

Legislative Brief

The Code on Wages, 2017

The Code was introduced in Lok Sabha on August 10, 2017 by the Minister of Labour, Mr. Bandaru Dattatreya.

The Code was referred to the Standing Committee on Labour (Chair: Mr. Kirit Somaiya) on August 21, 2017.

The Committee is expected to submit its report in the second week of the second part of the Budget Session, 2018 of Parliament.

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Highlights of the Code

- ◆ The Code replaces four existing laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.
- ◆ The central government will set minimum wages for certain employments including railways, and mines. State governments will set minimum wages for all other employments.
- ◆ The Code provides that a national minimum wage may be set by the central government. States cannot set minimum wages lower than the national minimum wage. Further, the central government may set separate national minimum wages for different states or regions of the country.
- ◆ Minimum wages must be revised by the central or state governments at an interval of five years.
- ◆ The overtime rate will be at least twice the normal rate of wages of the employee.

Key Issues and Analysis

- ◆ Central government may set a national minimum wage. Further, it may set separate national minimum wages for different states or regions. In this context, two questions arise: (i) the rationale for a national minimum wage, and (ii) whether the central government should set one or multiple national minimum wages.
- ◆ States have to ensure that minimum wages set by them are not lower than the national minimum wage. If existing minimum wages set by states are higher than the national minimum wage, they cannot reduce the minimum wages. This may affect the ability of states to reduce their minimum wages if the national minimum wage is lowered.
- ◆ The time period for revising minimum wages will be set at five years. Currently, state governments have flexibility in revising minimum wages, as long as it is not more than five years. It is unclear why this flexibility has been removed, and five years has been set for revision.
- ◆ The Equal Remuneration Act, 1976, prohibits employers from discriminating in wage payments as well as recruitment of employees based on gender. While the Code prohibits gender discrimination on wage-related matters, it does not include provisions regarding discrimination during recruitment.

PART A: HIGHLIGHTS OF THE BILL

Context

In India, labour is included in the concurrent list which implies that both the central government and state governments can make laws regarding this subject.¹ Currently, there are over 40 state and central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions in factories, and wage and bonus payments. The Second National Commission on Labour (2002) had recommended that existing labour laws should be classified into broader groups for easier compliance, such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.^{2,3} This would also allow for uniformity in the coverage of various labour laws that are in force.²

In this context, the Code on Wages, 2017 was introduced in Lok Sabha on August 10, 2017. The Code seeks to regulate wage and bonus payments in all employments where any industry, trade, business or manufacturing is carried on. It subsumes and replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

Key Features

- **Coverage:** The provisions of the Code will apply to all employees.

Minimum Wage

- The central government will set minimum wages for employments such as mines, railways, and ports among others, while the state governments will set minimum wages for all other employments. The central or state governments can set factors by which minimum wages will be determined for different types of work. These include skills required, the difficulty of work assigned, and geographical location.
- **National minimum wage:** The Code provides that a national minimum wage may be set by the central government. The central government may set separate national minimum wages for different states or regions of the country.
- Minimum wages set by state governments will not be lower than the national minimum wage set by the central government. In case the existing minimum wages set by state governments are higher than the national minimum wage, they cannot reduce the minimum wages.

Other Provisions

- **Methods of payment of wages:** The Code allows for wages to be paid in coin, currency notes, cheque, through electronic mode, or by crediting wages to employees' bank accounts. The central or state governments may specify, through notification, the types of employments where wages can be paid only through electronic mode or by crediting to bank accounts.
- **Bonus:** All employees, whose wages do not exceed a particular monthly amount to be notified by the central or state governments, will be entitled to a minimum bonus of 8.33% of their annual wage. The bonus cannot exceed 20% of the annual wage of the employee. This is similar to current provisions.
- **Advisory boards:** The central government and state governments will constitute the Central Advisory Board and State Advisory Boards respectively. These boards will consist of: (i) employers, (ii) employees in equal number as the employers, and (iii) independent persons (not exceeding one third of the total members of the board). They will advise the central or state governments on issues such as setting and revision of minimum wages and increasing employment opportunities for women, among others.

The table below compares provisions of the Code with the current wage laws.

Table 1: Comparison of current wage laws with the proposed Code

| Provision | Current laws | Code on Wages, 2017 |
|---------------------------|--|--|
| Coverage | <ul style="list-style-type: none"> ▪ Minimum Wages Act: Minimum wages are fixed for scheduled employments with more than 1,000 employees. | <ul style="list-style-type: none"> ▪ Minimum wages will be paid to all employees. |
| | <ul style="list-style-type: none"> ▪ Payment of Wages Act: Applies to employees whose wages do not exceed Rs 24,000 per month. | <ul style="list-style-type: none"> ▪ Provisions regarding payment of wages will apply to all employees. |
| | <ul style="list-style-type: none"> ▪ Payment of Bonus Act: Applies to employments with 20 or more persons and for employees whose wages do not exceed Rs 21,000 per month. | <ul style="list-style-type: none"> ▪ Bonus will apply to employees whose wages do not exceed a monthly amount notified by central or state governments. |
| Revision of minimum wages | <ul style="list-style-type: none"> ▪ Minimum Wages Act: Minimum wages must be revised by the central or state governments at least once every five years. | <ul style="list-style-type: none"> ▪ Mandates that minimum wages be revised in five-year intervals. |

| Provision | Current laws | Code on Wages, 2017 |
|------------------------------|---|---|
| National minimum wage | <ul style="list-style-type: none"> No provision. | <ul style="list-style-type: none"> The central government may set a national minimum wage and may set different national minimum wages for different states and regions. |
| Overtime wage | <ul style="list-style-type: none"> Minimum Wages Act: Allows the relevant central or state governments to set overtime wage. | <ul style="list-style-type: none"> Sets overtime wage at two times the normal wages. |
| Gender discrimination | <ul style="list-style-type: none"> Equal Remuneration Act: Prohibits gender discrimination in wage payment. Prohibits gender discrimination in recruitment, transfers, and promotions. | <ul style="list-style-type: none"> Prohibits gender discrimination in wage payment. No provision. |
| Inspections | <ul style="list-style-type: none"> Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, and Equal Remuneration Act: Inspectors are appointed to carry out (i) surprise checks, and (ii) examine persons and require them to give information, among other powers. | <ul style="list-style-type: none"> Appointment of a Facilitator to carry out inspections, and provide information to employers and employees for better compliance. Inspection will be done on the basis of an inspection scheme, which will include a web-based inspection schedule. The inspection scheme will be decided by the central or state governments. |
| Penalties | <ul style="list-style-type: none"> Minimum Wages Act: Offences include (i) paying employees less than minimum wages, and (ii) not providing for a day of rest in the week. Penalties include fine up to Rs 500 and imprisonment up to six months. Payment of Wages Act: Offences include (i) non-payment of wages at specified time period, (ii) unauthorised deductions from wages. Penalties include fine up to Rs 7,500. Payment of Bonus Act: In case a person or company does not comply with the Act, they can be punished with imprisonment up to six months or fine up to Rs 1,000. Equal Remuneration Act: Offences include: (i) non-maintenance of documents in relation to employees, and (ii) discrimination against women in recruitment. Penalties include fine up to Rs 20,000 or imprisonment up to one year. | <ul style="list-style-type: none"> Employers who pay less than what is due under the Code will pay a fine of up to Rs 50,000. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs 1 lakh or both. Employers who do not comply with any other provision of the Code will pay a fine of up to Rs 20,000. If an employer is guilty of the same offence again within five years, penalties include imprisonment up to one month or a fine of up to Rs 40,000 or both. |

Sources: The Minimum Wages Act, 1948; The Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Equal Remuneration Act, 1976; PRS.

PART B: KEY ISSUES AND ANALYSIS

Rationale for national minimum wage set by the central government

Advantages and disadvantages of a national minimum wage

As labour is included in the concurrent list, both the central and state governments can make laws regarding this subject.¹ Currently, state governments set minimum wages in their respective states. The Code introduces a national minimum wage to be set by the central government. This raises a question whether the central government or state governments should set minimum wages.

One argument for a national minimum wage is to ensure a uniform standard of living across the country. At present, there are differences in minimum wages across states and regions.⁴ Such differences are attributed to the fact that both the central and state governments set, revise and enforce minimum wages for the employments covered by them.⁴ The introduction of a national minimum wage may help reduce these differences and provide a basic standard of living for all employees across the country.

On the other hand, it may be argued that the ability of state governments to adjust minimum wage levels may be affected, if the central government sets a national minimum wage. These adjustments may be required for variations, across the country, in costs of living such as prices of essential goods and housing. Note that the Code does not provide for consultation between the central and state governments while determining the national minimum wage.

Rationale for allowing central government to set multiple national minimum wages

The Code allows the central government to set different national minimum wages for different states and regions. There arises a question whether the central government should set one national minimum wage or multiple national minimum wages.

Various expert groups, such as the Second National Commission on Labour (2002) and the Working Group on Labour Laws (2011), had recommended introduction of a single national minimum wage for the entire country. The rationale for a single wage was to bring uniformity in minimum wages across states and industries.² In addition, it would allow for easier implementation and compliance with the minimum wage law.³ Note that in countries which have a national minimum wage such as the United States of America and United Kingdom, a single minimum wage is set by the central government (the national minimum wage in USA only applies to certain employees engaged in interstate commerce and trade).⁵

However, given the large regional variations in consumption and prices, the First National Commission on Labour (1969) had expressed reservation that a single national minimum wage may not be feasible.² It may be argued that the choice of setting multiple national minimum wages has been given to the central government to take into account these regional variations.

States cannot lower minimum wage if national minimum wage is reduced

Bill: Clause 9(2) The Code allows the central government to set a national minimum wage. Minimum wages set by state governments may not be lower than the national minimum wage. However, if the existing minimum wage set by a state government is higher than the national minimum wage, the state cannot reduce its minimum wage. This may affect the ability of states to reduce their minimum wages if the central government decides to reduce the national minimum wage.

If economic conditions in the country change, such as a sustained period of deflation, there may arise a need for downward revision of minimum wages. In this scenario, the central government may revise the national minimum wage to a lower rate. However, *Clause 9(2)* prohibits states from lowering their minimum wages.

For example, for employments in the cement industry, the minimum wage in Bihar is Rs 186 per day.⁴ Say, that the central government introduces a national minimum wage at Rs 200. In this case, the state government of Bihar will have to revise its minimum wage to a level equal to or above Rs 200. However, if the central government later revises the national minimum wage to Rs 190, the state government of Bihar cannot reduce its minimum wage.

Time period for revising minimum wages set at five years

Act: Section 3
Bill: Clause 8(4) Currently, the Minimum Wages Act, 1948 allows the state governments flexibility in deciding when to revise minimum wages as long as it is not more than five years.⁶ The Code states that the time period for state governments to revise minimum wages will be set at five years. It is unclear why the flexibility in revising minimum wages has been removed, and why five years has been set for this revision. Further, note that no time period has been specified for the central government to revise the national minimum wage.

It may be argued that in the absence of set periodicity, governments can adjust minimum wages taking into account changes in the cost of living and other economic conditions.⁷ However, it has been observed that in countries without set periodicity, minimum wages sometimes remain unadjusted for long periods followed by sudden and large adjustments.⁸ If revision does not take place at set periods, businesses may be affected as employers will not know when they might suddenly face an increase in labour costs.⁸

Provisions regarding discrimination in recruitment not included

Act: Section 5
Bill: Clause 3 Currently, the Equal Remuneration Act, 1976, prohibits employers from discriminating in wage payments as well as recruitment of employees on the basis of gender.⁹ The Code subsumes the 1976 Act along with three other wage related laws. While provisions of the Code prohibit gender discrimination in matters related to wages, it does not include the provisions prohibiting discrimination in matters related to recruitment.

1. Entries 22, 23 and 24, List III, Constitution of India.
2. Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.
3. Report of the Working Group on Labour Laws and other regulations for the Twelfth five-year plan, Ministry of Labour and Employment, 2011, http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_labour_laws.pdf.
4. Report on the Working of the Minimum Wages Act, 1948, Ministry of Labour and Employment, 2014, http://labourbureau.gov.in/UserContent/Report_MW_ACT_2014.pdf?pr_id=wEIJpAkLE%3d.
5. Section 206(a)(1), The Fair Labor Standards Act, 1938, <https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>; Section 1(3), National Minimum Wage Act, 1998, http://www.legislation.gov.uk/ukpga/1998/39/pdfs/ukpga_19980039_en.pdf.
6. Section 3(1)(a) of the Minimum Wages Act, 1948.
7. C131- Minimum Wage Fixing Convention, International Labour Organization, 1970; R135, Minimum Wage Fixing Recommendation, International Labour Organization, 1970.
8. “How frequently should minimum wages be adjusted?”, Minimum Wage Policy Guide, International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--travail/documents/genericdocument/wcms_508530.pdf.
9. Section 5, Equal Remuneration Act, 1976.

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Annexure

Table 2 below compares the provisions of the Code on Wages, 2017 with the wage laws of other countries.

Table 2: International comparison of wage laws

| Provision | United Kingdom | United States | Germany | Brazil | India (proposed Code 2017) |
|--|---|--|---|--|---|
| Federal structure | <ul style="list-style-type: none"> National minimum wage. | <ul style="list-style-type: none"> National minimum wage. State minimum wage. | <ul style="list-style-type: none"> National minimum wage. | <ul style="list-style-type: none"> National minimum wage. State minimum wage. | <ul style="list-style-type: none"> National minimum wage. Central government minimum wage. State minimum wage. |
| Coverage of minimum wage | <ul style="list-style-type: none"> All employees. Exceptions include members of armed forces, religions officials, and volunteers. | <ul style="list-style-type: none"> National minimum wage applies to employees engaged in interstate commerce. Coverage varies across states. | <ul style="list-style-type: none"> All employees. | <ul style="list-style-type: none"> Employees in the formal sector. | <ul style="list-style-type: none"> All employees. Exceptions include members of armed forces. |
| Types of minimum wage | <ul style="list-style-type: none"> Two national minimum wages for employees (i) below 25 years of age, and (ii) above 25 years of age. | <ul style="list-style-type: none"> Single national minimum wage. Multiple state minimum wages. | <ul style="list-style-type: none"> Single national minimum wage. | <ul style="list-style-type: none"> Single national minimum wage. Multiple state minimum wages. | <ul style="list-style-type: none"> Single or multiple national minimum wages. Multiple state minimum wages. Separate minimum wages for central government employments. |
| Method of setting minimum wages | <ul style="list-style-type: none"> Set by central government on recommendations of the Low Pay Commission (LPC). LPC consists of employers, employees, and academics. | <ul style="list-style-type: none"> Set by the national and state legislatures. | <ul style="list-style-type: none"> Set by central government on recommendations of the Minimum Wage Commission (MWC). MWC consists of trade unions, employer representatives and academics. | <ul style="list-style-type: none"> Set by central or state governments. | <ul style="list-style-type: none"> Set by central or state governments. |
| Revision of minimum wage | <ul style="list-style-type: none"> No provision. | <ul style="list-style-type: none"> No provision. | <ul style="list-style-type: none"> Revised every two years. | <ul style="list-style-type: none"> Revised annually. | <ul style="list-style-type: none"> Revised every five years. |
| Overtime wage | <ul style="list-style-type: none"> Decided in employment contract. | <ul style="list-style-type: none"> 1.5 times regular wages. | <ul style="list-style-type: none"> Decided in employment contract. | <ul style="list-style-type: none"> 1.5 times regular wages. | <ul style="list-style-type: none"> Twice the regular wages. |

Sources: **United States:** Fair Labor Standards Act, 1938; **United Kingdom:** National Minimum Wage Act, 1998; **Germany:** Minimum Wage Act, 2014; **Brazil:** Constitution of the Federative Republic of Brazil, 1988; Consolidation of Labor Laws, 1943; “Minimum Wages in Developing Countries: Helping or Hurting Workers?”, World Bank, December 2008; “The Impacts of the Minimum Wage on the Labour Market, Poverty and Fiscal Budget in Brazil”, Institute for Applied Economic Research, Federal Government of Brazil, January 2015; “Overtime: Information Sheet No. WT-2”, International Labour Organization, 2004; **India:** Code on Wages, 2017; PRS.