

# A WAGE CODE THAT IS A HASTY COMPOSITION

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In the brief monsoon session of Parliament, [three new labour codes \(The Industrial Relations Code, the Social Security Code and the Occupational Safety, Health and Working Conditions Code, 2020\) were bulldozed](#) into passing and now await the President's assent. Labour Minister Santosh Gangwar told the media that four new labour codes will become operational before the year ends.

Prime Minister Narendra Modi, on his part, has said the Code on Wages, 2019 would expand the coverage of workers in all industries in the unorganised sector as the old Minimum Wages Act covered only 30% of the total workforce. He also said that while there were 10,000 slabs of minimum wages that existed, they would now be reduced to 200 slabs.

The Hindu Explains | [What does the new Industrial Relations Code say, and how does it affect the right to strike?](#)

The [Code on Wages, 2019](#) seeks to consolidate and simplify four pieces of legislation — Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976 — into a single code. Its object and reasons stated that even the Second National Commission on Labour (Ravindra Varma, 2002) suggested consolidating all labour laws into four codes.

While the previous four pieces of legislation had a total of 119 sections, the new Code has 69 sections. Considering that the repealed legislations each had a definition section, inspectors, penalties, a competent authority, an appellate authority, and rule-making powers, any consolidation will impact their length.

Further, all requirements for enforcing the Act, have been relegated to the Rules. Section 67 had authorised the framing of rules relating to as many as 38 provisions of the Act. As a result, the delegated pieces of legislation (Rules) will be bigger than the Code; this is no way to condense prior pieces of legislation.

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All the four repealed pieces of legislation were enacted historically at different points in time and to deal with different situations. The combining of asymmetrical laws into a single code is not an easy task and will only create its own set of new problems.

Barring a few new concepts, the new Code retains almost all provisions. These are features such as the procedure for fixing minimum wage, limit for fines and deductions in wages, minimum and maximum bonus, calculation of allocable and available surplus, as well as gender neutral consideration in fixing wages.

Editorial | [Code debate: On new labour Bills](#)

The Code will have the same definition of the term “worker”; but, a person employed in a supervisory capacity drawing up to 15,000 will also be considered a worker. In the (erstwhile) Minimum Wages Act, to fix minimum wage in an employment which has more than 1,000 workers to be first included in the Schedule, and, thereafter, minimum wages will be fixed as per

law. The new Code has dispensed with the necessity of having a minimum number of workers and the inclusion of such employment into the schedule.

The central government will have the power to fix a “floor wage”. Once it is fixed, State governments cannot fix any minimum wage less than the “floor wage”. It is unwarranted since many States always fix minimum wages higher than the existing rates, depending upon the employment and workforce involved. The concept should be for a binding minimum wage and not have dual wage rates — a binding floor wage and a non-binding minimum wage.

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Hitherto, there was a conflict between the minimum wages fixed by the State governments for agriculture workers. There were cases as to whether the Minimum Wages Act would have an over-riding effect over the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005. Several High Courts have placed the Minimum Wages Act to override MGNREGA. That has been set to rest by excluding MGNREGA from the purview of the Code on Wages.

However, foremost in the labour code will be its enforcement provisions and the sanctions behind it. The Code has created an omnibus inspector-cum-facilitator who will act as per the inspection scheme framed by the government. He will advise employers and workers to comply with the provisions of the code and may carry out inspections as may be assigned by the government (Section 51).

As for the claim mechanism, Section 45 stipulates that they will be heard and determined by an authority who is not below the rank of a “Gazetted Officer”. A government official without legal and administrative background can hear such claims. However, any dispute regarding bonus will continue to go before the Industrial Tribunal (the new Industrial Relations Code Bill contemplates a two-member Tribunal). As against the decision of the Gazetted Officer, one can prefer an appeal to an appellate authority who must be one rank higher than the competent authority (Section 49).

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Neither the Code nor the Rules (presently, draft Rules) prescribe the qualifications and experience required for appointment of competent authority. Complicated questions of law and facts arising out of claims will henceforth be decided first by a Gazetted Officer, and thereafter by an Appellate Authority who must hold one rank above him.

The penal provisions found hitherto in any pieces of labour legislation never had an impact on employers. In *People’s Union For Democratic Rights and Others vs. Union Of India & Others*, 1982 (Asiad case), the Supreme Court of India observed: “If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws.”

But, curiously, a new provision (Section 52) has been introduced where an officer (not below the rank of an under secretary to the government will be notified with power to impose a penalty in the place of a judicial magistrate. An essential judicial function is now sought to be vested with the executive in contravention of Article 50 of the Constitution, where the State has been mandated to separate the judiciary from the executive in public services.

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A similar provision (Section 21 of the Bonded Labour System (Abolition) Act, 1976) which empowered revenue officers designated as executive magistrates to try offences under the Act was struck down by the Division Bench of the Madras High Court (Gajendran, 2014). A review filed by the central government was dismissed (2018). The Division Bench had observed: “On enforcement of the Code (Criminal Procedure), there has been complete separation of Judiciary from the Executive to implement the mandate under Article 50 of the Constitution which requires that State shall take steps to separate the Judiciary from Executive. By merging the judicial function in the executive, the basic structure of the Constitution is affected; justice and fair trial cannot be ensured by the Executive Magistrates in as much as they are not required to be legally qualified and trained persons and in actual practice are required to perform various other functions... In fact the functions of the Judiciary and Executive are quite different. In other words it is clear that the Executive Magistrate has no role to play in conducting judicial trial and recording judicial decisions.”

Apart from providing for a compounding of offences (Section 56), the Code also exempts employers from penal provisions if they were able “to prove that they had used due diligence in enforcing the execution of the code and it was the other person who had committed the offence without his knowledge, consent or connivance”.

Though the Prime Minister had claimed that the erstwhile provisions covered only 30% of the workers, there is nothing particular in this Code that it will have wider coverage. Similarly, as minimum wages mostly help the unorganised worker, the 200-slab categorisation may not have much of an impact.

The Hindu In Focus podcast | [Breaking down the new labour codes](#)

The Code on Wages (yet to be notified) has neither succeeded in a consolidation of laws nor will it ever achieve the claims made by the Prime Minister.

*Justice K. Chandru is a retired judge, Madras High Court*

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