

Gist of EPW December Week 2, 2019

Protection of Workers' Wages in India

Context

The Labour Code on Wages Act (wage code) enacted in August 2019 consolidates India's four wage-related laws, namely the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Equal Remuneration Act, 1976; and the Payment of Bonus Act, 1965.

Significance of wage laws

- Of the country's workforce, 49% are dependent on wages for the sustenance of their households.
- However, both urban and rural wage growth rates have declined dramatically in recent years.
- Furthermore, the Economic Survey 2018-19 has revealed that 1 in 3 wage workers are not protected by the minimum wage laws due to a faulty enforcement mechanism.
- Of these waged workers, two-thirds are casual workers and represent the poorest and most vulnerable sections of the country.

Reasons for enacting Wage Code

- The Wage Code is backed by the central government's claim that it will address the wage crisis by simplifying the multiplicity of definitions and authorities involved.
- This would improve compliance and expand the coverage of previous laws to make them more inclusive of the vast unorganised sector

Critics of the wage code

- The Wage Code has, in fact, made definitions unclear by leaving much to the discretion of government authorities or to the interpretation of judicial bodies.
 - For instance, no attempt has been made to define and outline the methodology for setting minimum wages, leaving the procedure to be formulated by the centre as seen fit.
- The major challenge facing the coverage of wage laws is poor regulatory oversight and faulty implementation of laws.
 - The Wage Code dismantles existing enforcement mechanisms without replacing it with viable alternates.
 - It undoes the existing legislative framework that intends on checking the unrestrained exploitation of workers and legitimises the cheaper availability of workforce for facilitating economic growth.
 - This neatly fits into the state's agenda of improving the "ease of doing business" in order to attract investments into the country.

The Ambiguous Minimum Wage Rate

- The Wage Code does not define or outline the methodology for fixing an adequate minimum wage.
- The wage law completely ignores the formula, which was unanimously recommended by the Indian Labour Conference (ILC) in 1957.
 - The formula formed the basis of the Supreme Court ruling in the Raptakos Brett case of 1992, where it laid down needs-based criteria for fixing minimum wages.
 - The criteria takes into account expenses on adequate levels of nutrition, clothing, fuel and lighting, education and healthcare, old-age provision, etc.

- This methodology prioritised the needs of the workers, rather than viewing them merely as factors of production.
- The Wage Code leaves the setting of minimum wages to the discretion of administrators, disregarding the rights of workers to wages that are adequate for leading a dignified life.
 - Moreover, there is no clarity on the particular authority designated for setting the minimum wages, or the procedure which is to be followed.
- The Wage Code merely states that a floor minimum wage may be set by the central government either at the national level or regional levels and that state governments may set minimum wages at the state level.
 - Additionally, the setting of different state-level minimum wages is now in the hands of respective state governments, so long as they do not place their minimum wages below the floor set by the central government for that state or region.
 - This, though, might lead to a race to the bottom between states that are competing with one another to lower wage rates and bring in greater investments.
- The Wage Code states that the minimum wage will be determined according to the skill of the employee, the arduousness involved in the work performed by the employee, the geographical location of the place of work, or other factors as the government might deem important.
 - Taking into account such specific factors that are difficult to measure to decide wages strengthens the discretionary power of administrators.
 - Such discretion in the hands of bureaucracy can result in lobbying, and could ultimately lead to adverse effects
- The provisions for the central or state-level advisory boards, whose functions include maintaining checks and balances, and ensuring representation of all stakeholders, have also been disappointing.
 - The wage code also states that the recommendations of the advisory boards are not binding on the state government.
 - The composition of the board has also been changed, reducing the number of employees on the board to three.
 - The representation of women among the nominated employees has been reduced from 50% (as under previous legislations) to one-third.
- In order to extend coverage to all workers, the Wage Code removes the schedule of employments, which documents the specific industries that would be covered by existing minimum wage legislations.
 - The logic of having a Schedule of Employments was to ensure that workers in industries where unionisation and collective bargaining strength was weak, would still be able to access minimum wages.
 - The industry-level minimum wage has now been replaced by a standardised minimum wage based on either time-based or piece work, which is applicable to all sectors.

Many Provisions, No Enforcement Mechanisms

- Rather than strengthening implementing mechanisms to realise its provisions, the Wage Code dismantles the inspection systems present in previous legislations,
 - Under the previous legislations labour inspectors could carry out “surprise checks” and “examine persons”.
- Under the previous wage legislations, only few inspections and prosecutions could be carried out due to limited financial and human resources.
 - The labour department is grossly understaffed.
 - A study conducted in Maharashtra states that it would take three years to carry out one visit per inspector of the 5,602 sites covered by the previous non-universalised minimum wage systems.
- Furthermore, inspectors have now been termed “facilitators,” the term itself making a mockery of their regulatory and enforcement authority.
 - The task of facilitators to “supply information and advice to employers and workers concerning the most effective means of complying with the provisions of the code,” takes a more generous approach to wage violations by employers.

- The inspectors are required to carry out inspections on the directions of the state government.
 - The state inspection schemes provide for web-based inspections through an automated centralised system.
 - This means that labour inspectors cannot conduct surprise checks and instead have to wait for the time of inspection that comes every three to five years through the automated system.
- The law allows for a web-based self-certification scheme, where employers can certify themselves as being compliant to the provisions of the code.
 - Such a self-certification scheme assumes that employers are keen to, and will naturally, comply with labour regulations.
- The penalties on employers for not complying with wage laws have also been weakened, with penal inspections being replaced by guidance inspections.
- The Wage Code also takes away the jurisdiction of courts in providing justice to workers who have faced violations with respect to their wages.
 - This means that workers can no longer access courts to contest the wages paid to them by their employers, but can only approach the quasi-judicial body and appellate authority set up under the provisions of the Wage Code.
 - The government is claiming that the setting up of an appellate authority to redress violations regarding workers' wages will lead to speedy, cheap and effective resolution of wage disputes.
 - However, it gives the appellate authority, whose membership is not defined, the sole power to adjudicate on wage disputes, which are not subject to review by the courts.

Pro-employer Regime Based on Labour Cheapening

- The law omits the liability of the principal employer to pay wages to workers if the labour contractor has failed to do so.
 - In India, the majority of workers are contract or daily wage labourers, and the most vulnerable, impoverished and migrant workers are often employed in jobs that have multiple layers of subcontracting.
 - The ability to hold the principal employer liable for paying wages when contractors disappear or cannot be held accountable is crucial for workers being able to access their wage payments in full.
- The arbitrary deduction of workers' wages by the employer has been legitimised, permitting employers to cut wages based upon the performance of the employee or to recover losses.
 - As it does not mention any due process to be followed in these instances, it opens up the possibility of misuse, especially in a situation where the power relations between employers and workers already favour the employer.
- While the Wage Code has set overtime rates at double the normal rate, it makes overtime payments doubly difficult to claim.
 - Even though it empowers governments to set the number of normal working hours, it excludes from its ambit employees engaged in urgent work or in any emergency, which could not have been foreseen or prevented.
 - This signals the end of the existing understanding of overtime work as being beyond nine hours per day and 48 hours per week, and instead allows employers to present overtime work as compulsory normal work hours without extra payment.
- Third, the Wage Code expands the definition of new establishments that are exempt from paying bonuses under the previous laws to include "trial running of any factory" and "prospecting stage of any mine".
 - This means that existing establishments can also escape payment of bonuses by being on trial runs or prospecting stages, as there is no time limit specified for either of these activities.

Conclusion

- There is an urgent need to revisit the original intention of labour legislations in the country, which was to balance the interests of labour and capital, and subsequently recognise labour as the less powerful party in the equation.
- The protection of wages was the means to ensure that the benefits of industrial growth would lead to the economic betterment and social regeneration of the labouring population, further ensuring social justice.
- Setting up an enabling environment for collective bargaining by workers to push up wage levels over and above the minimum wages is also necessary in order to ensure a fair labour share in profits.
- Rather than dismantling the inspections system under the charge of corruption, labour departments need to be empowered to ensure compliance through better staffing and resourcing, while establishing accountability mechanisms to check misuse of power by labour inspectors.
- At the same time, the power of courts and workers' organisations to ensure grievance redressal to workers in times of violations, needs to be restored.
- Rather than overhauling the existing enforcement mechanism, the implementation of these legislations should be strengthened by enhancing the regulatory authorities' ability to understand the informal sector.

Interrogating the Citizenship (Amendment) Bill

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