguard both organized and unorganized sectors. However, effective implementation mechanisms are essential to ensure that the goals of the Code are not rendered futile.

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- ³⁶ *Supra* Note 6 at 1, See generally:
 - a) “3 consumption units for one wage earner without taking into account the earnings of women, children and adolescents;
 - b) Minimum food requirement of 2,700 calories per adult person per day;
 - c) Clothing requirements at 72 yards per annum for an average working family of four;
 - d) House rent corresponding to the minimum area provided for under the Government's Industrial Housing Scheme; and
 - e) 20 % of total minimum wage for fuel, lighting, and other miscellaneous items.”
- ³⁷ MANU/SC/0093/1992. See also, Supreme Court held that- “Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:

children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage.”

³⁸International Labour Organization, *C100 - Equal Remuneration Convention, 1951 (No. 100)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100 (accessed on February 8, 2024).

³⁹ The Code on Wages, 2019, § 3 Sub-Section 2, No. 29, Acts of Parliament, 2019 (India).

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⁴² *Ibid.*

