

Wage Code and Rules

Impact on the Effectiveness of Minimum Wage Policy

ANOOP SATPATHY, XAVIER ESTUPIÑAN, BIKASH K MALICK

The minimum wage policy is regarded as an essential tool for improving the welfare of low-paid workers, reducing inequality and poverty within the labour market. The Government of India recently reformed the country's wage policy and enacted the Code on Wages in August 2019. To give effect to the code, the government has now outlined the implementation mechanism by notifying the draft Code on Wages (Central) Rules in July 2020. This paper examines some of the key reform measures undertaken in the wage code and the implementation mechanism, as provided in the draft wage rules, identifies shortcomings therein, and provides suggestions for improvement.

The Government of India (GoI) has published the draft Wage Code (Central) Rules (hereafter referred to as the wage rules) in the form of a gazette notification issued on 7 July 2020 (GoI 2020). The publication of the wage rules in the gazette is the second step taken by the government, after the enactment of the Code on Wages (hereafter referred to as the wage code) on 8 August 2019 (GoI 2019d). Arguably, this development potentially takes us closer to the final notification of the wage rules. The implementation of the code and rules will also witness the beginning of a new phase in the wage policy of India, with a concomitant repealing of the existing four wage-related regulations on the payment of wages, minimum wages, payment of bonus and equal remuneration.

The long-standing wage-related regulations—the first being on payment of wages, enacted way back in 1936, and the second, on minimum wages, in 1948—made India a wage policy pioneer amongst developing countries. However, wage policy has not produced the desired redistributive outcomes. Instead, as pointed out in numerous empirical studies, and most importantly in the India Wage Report, there is overwhelming evidence around pervasive low wages, high wage inequality, working poverty and high gender pay gap, compared to international standards (ILO 2018). These findings bolstered the call for wage policy reform and the establishment of a statutory national minimum wage for India.

Both the wage code and the wage rules have introduced several aspects of reform related to the minimum wage system of the country. The wage code, for the first time, has explicitly stated the objective it intends to achieve, that is, to promote equity and labour welfare on the one hand and encourage investment and setting up of more enterprises on the other, thereby catalysing the creation of more employment opportunities (GoI 2019c). The wage code has universalised the application of minimum wages and floor wages to all wage earners, apart from simplifying the complex minimum wage structure of India. Similarly, the wage rules have, for the first time, included in their ambit the manner and criteria of fixation, revision and adjustment of floor wages and the minimum rate of wages. Therefore, it becomes imperative to examine the extent to which some of these key reform measures could potentially revive the minimum wage policy as a redistributive tool targeting low-paid workers.

Moreover, workers' welfare is contingent upon an effective minimum wage policy that addresses the extent of coverage, the level at which the floor and minimum wages are set, and

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Anoop Satpathy (anoopsatpathy.vvgnli@gov.in) teaches at the V V Giri National Labour Institute, Noida. Xavier Estupiñan (estupinan@ilo.org) works as a wage specialist with the ILO Decent Work Team for South Asia, New Delhi. Bikash K Malick (malick.bikash@gov.in) is an officer of the Indian Economic Service (2015 batch).

the degree of compliance. It is therefore essential to identify shortcomings in the notified wage rules relating to the above three aspects, and analyse their implications on the effectiveness of the minimum wage policy. Lastly, this paper also provides suggestions to strengthen the notified wage rules further, drawing from the recommendations of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage (hereafter referred to as the Expert Committee) (GoI 2019a) and international experiences.

Wage Code Reforms

The first of the three key reform measures in the wage code, which the wage rules will make effective, is the extension of the legal coverage of both floor wages and minimum wages to all wage earners in the country. It is a significant step forward and stands to benefit about 22.47 crore wage earners in 2018–19, as per the Periodic Labour Force Survey (PLFS) data (NSO 2020). It also implies protecting an additional 7.64 crore wage earners,¹ presently not covered under the minimum wage regulation of 1948. Many of these additional wage earners belong to the most vulnerable groups within India's vast informal economy, usually employed under non-standard forms of employment. The extension of legal coverage, in conjunction with the universalisation of payment of wages, is expected to provide wage protection to these vulnerable workers and level the playing field for all employers, fostering fair competition.

The establishment of a statutory floor wage is the second element in the wage code that has significant implications for wage earners. The code prescribes that state governments should fix their respective minimum rate of wages at least equal to or above the floor wages. For states where the minimum wages are already higher, provisions under the code restrict them from lowering such wages. If appropriately implemented, the institution of a legal floor wage will bring a new dynamism into the wage-setting process in India. This could result in raising the wage levels of millions of low-paid workers, either presently not covered under the minimum wage regulation or receiving a sub-minimum level of wages. The floor can potentially reduce the considerable disparities in the minimum wage rates that exist within and across states.

Another primary task that the wage code is set to perform relates to the simplification and rationalisation of the complex minimum wage structure. In this context, it may be useful to note that there were more than 1,915 occupational minimum wage rates across state spheres as per the *Economic Survey* (GoI 2019b). These have been significant roadblocks affecting compliance and dispersing the focus of the minimum wage policy away from the most vulnerable low-paid workers. The plethora of minimum wages found in India are also frequently perceived as the established wages for each occupation, rather than just the minimum level of wages.

This situation distorts the meaning of a minimum wage and interferes with the collective wage bargaining process. Notably, the wage code has done away with the practice of fixing

occupational minimum wage rates or wage fixation by scheduled employments. It has only retained the procedure of setting the minimum rate of wages by skill categories, or geographical areas, or both. This act of simplification will effectively reduce the number of rates to a minimum of three and a maximum of 12 rates per state. Interventions around enhancing awareness about fewer rates are expected to improve minimum wage compliance, and might even provide enough space for collective bargaining.

The combined effect of the above key reform measures is expected to deliver significant first-order outcomes that may be anticipated from any minimum wage policy, in terms of reduced inequality and poverty. The wage code, therefore, may enable the minimum wage policy as a critical redistributive tool expected to improve the standards of living and welfare of low-paid workers. This inference is attested to by various empirical investigations and, most importantly, in a detailed study undertaken by Patrick Belser and Uma Rani (2011) in the context of India. This study, under the assumption of full implementation, found that the extension of legal coverage can reduce wage inequality by 10 percentage points; reduce poverty among low-paid workers by 8%–9%; and compress the gender wage gap by 6 percentage points among regular and 18 percentage points among casual workers. Empirical evidence from other emerging economies, such as Brazil and China, also suggests that a minimum wage policy may contribute to a reduction in income inequality by raising the earnings of low-paid wage workers (Lin and Yun 2016; Engbom and Moser 2018).

Admittedly, the extent of the effect of these redistributive outcomes will be contingent on the effectiveness of the minimum wage policy measured in terms of the scope of coverage, the level at which floor and minimum wages are set, and on the degree of compliance. In India, given the vast informal economy, the universal application of minimum wage provisions in practice has always been a significant challenge. Further, as far as the levels of minimum wages are concerned, it is perceived that the prevailing minimum wages across states are low. Hence, one crucial discussion on minimum wages has always been around the question of the level of the “adequate minimum wage” as referred in the International Labour Organization's (ILO) Centenary Declaration for the Future of Work (ILO 2019), which could provide a decent standard of living, thus creating more quality employment.

Similarly, compliance is another issue that has been widely debated, with poor compliance being attributed to weak enforcement regimes (Soundararajan 2019). The *Economic Survey* 2018–19 providing evidence to this effect states that 20% of regular and 42% of casual workers earned below the non-statutory national floor level minimum wage² (NFLMW) in 2012 (GoI 2019b). As the extent of coverage, the level of the floor wage and state minimum wages and compliance depend on the implementation mechanism and elements therein, in the next section, we have examined the wage rules that contain these elements, and question their relevance in

improving the effectiveness of the minimum wage policy under the new legal framework.

Implications of Draft Wage Rules

The wage rules have 58 provisions and have amalgamated eight different existing rules under the four wage-related regulations. Of all the provisions in the wage rules, we examine three crucial aspects upon which the effectiveness of minimum wage policy is contingent: first, the scope of universal coverage leaving no group of wage earners behind; second, the elements related to determining the minimum wage level that is minimum wage fixation, revision and adjustment, including the proposed criteria; and third, the enforcement strategy leading to better compliance. Based on the above examination, we have identified shortcomings in the wage rules that may affect the effectiveness of minimum wage policy and, thus, workers' welfare. Based on the recommendations of the Expert Committee (GoI 2019a) and past implementation experience, we have outlined some additional features, which, if integrated into the wage rules, will provide the wage code more teeth in terms of protecting all wage earners, setting adequate minimum wages and improving compliance, thereby benefiting millions of low-paid workers.

Universal coverage of minimum wages: As discussed in the preceding section, the wage code has extended the legal coverage of minimum wage to all employees or wage earners in any establishment. Section 5 of the wage code explicitly states that “no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate government” (GoI 2019d: 6). The definition of employee has been so formulated to include, “any person employed on wages by an establishment.” This is a game-changing provision and can undoubtedly help in improving the effectiveness of the minimum wage policy.

However, an in-depth review reveals that the definition of establishment³ could exclude wage earners in the household and agricultural sectors from the scope of the coverage, as the said definition is silent regarding the inclusion of private households or owners of agricultural holdings under its ambit. Workers falling between the cracks of this definition may struggle to retain their right for universal coverage and fail to claim the right for minimum pay. Further, Section 50 (4) of the wage code also has a provision that excludes employers employing less than five workers for domestic and agricultural purposes from maintaining registers of employees, and issuing wage slips to workers. It just states that such employers shall be able to produce “reasonable proof of payment of wages,” if demanded by the inspector-cum-facilitator.

Maintenance of registers and issuance of wage slips are central to effective implementation, and used as reference documents to establish the employment relationship in the event of a dispute. Therefore, replacing them with a clause of reasonable proof of payment of wages, without clarifying what constitutes “a reasonable proof” even in the wage rules, together with an establishment-based definition of an employee, is akin

to widening the vulnerability of vulnerable workers falling outside the purview of universal coverage. This may lead to the exclusion of millions of agricultural workers, domestic workers, homeworkers, and other similar workers employed by households, from the application of wage code in practice, as these workers will struggle to establish their employment relationship. As both agricultural and household sectors are gendered, this has significant implications for women workers.

Further, the wage code also misses an opportunity to consider the emerging category of workers and new forms of employment relationships, such as “gig and platform workers” as employees, even though their number is quite sizeable and growing. Similarly, other non-standard forms of working arrangements, such as temporary workers, part-time workers, agency workers, and other multiparty employment relationships could fall outside the protection realm, as they are “on the run,” chasing job opportunities for subsistence. Some of these workers may not have identified establishment-linked employment, albeit working for wages in non-standard jobs. Lastly, the wage code provides a traditional definition of “contractor.” It does not include emerging contractual arrangements, such as “concessionaire” and “licensee,” engaged by establishments primarily in the infrastructural sector. The non-standard workers working under such arrangements also face the risk of exclusion from universal coverage.

All the above omissions and exclusions in the wage code will create an obstacle in the way of the universal applicability of minimum wage provision in practice. Therefore, the wage rules should clarify that the wage code provides comprehensive protection to all employees, irrespective of the employment arrangement and establishment linked employment relationship. Even those engaged in non-standard forms of employment, where an employment relationship is in place, require such protection.

Minimum wage fixation: Unlike the earlier minimum wage regulation, the wage rules have, for the first time, included basic criteria and mechanisms related to fixation, revision and adjustment of the floor and minimum wages under their ambit. This was a long-time demand of the trade unions and is expected to bring uniformity in the wage fixation criteria and adjustment processes across states. Notwithstanding the above, a scrutiny of the wage rules suggests that on each of these three counts, the wage rules are a mixed bag—including some elements, excluding some, and leaving certain other features open-ended—which raises questions about the effectiveness of the minimum wage policy under such circumstances.

Issues with Criteria and Methods

At the outset, the wage rules do not outline the exact criteria and methods for the fixation of floor wage rates by the central government, except for stating some broad components, such as food, clothing, housing and any other factors considered appropriate in Rule 11(1). India, with more than 70 years of experience in the implementation of minimum wage regulation and 24 years of implementing the NFLMW, cannot afford to

leave the floor wage fixation criteria ambiguous in the wage rules. Instead, it should lead the world in setting such benchmarks. It is all the more critical, when the Expert Committee appointed by the government has already recommended an evidence-based methodology that needs to be considered for the fixation of such a floor wage (GoI 2019a).

The Expert Committee, for fixing a national floor, had, amongst other things, recommended for a nationally representative and culturally palatable balanced diet approach.⁴ The updated evidence established a recommended intake of 2,400 calories, 50 grams of protein and 30 grams of fat per day per person for estimating the cost of a food basket. Applying this methodology to the Consumption Expenditure Survey data for 2011–12 (NSSO 2014), the Expert Committee had recommended setting the national floor wage at ₹375 per day as per July 2018 prices, irrespective of skill level, occupation and location (Table 1). With the use of the PLFS data, it is estimated that the recommended benchmark would benefit 11.2 crore employees, who earned wages below this minimum threshold in 2017–18 (NSO 2019).

Table 1: Level of National and Regional Floor Minimum Wage Rates as per the Balanced Diet Approach (₹)

Floor Minimum Wages	Daily Wage Rates per Day	Total Monthly Wages per Day	Daily Wage Rates per Day	Total Monthly Wages per Day
	July 2018 Prices*		January 2020 Prices#	
National	375	9,750	413	10,738
Region 1	342	8,892	375	9,750
Region 2	380	9,880	417	10,842
Region 3	414	10,764	455	11,830
Region 4	447	11,622	490	12,740
Region 5	386	10,036	423	10,998

* As estimated by the Expert Committee; # as per authors' calculation after updating with January 2020 prices, using the Consumer Price Index—Industrial Workers (CPI—IW). Source: GoI (2019a) and authors' calculations.

If the Expert Committee recommended wage rate is updated to January 2020 prices, the level of floor wage will increase further to ₹413 per day. Besides, the Expert Committee had also suggested five regional⁵ floor-level minimum wage rates, given the vast diversity in socio-economic and labour market situations across various regions. Therefore, it is crucial to have a closer look at this report and incorporate its recommendation as appropriate in the wage rules, stating the exact methods of fixation of floor wage. It would enable the setting of the floor wage at an appropriate level after the wage code takes effect. Similarly, it would facilitate gradually catching up with the central trade unions' demands to set the national floor at ₹18,000 per month.⁶

The wage rules are not very firm and categorical about the periodicity of revision and adjustment of the floor wage. They simply state that the floor wage “may” be revised ordinarily every five years and that adjustment for cost of living “may” be undertaken “periodically,” in Rule 11(4). The use of uncertain terms opens the door to the delaying of revision. It may lead to stagnation of the floor wage in future, after its initial setting, thereby defeating the very purpose for which it has been instituted. Many countries establish shorter periods of revision and also mark the dates when the minimum wage shall come into force, leaving no space for ambiguity. Furthermore, the

five-year period of the revision of floor wage is not only too long (as presently the NFLMW gets revised every two years), but coincides with the revision period of the minimum rate of wages. As state governments have to set and revise their minimum rates of wages within five years—either equal to or above the floor as per the wage code—this demands setting and revising the floor wage at an earlier interval.

The wage rules must provide conceptual clarity regarding the “manner of calculating minimum rates of wages” in Rule 3. They need to recognise that a “minimum rate of wages” has two components as per the wage code, that is, the “basic rates of wages” and “dearness allowance.” Hence, changes in the minimum rate of wages can be effected by changing either of these two components. The wage rules, for the first time, included a provision to adjust the dearness allowance concerning inflation every six months, which is a significant step that prevents any deterioration of workers' purchasing power. Therefore, the other component that needs to be set initially and revised ordinarily within every five years is the basic rate of wages. This confusion in the wage rules, which has persisted for the last 72 years, needs to be corrected.

Wage earners have borne the cost of this confusion; many states, by taking advantage of this situation, do not revise their basic rates of wages for many years altogether, a practice that is essential for improving workers' living standards. For instance, the Delhi and Maharashtra governments revised their basic rate of wages after 22 and nine years, respectively. By delaying the process, these two state governments did not violate the minimum wage regulation as they effected changes in the overall minimum rate of wages through the dearness allowance in every six months, and not through the revision of the basic rate of wages. It defeats the very purpose of having such a regulation, and is one of the reasons for the prevalence of a low level of minimum wages in many states.

Rate Setting and Economic Factors

Another issue with the wage rules is related to the criteria for setting the minimum rate of wages. The rules include the need-based criteria recommended by the 15th Indian Labour Conference (ILC) of 1957, and the subsequently expanded Supreme Court judgment of 1992, into their fold in Rule 3(1).⁷ However, the rule should recognise that the needs of the workers and their families, as defined in 1957, lack relevance in the present context owing to changes in economic development,⁸ demography, family size, consumption patterns, nutritional intakes and work intensity. Therefore, to set the minimum rates of wages at an adequate level above the floor wage, a new set of criteria and methodology are required in the present context. Moreover, the Expert Committee report provides strong evidence and assiduous scenario analysis to this effect. Apart from recommending the floor wage levels, as discussed earlier, the Expert Committee report, with the use of evidence, has also suggested enhancing the consumption unit from three to 3.6 units per family.

It had also estimated the possible level of the minimum rate of wages corresponding to 2,700-calorie levels (per day per

consumption unit) with a balanced diet approach (GoI 2019a: 82).⁹ The committee had also proposed to estimate the cost of non-food items as per household consumption behaviour, and not as a fixed percentage of food and clothing cost, as is done presently. Besides, it had also recommended expanding the non-food basket to include essential items such as transport and communication expenditure, and also to estimate house rent allowance as per actual expenditure incurred, and not as a fixed 10% of food and clothing expenditure, as provided in the wage rules. Thus, it is of utmost importance to think about adopting a new approach supported through evidence and tripartite social dialogue. On the former, the Expert Committee report presents multiple options for zeroing in on evidence-based and contemporary criteria, for fixing not just the floor wage but also the minimum rate of wages.

The next element relates to non-inclusion of economic factors in Rule 3(1) for the fixation of the minimum rate of wages, as provided in Article 3 of the ILO's Minimum Wage Fixing Convention, 1970 (No 131). The provision calls for taking into account not only the needs of the workers and their families, but also economic factors, when setting the minimum rate of wages. International experience shows there is a nearly universal practice to take into account economic factors, such as economic development, levels of productivity and employment analysis, while determining the level of the minimum wage. If these elements are not factored in, effective minimum wage enforcement may not be achievable.

Therefore, the wage rules must establish within their ambit the circumstances or indicators to be considered to address the economic environment that may enable stakeholders to arrive at minimum wage decisions under an evidence-based social dialogue. It would allow for setting the floor and minimum wages at a feasible level, as well as improve compliance and enhance the effectiveness of the minimum wage system. The inclusion of economic factors in the minimum wage setting process would also enable India to move closer towards the ratification of Convention No 131, pending since 1970.

Dearness Allowance and Skills

Another element that needs to be addressed in the wage rules is the procedure for the adjustment of dearness allowance. While the wage rules have made it statutory in Rule 5 to adjust the dearness allowance every six months, they do not elaborate upon the manner of adjustment. In the absence of guidelines under the previous minimum wage regulation, states have used the consumer price index (CPI) for agricultural labourers, the CPI for rural labourers, the CPI for industrial workers (CPI-IW), and the wholesale price index without distinction, for adjusting the dearness allowance depending on the scheduled employment. Further, the states have used different dearness allowance neutralisation rates for different types of skilled workers. For instance, in Delhi, the dearness allowance neutralisation rate for unskilled workers is taken as ₹1.35 per point, while for graduates and above, the same is taken as ₹1.80 per point. All this has led to substantial interstate variations in the minimum rate of wages, while not sufficiently protecting the erosion in

real wages of workers, thereby affecting the effectiveness of the minimum wage policy.

Given the above, Rule 5 may also provide for the manner of adjustment of dearness allowance, including the following elements. As minimum wages will now be fixed for workers living in metropolitan, non-metropolitan and rural areas, the Expert Committee had recommended using the CPI numbers (rural and urban) published by the National Statistical Office, with the latest 2012 base uniformly across states (GoI 2019a). The rule may include this element. Further, the rule may provide that for the adjustment of dearness allowance with respect to 1 April and 1 October, average index numbers for July to December of the previous year, and January to June of the current year, shall be taken into account, respectively. The wage rule should provide for 100% neutralisation in the rate of dearness allowance adjustment uniformly for each skill category. The above inclusions in the rule are vital to protect the real wages of workers across the country through a uniform yardstick.

In terms of defining skill levels of employees (unskilled, semi-skilled, skilled and highly skilled), the wage rules provide for the constitution of a technical committee to advise the central government, as per the National Skills Qualifications Framework (NSQF) and the National Classification of Occupation (NCO) in Rule 4(2). This change in approach will ensure the objective classification of skill categories so that higher levels of skills, competencies, experiences, and qualifications are appropriately identified and rewarded through higher minimum wages. However, at the same time, the wage rules, in the definition part under Rule 2, have retained the earlier subjective definition of skill levels, which caused numerous problems in identifying the updated skills found in the Indian labour market.

Retaining two different but parallel proposals for minimum wage-setting for various skill categories will be counter-productive and will affect the wage-setting process for workers across various skill categories.¹⁰ Therefore, the wage rules must clearly state that the subjective definition of skill levels as given in the definition section shall be removed, once the technical committee provides a new objective classification. Similarly, for maintaining the tripartite character of the wage code, it is proposed to include at least one technical expert from the trade unions and employers' side each in the technical committee for the determination of skill categorisation. Additionally, the wage rules should ensure that if an employee's occupation is not addressed as per the technical committee, the NSQF or the NCO, the employee will still be protected by the lowest minimum wage fixed by the appropriate government.

Consultation and Advisory Boards

The last issue is about the importance of consultation in setting and revising the level of floor wage and minimum wages. Full consultation with social partners on the basis of equality, and if possible, their direct participation in the operations of the minimum wage system, is a central element

of the ILO Convention No 131. In accordance with this convention, the wage code provides for the constitution of minimum wage advisory boards by the appropriate government, comprising an equal number of representatives from employee and employer organisations, and independent members, for fixing and revising minimum wages and other connected matters through consultation. Additionally, it goes on to state that one-third of the members of the advisory boards shall be women. The wage rules in Chapter VI provide a detailed procedure for the constitution and functioning of the advisory boards and the terms of office of the members.

However, the wage rules have retained similar provisions relating to functioning and operation of advisory boards, as given in the existing rules relating to the minimum wage regulation of 1948. It is despite the fact that numerous problems are associated with the functioning of advisory boards and committees formed thereunder, as experienced in the last seven decades of its implementation. The challenges and issues with advisory boards are as follows: (i) constituted on an ad hoc basis, meeting infrequently, with wide variations in their functioning across states; (ii) not adequately backed by technical experts to undertake an evidence-based enquiry and wage fixation; (iii) do not conduct studies on monitoring and impact of minimum wages and their enforcement across sectors, occupations and states; (iv) lack of coordination and interaction between central and state advisory boards; and (v) inadequate funding for boards' functions and no independent technical secretariat for smooth functioning of the board.

Therefore, the Committee on the Functioning of the System of Wage Boards (1968) reported that a majority of the wage boards had not found it feasible to fix the "need-based minimum" of the 15th ILC, and wages of the least skilled workers in almost all cases are still below the need-based norms, as adopted in the 15th ILC (GOI 1968: 50). Similarly, the National Commission on Rural Labour in 1991 enquired into this issue, and observed that wide disparities in minimum wages reflect the varied perceptions of the concept of the minimum wage in the states and at the centre (GOI 1991).

This paper earlier suggested that setting the floor wage and minimum wages should be grounded in sound criteria and evidence-based methodologies. However, the final decision requires the engagement of the tripartite stakeholders and a process of full consultation to arrive at the final decision. Therefore, effective and efficient functioning of advisory boards, both at central and state levels, is of paramount importance for setting minimum wages at an adequate level, and for undertaking timely revision and adjustment. Hence, streamlining of the functioning of advisory boards on the basis of past experience has to be emphasised in the wage rules.

The rules may specify that these advisory boards are permanent bodies, ensuring meetings and providing for appropriate staffing (technical and administrative). Allocation of funding for their smooth functioning is also relevant. The wage rules may create room to incorporate some technical capacity into the central and state advisory boards, which may enable the boards to make timely decisions grounded in studies, information

and official data that support any deliberation and argument. The rules may also provide mechanisms for regular interactions between central and state advisory boards.

Enforcing Minimum Wages

Ensuring a high rate of compliance is dependent as much on a simplified minimum wage system, as on a coherent enforcement strategy involving the awareness and provision of information, effective labour inspections, and punitive sanctions in case of violation. As discussed earlier, the wage rules and the wage code, by universalising the minimum wage application, rationalising the minimum wage structure and setting uniform criteria, have attempted to simplify and redesign the minimum wage system, which could improve compliance. However, the same cannot be said about the enforcement strategy,¹¹ which should involve provisions related to awareness-raising, the use of statistical information, and an inspection system, which have been dealt with in the following paragraphs.

Raising awareness about the various provisions of the code among workers and employers, the use of statistical information to monitor non-compliance and undertake focused inspections, are vital aspects of enforcement and compliance. The wage rules in their present form are silent on them. Therefore, the rules should encourage putting in place a minimum wage policy campaign strategy with adequate provision of resources. In light of the preponderant informal labour market and the pervasive levels of sub-minimum wages, facilitating an understanding of the provisions in the law becomes most relevant for enforcing minimum wages.

This strategy should ensure dissemination of pertinent information through print and electronic media, including hotlines reaching out to every worker and employer in the country, so that they have a clear understanding of the law, thereby promoting a culture of compliance. Further, the wage rules should also outline the mechanism and procedure for identifying non-compliance gaps and patterns, so that appropriate interventions for enforcing provisions of the wage code can be undertaken to improve the degree of compliance. In this regard, the wage rules may provide for the use of technology and big data (compilation of surveys and administrative data), to monitor the effectiveness of the minimum wage policy and the extent of non-compliance, and to undertake planned and focused labour inspections.

The second critical element crucial for achieving compliance is an effective and efficient labour inspection system. In this regard, the wage code has introduced significant cultural changes to deal with corrupt and arbitrary inspections. The code provides for the appointment of an inspector-cum-facilitator to not only inspect and impose fines, but also provide information and advice to the workers and employers. It has also introduced a web-based inspection scheme, involving requests for information electronically and conferment of jurisdiction to the inspector-cum-facilitator based on a randomised selection. However, the wage rules are silent on the detailed implementation mechanism, and Rule 58(1) merely states that a detailed inspection scheme shall be formulated by the chief labour

commissioner (central) at a later date, with the approval of the central government.

Further, the web-based inspection scheme as the only form of inspection is not compatible with the ILO's Labour Inspection Convention, 1947 (No 81), which India ratified in 1949. Therefore, the wage rules must provide the details of the inspection scheme, which should not only be tied to a web-based scheme, but also include other options, such as complaint-based inspection, surprise inspection and risk-based inspection, so that non-compliance is detected through a wide range of measures, especially in the informal economy. Also, a provision of an online grievance redressal mechanism and the creation of a national dashboard as an information hub would help in improving compliance significantly.

Conclusions

The wage code and wage rules have introduced many elements of reforms that will strengthen the minimum wage system of the country. The wage code has universalised the due application of floor and minimum wages and payment of wages to all employees, and simplified the minimum wage structure. Similarly, the wage rules have established the criteria and methods related to the fixation, revision and adjustment of the floor and minimum wages. These are positive steps forward and have been a long-time demand of the central trade unions. These reforms offer hope for a revival of the minimum wage policy in India, with relatively more potent redistributive effects than those obtained from previous regulations. It could potentially produce first-order outcomes that may be expected from any wage policy in terms of reducing inequality, poverty and the gender pay gap.

However, the extent of the effect of these redistributive outcomes relies on the effectiveness of the minimum wage policy focusing on low-paid workers. It depends on the extent of legal minimum wage coverage in practice (leaving no one behind), the level at which floor and minimum wages are set, and the degree of compliance. The minimum wage coverage, although widely promulgated as universal, leaves space for ambiguity in the code. Detailed examination shows that universal legal coverage in practice would be a challenge, owing to a combination of factors relating to ambiguities in the definition of establishments, non-recognition of new forms of employment relationship and non-standard work arrangements and a narrow definition of contractor.

It may leave unprotected vulnerable work categories that do not hold standard forms of employment linked to an

establishment. The provisions related to setting, revising and adjusting of floor wage and the minimum rate of wages in the wage rules are based on the old norms. Similarly, the enforcement and compliance provisions in the wage rules are narrow in scope and have some missing elements. These loose ends in the wage code and rules pose questions about the effective application of the wage code in practice, and the adequacy of the level at which floor and minimum wages are to be set. These concerns call for strengthening and refining relevant provisions of the wage rules related to universal coverage, the setting of floor wages and minimum wages at an adequate level, and ensuring meaningful compliance.

This paper, by drawing from the report of the Expert Committee and international experience, provides a host of constructive suggestions to further strengthen the wage rules. It argues that the wage rules should amply clarify that the provision of universal coverage of minimum wages and payment of wages is applicable to all employees, irrespective of their employment arrangements and establishment-linked employment relationship. In the context floor and minimum wages fixation, the paper highlights deficiencies in the criteria provided in the wage rules, and argues in favour of the inclusion of scientific and evidence-based criteria, factoring in both the needs of the workers and economic factors in fixing wages at an adequate level.

As the advisory boards are an important institutional machinery for setting, timely revision and adjustment of statutory wages, this paper advocates for streamlining their functioning through the provision of appropriate staffing, funding, and inclusion of technical capacity. Further, to make the minimum wage enforcement more coherent and improve compliance, the wage rules must include a section related to awareness generation and minimum wage policy campaign strategy, with adequate provision of resources. They must also clearly outline an inspection scheme based on statistical information, which should not only focus on web-based inspection, but must also include complaint-based inspection and planned inspections.

It is hoped that the incorporation of the above suggested changes in the wage rules, along with enabling provisions in the wage code, will mutually reinforce each other and improve the effectiveness of the minimum wage policy under the new legal framework. Effective application of these refined and strengthened tools will enhance the effect of the redistributive outcomes of the wage code, and allow India to deliver dignity and improve the working conditions of millions of low-paid workers in the coming years.

NOTES

- 1 We have estimated this figure based on previous studies that indicated that 30% to 40% of wage earners fell outside the scope of previous regulations (Rani and Belser 2012; Rani et al 2013; ILO 2018).
- 2 The NFLMW was established as a non-binding and advisory measure in 1996 to address the prevalence of undue low wages and wide interstate variations in minimum wage rates. It is currently ₹176 per day, with effect from June 2017.

- 3 As per the wage code (Section 2m), establishment means any place where any industry, trade, business, manufacture or occupation is carried on and includes government establishments.
- 4 See GoI (2019a: 33–52) relating to methodology for floor wage-setting.
- 5 The report of the Expert Committee provides a detailed account of the methods related to the categorisation of states into regions, and the estimation of regional floor minimum wage rates (GoI 2019a: 43–47).
- 6 Utilising the PLFS 2017–18 data (NSO 2019), we

estimate that 86% of wage earners earn below the daily rate of ₹692 per day (equivalent to ₹18,000 per month).

- 7 See Section 3 and Sub-section 1 of the draft Wage Code (Central) Rules (GoI 2020) for detailed criteria.
- 8 Engel's law is an economic observation stating that the proportion or share of income spent on food decreases as income rises, even if absolute expenditure on food rises.
- 9 The balanced diet approach for the minimum rate of wage setting allows for a minimum

- recommended intake of 2,700 calories, 50 grams of protein and 30 grams of fats per adult person per day for 3.6 consumption units per family. Including the non-food expenditure, this method of the committee estimates the possible level of the minimum rate of wages at ₹407 per day, as of July 2018 prices (or ₹447 as of January 2020 prices) for rural unskilled labourers (GoI 2019a: 33–52).
- 10 A similar problem can also be seen in Schedule E of the wage rules, where various occupations have been classified under skill categories. No rationale has been provided for how these categories have been arrived at. Further, many occupations have not been included in the list. These include occupations overrepresented by women, such as domestic work and childcare occupations.
- 11 The wage code has dealt with sanctions in case of violation relatively better than the other two elements of the enforcement strategy (statistical information and inspection system). It has strengthened the concept of a graded penalty and enhanced the penalty, especially the fine amount manifold, compared to existing regulations. However, this increase in the maximum penalty amount was found inadequate in the present context by the Parliamentary Standing Committee on Labour, which examined the draft wage code bill (GoI 2018: xi).
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