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# The Three Dimensions of the Indian Wage Code (2019): Shifting Economic, Socio-political and Legal Values?

Catharina Hänsel \*

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## Abstract

The value of work is intrinsically linked to its monetary equivalent expressed in wages. Changes in wage laws therefore impact a wide-ranging frontier of tensions inherent in the politics around remuneration, at the individual, the firm and the state level. In other words, wages do not form a single line of conflict, but in fact matters of payment unfold multiple struggles in the spheres of institutions, at the shop-floor and within the household. From this three-fold perspective, the paper analyses unraveling tensions in the economic, legal and socio-political constitution of wages in the Indian Wage Code of 2019. This evaluation shows the importance of strengthening need-based approaches to wages such as minimum wage policies, not just to facilitate decent working standards, but also to guarantee adequate social safety nets, particularly in times of crisis such as the COVID-19 pandemic.

**Keywords:** *Industrial Relations; Labour Law; Minimum Wages; Wage-Price Spiral; Incentive Pay.*

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\* Catharina Hänsel is a PhD Student at the Scuola Normale Superiore (Italy) and the Centre for Modern Indian Studies of Georg-August University (Germany). Email address: [catharina.haensel@sns.it](mailto:catharina.haensel@sns.it).

## 1. Introduction

During the COVID-19 pandemic, India initiated a major labour law reform which had been discussed for the last two decades. This reform aimed at consolidating 44 central and about 100 state labour laws into four Codes, viz. the Wage Code (2019), the Industrial Relations Code (2020), the Code on Social Security (2020), and The Occupational Safety, Health and Working Conditions Code (2020). While this reform has been largely welcomed by Indian employers, it has received criticism from all major trade unions as well as the International Labour Organisation (ILO). According to the ILO's statement from May 2021, the international organisation was investigating the compliance of the new labour Codes with Convention No. 144 on tripartite consultations.<sup>1</sup> This raises the issue of which standards are appropriate to analyse the new legal system. What would be the substantive measure to determine whether the ILO's constitutional principle of the "provision of an adequate living wage" have been met under the new Codes?<sup>2</sup> The four labour Codes have received wide scholarly attention, particularly with regards to the health emergency in which they were passed, and their implications for workers,<sup>3</sup> as well as with the devastating effect they could have on the role of already weakened trade unions in India.<sup>4</sup> The Wage Code has predominantly received attention on specific issues, particularly the provision of adequate minimum wage standards and its potential implications for the labour market.<sup>5</sup> However, these analyses do not take

<sup>1</sup> The ILO Convention No. 144 on Tripartism seeks to strengthen social dialogue between employers, workers and government institutions. For the full text of the convention, see:

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312289](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312289) (accessed July 1, 2022).

<sup>2</sup> This principle is also enshrined in the UN Declaration of Human Rights, 1948 in Art. 23 para. 3.

<sup>3</sup> E.g. Srivastava, R., Growing precarity, circular migration, and the lockdown in India. *The Indian Journal of Labour Economics*, vol. 63, n. 1, 2020, 79-86; Breman, J., The pandemic in India and its impact on footloose labour. *The Indian Journal of Labour Economics*, vol. 63, n. 4, 2020, 901-919; Satpathy, A., Estupinan, X., & Malick, B. K., Strengthening Wage Policies to Protect Incomes of the Informal and Migrant Workers in India. *Labour and Development*, VV Giri National Labour Institute, 2021.

<sup>4</sup> Shyam Sundar, K. R., Critiquing the Industrial Relations Code Bill, 2019. *Economic and Political Weekly*. vol. 55, n. 32-33, 08 Aug, 2020.

<sup>5</sup> Kapoor, R., COVID-19 and the State of India's Labour Market. *ICRIER policy series*, 18, 2020, 1-7; Kapoor, S., A Critical Analysis of The Code On Wages 2019: Need For Right To Minimum Wage. *Indian Journal of Law and Legal Research*, vol. 2 n. 1, 2021, 296-306.

into account the implications of the changes in wage determinations on industrial relations systems. In order to analyse the implications of the new Wage Code on remuneration and the value of work, it is necessary to define wage matters not as a one-dimensional line of conflict, but instead understand its economic, legal and socio-political constitution.

These three intersecting spheres shape the way wages are negotiated. At the economic level, this particularly relates to the nature of the labour market and the conceptualisation of the relationship between wages and prices – both as “price” for labour inputs as well as prices for workers’ cost of living.<sup>6</sup> In other words, both the moment of production (shop-floor) and of reproduction (household) need to be investigated. Wage inequalities in India have often been studied under the concept of segmented labour markets,<sup>7</sup> highlighting the difference between the organised and the unorganised employment sectors,<sup>8</sup> leading to varying degrees of informal working conditions.<sup>9</sup> However, in these models, wages are often used as a marker of a certain outcome of segmentation, rather than looking at the processes by which these binaries are put into practice.<sup>10</sup> The paper seeks to complicate this perspective by analysing how wages are not only shaped by segmentation but also how certain wage setting practices contribute to social inequalities.

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<sup>6</sup> Rubery, J., Johnson, M. and D. Grimshaw, *Minimum Wages and the multiple functions of wages*. London, Routledge, 2021. They identify five functions of wages: 1) wages as price of labour 2) wages as living costs, 3) wages as class distribution, 4) wages as social practice and 5) wages to control the labour process.

<sup>7</sup> Bardhan, K., Economic growth, poverty and rural labour markets in India: a survey of research. *ILO Working Papers*, (992228833402676), 1983.

<sup>8</sup> Mazumdar D. and Sarkar, S., *Globalization, Labor Markets and Inequality in India*. London, Routledge, 2008.

<sup>9</sup> Jens Lerche, *From ‘rural labour’ to ‘classes of labour’: Class fragmentation, caste and class struggle at the bottom of the Indian labour hierarchy*. London, Routledge, 2009, 90-111; Henry Bernstein ‘Capital and Labour from Centre to Margins’. Keynote speech at the conference ‘Living on the Margins’, Stellenbosch University (26–28 March 2007). [http://pdf.steerweb.org/WFP%20ESSAY/Bernstein\\_dsi.pdf](http://pdf.steerweb.org/WFP%20ESSAY/Bernstein_dsi.pdf) (accessed June 7, 2022); Jan Breman, *At Work in the Informal Economy of India: A Perspective from the Bottom Up*. Delhi, Oxford University Press, 2013; Jan Breman and Marcel van der Linden, *Informalizing the Economy: The Return of the Social Question at a Global Level*, *Development and Change*, vol. 45, n. 5, 2014, 920–40.

<sup>10</sup> Anant, T. C. A., Hasan, R., Mohapatra, P., Nagaraj, R., & Sasikumar, S. K., Labor Markets in India: Issues and Perspectives. In J. Felipe & R. Hasan (Eds.), *Labor Markets in Asia: Issues and Perspectives*, 205–300. Palgrave Macmillan UK, 2006.

Further, in these models, binary labour markets are framed by the idea that informality is a consequence of missing implementation of the law,<sup>11</sup> without recognising how Indian labour law creates graded scales of inclusions and exclusions.<sup>12</sup> The unevenness of the application of law has to be analysed by extending the scope of the regulatory sphere in question – in other words, which institutions are involved in the making of industrial relations? Apart from labour laws, this involves decisions by labour courts and the mechanisms of collective bargaining, whether in tripartite, bipartite forums or “voluntary” agreements between parties involved.<sup>13</sup> This concerns the extent of the state’s engagement in the wage negotiation process. Given the relative weakness of the trade union movement particularly in the low-earning sections of the workforce,<sup>14</sup> state-determined minimum wages have often been cited as an argument to strengthen workers’ organisations. This further relates to the state’s role within the bargaining process and the extent to which legal and judicial provisions can safeguard workers’ earnings without becoming too rigid.<sup>15</sup> Further, the reorganisation and transformation of work in the context of platform work and other shifts in labour supervision towards more

<sup>11</sup> Jayaram, N., Varma, D. Examining the ‘Labour’ in Labour Migration: Migrant Workers’ Informal Work Arrangements and Access to Labour Rights in Urban Sectors. *Indian Journal of Labour Economics* Vol. 63, 2020, 999–1019.

<sup>12</sup> Shyam Sundar, K. R., Labour Flexibility Debate in India: A Comprehensive Review and Some Suggestions, *Economic and Political Weekly*, vol. 40, n. 22/23, 2005, 2274–85.

<sup>13</sup> There is a growing body of literature analysing voluntary grievance mechanisms and the role of businesses in fostering their own internal cultures of conflict resolution and remedy provision in case fundamental rights have been violated at work. See, for example, Smit, L. Gabrielle Holly, McCorquodale, R. & Stuart N., Human Rights Due Diligence in Global Supply Chains: Evidence of Corporate Practices to Inform a Legal Standard, *The International Journal of Human Rights*, vol. 25 n. 6, 2021, 945–973. Olivier De Schutter, Towards a New Treaty on Business and Human Rights, *Business and Human Rights Journal*, vol. 1 n. 1, 2016, 41–67; John G Ruggie, Business and human rights: the evolving international agenda, *American Journal of International Law*, vol. 101 n. 4, 2007, 819–840. However, these claims are often framed in addressing issues of “human rights” at work, rather than labour rights.

<sup>14</sup> Harriss-White, B., Inequality at work in the informal economy: Key issues and illustrations. *International Labour Review*, 2003, 142, 459.

<sup>15</sup> Many scholars have evaluated to what extent a quantification of minimum wages by the government bears the risk of crowding out employees. Moreover, examples in Europe show how slow mechanisms of adjustments also negatively impact workers and make trade unions cautious in their demands for minimum wages Hancké, B., Why Trade Unions have a Problem with the Minimum Wage, LSE Blog, <https://blogs.lse.ac.uk/europblog/2021/11/30/why-trade-unions-have-a-problem-with-the-minimum-wage-and-what-can-be-done-about-it/> (accessed July 4, 2022).

indirect forms of oversight — controlled by algorithms which often disguise work as self-employment — make it more difficult to hold employers accountable for the payment of wages.<sup>16</sup> This raises the question whether those matters should be addressed through a labour lens or through a more, universal social citizenship lens.<sup>17</sup>

Socio-political power permeates and shapes labour markets, industrial relations, and working-class households.<sup>18</sup> Building on White's framework of market politics, the paper investigates the Wage Code at three intersecting frontiers of wage negotiations: 1) The sphere of industrial relations and shop-floor negotiations - How is the relation and valuation between workloads and wages shaped by political power? 2) The legal-institutional framework – Is the Code adequate to address power imbalances between actors involved in the bargaining process (trade unions, business associations, individual workers, firms, and the state)? 3) The sphere of reproduction and consumption - How are calculations of “cost of living” as basis for minimum wage claims part of a wider nexus of social inequalities based on caste, class and gender (e.g. the idea of the male breadwinner as the sole earner)?

The paper is structured as follows. The second part outlines the analytical spheres of investigation, defining which issues need to be accounted for when framing the Indian labour market for an analysis of the new Codes. Moving beyond the neoclassic idea of wages as mere indicators of labour market equilibria, this section shows how the need for a multi-perspective understanding of wages results from the incomplete commodification of work. Given that wages include both reproductive (in terms of need-based calculations) as well as productive (in the sense of labour process-related) considerations, these tensions are sketched out as frontiers which laws on remuneration need to incorporate. These frontiers occur in

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<sup>16</sup> These two shifts are not only observable in the Global South in countries like India, but seem to indicate a global trend. Discussions on whether governments should extend and universalise the coverage of labour law have also been held in the context of the European Pillar of Social Rights. See, for example, De la Porte, C., *The future of EU social and labour market policy: Between a European social union and an EU regulatory welfare state?* In Damro, C., Heins, E. and D. Scott (eds.) *European Futures: Challenges and Crossroads for the European Union of 2050*, 58-73, London, Routledge, 2021.

<sup>17</sup> Standing, G., *The precariat: Today's transformative class?*, vol. 61 n. 1, 2018, *Development*, 115-121.

<sup>18</sup> For the constitution of political power and its relation to the labour process, see for example, Burawoy, M., *The capitalist state in South Africa: Marxist and sociological perspectives on race and class*. *Political Power and Social Theory*, vol. 2, no. 81, 1981, 279–335.

relation to different components of the wage (basic wage, dearness allowance, bonus payments) as well as the labour process and legal institutions in which negotiations may take place. The third part evaluates the Wage Code based on this model, taking into consideration the broader context of labour law reform in India. Given that the Wage Code merges four laws concerning wages from before the reform, the focus lies on the continuities of exclusions of certain sections of the workforce in the structure of the Code. This also requires a historical review of the emergence of these wage laws in India. The fourth part revisits the idea of wage frontiers based on the concrete examples of the Wage Code, arguing that the power imbalances at the shopfloor are not adequately addressed (question 1), thereby containing significant implications for the sphere of reproduction and industrial relations (questions 2). This evaluation concludes with underlining the importance of the state in strengthening need-based approaches to wages such as minimum wage policies, not just to facilitate decent working standards, but also to guarantee adequate social safety nets, particularly in times of crisis such as the COVID-19 pandemic (question 3).

## 2. The Labour Market: Economic, Socio-Political and Legal Frontiers

### 2.1 Framing the Labour Market

#### 2.1.1 Economic Frontiers

Neoclassical economics defines the labour market as a locus of commodity exchange not much different from any other goods.<sup>19</sup> In these models, wage rates are based on the marginal productivity of the work performed, or in other words, the productivity gain of the firm resulting from one additional unit of either another employee or one extra hour of work. However, even under the assumption of perfect equilibria between work supply and demand which determines the wage rate, three major problems remain. First, the existence of multiple, segmented labour markets, varying in degrees of (in)formality, regulated through social factors.<sup>20</sup> Even before the economist Clark Kerr proposed his idea of the

<sup>19</sup> E.g. Smith, R. S. and Ehrenberg, R. G., *Modern Labor Economics: Theory and Public Policy* (12th Edition), Hoboken, Prentice Hall, 2014.

<sup>20</sup> Rubery, J., Wages and the Labour Market. *British Journal of Industrial Relations*, vol. 35 n. 3, 1997, 337–366.

“Balkanisation of labour markets” (1954) in the US as well as in developing economies,<sup>21</sup> colonial authorities divided “traditional” and “modern” sectors of the Indian economy – with generally handicraft and agricultural production falling into the first category.<sup>22</sup> These definitions have been extended, including geographical segmentations,<sup>23</sup> those based on skill,<sup>24</sup> the “organized” and the “unorganized”<sup>25</sup> with a measurement of degree of access to the state<sup>26</sup> as well as based on discrimination due to caste, gender and religion.<sup>27</sup> In the model on segmented labour markets and social factors introduced by Rubery, wages not only perform a signalling function for the degrees of segmentation, but also in turn divide the labour force by endowing working class households with varying degrees of purchasing power and therefore economic capacities for participation in the labour market. In other words, whoever is poor is very likely to remain so in segmented labour market scenarios.<sup>28</sup>

Second, the imperfect nature of labour as a commodity, given that the employer only buys a workers’ labour power, which however, is physically and practically indistinguishable from the person who performs the work

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<sup>21</sup> Kerr, C.; *The Balkanization of Labor Markets*. Reprinted by permission from Labor Mobility and Economic Opportunity, The Technology Press of M.I.T., and Wiley. Copyright: 1954 Massachusetts Institute of Technology. University of California Press, 2020.

<sup>22</sup> Mohapatra, P. (2005). Regulated Informality: Legal Constructions of Labour Relations in Colonial India. In Bhattacharya, S., Lucassen, J. (eds.), *Workers of the Informal Economy: Studies in Labour History, 1800-2000*, Delhi: Macmillan India, 2006; Behal, R. P. & Mohapatra, P. P., Tea and money versus human life: The rise and fall of the indenture system in the Assam tea plantations 1840–1908, *The Journal of Peasant Studies*, vol. 19 n. 3-4, 1992, 142-172; Stanziani, A., *Labor on the fringes of empire: voice, exit and the law*, 2018, London, Palgrave Macmillan.

<sup>23</sup> Papola, T. S., Inter-regional variations in manufacturing wages in India: Industrial structure and region effects. *Indian Journal of Industrial Relations*, vol. 7 n. 3, 1972, 355–376.

<sup>24</sup> Dayal, S., Wage Policy in India: A Critical Evaluation. *Indian Journal of Industrial Relations*, vol. 6 n. 2, 1970, 149–170.

<sup>25</sup> E.g. Rani, U., & Unni, J., Unorganised and organised manufacturing in India: Potential for employment generating growth. *Economic and Political Weekly*, 2004, 4568-4580; Harriss-White, B., & Gooptu, N. Mapping India's world of unorganized labour. *Socialist Register*, 37, 2001.

<sup>26</sup> Kumar, A., Hashmi, N.I., Labour Market Discrimination in India. *Indian Journal of Labour Economics*, vol. 63, 2020, 177–188.

<sup>27</sup> Deshpande, A., Goel, D., & Khanna, S., Bad karma or discrimination? Male-female wage gaps among salaried workers in India. *World Development*, 102, 2018, 331-344; Deshpande, A., The Covid-19 pandemic and gendered division of paid work, domestic chores and leisure: evidence from India’s first wave. *Economia Politica*, 2021, 1-26.

<sup>28</sup> Rubery, J., Wages and the Labour Market. *British Journal of Industrial Relations*, vol. 35 n. 3, 1997, 337–366.

and is subject to needs of reproduction and rest.<sup>29</sup> This significantly complicates the determination of the value of labour power, as it already includes a tension between need-based aspects of wages and the necessity to earn enough to enable adequate consumption (i.e. the use-value in the terms of Marx) on the one hand, and the “cost of labour” in production (exchange value).<sup>30</sup> These may not be coinciding with each other – need based calculations may determine higher or lower requirements of wage payments than the rates paid by the industry.<sup>31</sup>

Third, in order to account for the power dynamics of markets, White introduces the concept of *market politics* to provide analytical tools for understanding the “inter-relations between economic, social, cultural and political phenomena.”<sup>32</sup> He identifies the involvement of the state in terms of regulation of markets, participatory processes and distributions of power as one of the primary arenas of market politics, along with market organisation (and associations dominating the market such as trade unions and business associations), the economic structure and distribution of economic power, and social embeddedness of the market. Taking these factors into account allows to take a step back from equilibria approaches and to think about the fragmentary process of wage politics.

### 2.1.2 Frontiers of Social Reproduction

Thus, the model of the labour market needs to be extended in two directions: one, to include issues of social reproduction and two, to account for the working of political institutions and the law. In order to understand scenarios in which wage rates lie below subsistence standards,

<sup>29</sup> Prasch, R. E., How Is Labor Distinct from Broccoli? Some Unique Characteristics of Labor and Their Importance for Economic Analysis and policy. In Champlin, D. P., Knoedler, J. T. (eds.), *The Institutional Tradition in Labour Economics*, London, Routledge, 146-158.

<sup>30</sup> While neoclassical economists have been mostly occupied with the exchange value of labour with wages as the price of the marginal product of labour, Marxist economists have been mostly struggled with the conversion of values and the production of surplus value under the capitalist labour process into prices. On the transformation problem, see Shaikh, A., The transformation from Marx to Sraffa. Ricardo, Marx, Sraffa, In Ernest Mandel, and Alan Freeman (eds.) *Ricardo, Marx, Sraffa, The Langton Memorial Volume*, London, Verso, 1984, 43-84; and Fine, B., The Value Dimension (Routledge Revivals): Marx versus Ricardo and Sraffa, London, Routledge, 2013.

<sup>31</sup> Sharif, M., The concept and measurement of subsistence: A survey of the literature. *World Development*, vol. 14 n. 5, 1986, 555-577.

<sup>32</sup> White, G., Towards a Political Analysis of Markets. *IDS Bulletin*, 1993, vol. 24 n. 3, 4.

Moes and Bottomley have contended that an over-supply of labour would be responsible for such levels.<sup>33</sup> High competition of workers would lead to starvation wages, which in turn would hamper efficiency due to lack of adequate nutrition to perform workloads required. They postulate that these economies could exit the deadlock of such low-level equilibria by paying higher wages, which would in turn raise the ability of households to spend more on their nutrition and health. This would not only benefit working class households, but also employers who would have in turn access to a more productive workforce, thereby able to receive higher returns on their labour investments.<sup>34</sup> However, this approach needs to be problematised. As Rodgers has argued,

wage levels ... depend not only on economic and nutritional factors, but also on a host of institutional variables involving the local power structure, moral judgements of desirable living standards for labourers and their dependants, preferences for stability and so on<sup>35</sup>

Therefore, there are several core issues which need to be addressed: Difference in consumption choices between and within households (e.g. notions of family wages and gender imbalances), as well as the impact of “institutional factors and government policy” on wage determination.<sup>36</sup> Further, it needs to be recognised that the process of wage determination is not simply given by economic variables such as production and nutrition, but depends on social configurations of political power, both in negotiations with the state and employers. Therefore, dynamics of bargaining processes, campaigns and other struggles need to be considered – particularly where workers’ positions are weakened due to their low economic power.

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<sup>33</sup> Moes, J. E., & Bottomley, A., Wage rate determination with limited supplies of labour in developing countries. *The Journal of Development Studies*, vol. 4 n. 3, 1968, 380-385.

<sup>34</sup> Theories of “efficiency wages” are not just applied to economies of the Global South, but also in the Global North. See, for example Krueger, A. B., & Summers, R. H., Efficiency wages and the inter-industry wage structure. *Econometrica: Journal of the Econometric Society*, 1988, 259-293.

<sup>35</sup> Rodgers, G. B., Nutritionally based wage determination in the low-income labour market. *Oxford Economic Papers*, vol. 27 n. 1, 1975, 79.

<sup>36</sup> Harris, J. R. Wage rate determination with limited supplies of labour in developing countries: A comment, *The Journal of Development Studies*, vol. 7, n. 2, 1971, 200.

### 2.1.3 Legal Institutions and Collective Bargaining

Economic imbalances of power also affect the working of political institutions and the state. How are these institutions shaped by these differences in capacities, or to what extent can they aid in overcoming such discrepancies? The sociologist Budd has shown that the recognition of the complex tensions around the value of labour have been incorporated in three different strands of theory: a) Human Resources Management, b) Industrial Relations and c) Critical Industrial Relations.<sup>37</sup> These approaches would particularly vary with regards to the approach to (wage) bargaining – while Human Resources Management would highlight the significance of the individual contract between employer and employee, industrial relations would be concerned with the unequal bargaining power between workers and those offering work and therefore stress the need for collective bargaining. Meanwhile, Critical Industrial Relations would be concerned with the nature of the state and the conditions it sets for labour relations.<sup>38</sup>

As part of the Critical Industrial Relations school, Dukes and Streek have highlighted the importance of the beginning of the twentieth century for the emergence of labour laws under the competing legal frameworks of general contract law, and the specific needs of workers as human beings - resulting in the emergence of institutions to create a structure for procedural, inclusive law-making.<sup>39</sup> From their perspective, therefore, any law which facilitates institutions to strengthen workers' material position for better bargaining capacities should be politically welcomed. This can even include statutory provisions such as the minimum wage.<sup>40</sup> Such institutions could be formed at the firm or sectoral level (e.g. collective bargaining, works councils), or with the help of the state (tripartite forums). In this case, even a state which may be inherently unequal in terms of economic distribution could still hold transformative potential if it provides for adequate wage laws.

<sup>37</sup> Budd, J. W., Labour Relations. Striking a Balance. Fifth edition, New York: Mc Graw Hill Education, 2017.

<sup>38</sup> Hyman, R., Industrial Relations. A Marxist Introduction, London, Palgrave Macmillan, 1975.

<sup>39</sup> Dukes, R. and Streek, W., From Industrial Citizenship to Private Ordering? Contract, Status and the Question of Consent. *Max-Planck-Institut für Gesellschaftsforschung Discussion Paper 20/13*, 2020.

<sup>40</sup> Dingeldey, I., Grimshaw, D., & Schulten, T. (eds.), *Minimum Wage Regimes: Statutory Regulation, Collective Bargaining and Adequate Levels*. London, Routledge, 2021.

## 2.2 The Frontiers of Wage Law

Approaching wages from these three sides (economic, socio-political, legal), the forms of conflict lines occur at the intersection of those spheres. These frontiers will be used as a basis for the analysis of the Wage Code. First, this dissects the wage into different components, with not all sections of the workforce able to claim all of them. In India, the term ‘wages’ relates to the payment of a basic rate, dearness allowance as a compensation for inflation as measured by the Consumer Price Index (CPI), and bonus payments related to company profits. Due to its direct connection to prices, dearness allowance payments relate to the purchasing power of the household even more directly than basic wages and can therefore be defined as one of the frontiers of social reproduction. Dearness allowance, part of every labour contract, is paid to all public sector employees as well as all formal private sector employment. To gain insights into the practice of such payments, the Pay Commission reports of the government are of particular importance, providing a mandatory framework for public employment and a reference point for private companies. From these reports it becomes clear that in government employment, the dearness allowance component of the wage is currently 31 per cent.<sup>41</sup> This affects remuneration in two significant ways. 1) Given that social security benefits are linked to the payment of basic wages, such benefits can remain stagnant over decades since the number of basic rates hardly rises compared to the dearness allowance component. 2) Depending on the so-called “linking factor” between the CPI and the payment of the government, dearness allowance payments only compensate for a certain percentage of the rises in the CPI. The most recent report of the Seventh Pay Commission (2017) prescribes a compensation rate of 100 percent for public sector employees.<sup>42</sup> However,

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<sup>41</sup> In other sectors, the dearness allowance component can be even higher than the basic wage. Government of India, Department of Expenditure, *Revised rates of Dearness Allowance to the employees of Central Government and Central Autonomous Bodies continuing to draw their pay in the pre-revised pay scale/Grad Pay as per 6th Central Pay Commission w.e.f. from 01.07.2021.* <https://doe.gov.in/Dearnes-Allowance>, (accessed December 16, 2021).

<sup>42</sup> Government of India, Department of Expenditure, *Report of the Seventh Pay Commission*, 2017.

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&ua=ct=8&ved=2ahUEwjqzfPb5N34AhUJr6QKHU8VAC4QFnoECAcQAQ&url=https%3A%2F%2Fdoe.gov.in%2Fseventh-cpc-pay-commission%3Fpage%3D1&usg=AOvVaw0FECRN1wfzfwpxgAt1q4M>, (accessed July 4, 2022).

these compensation rates may be lower in other sectors. This means that a rise in the CPI does not always get translated into a corresponding rise in dearness allowance and real wages effectively fall. Regarding bonus payments, there are different types of bonus models, relating to issues of distributing profits and the determination of added value of workers within the labour process, while also functioning as an instrument of control (e.g. attendance bonus, efficiency bonus). This is why definitions of wages matter in the law and need to be observed closely.

Matters of bonus also relate to a second frontier connected to labour process regimes, dynamics of intensification and extensification of work, enabled through varying degrees of control.<sup>43</sup> Wages not only express hierarchies at the shop-floor, but are also an active instrument of control and incentivisation.<sup>44</sup> Bonus payments are one of such instruments, but modalities of payment (e.g. piece rates and time rates) are also of relevance here. Subsistence level earnings may be particularly endangered in piece rated occupations, as these rates only prescribe a certain output without limiting the working time necessary to achieve such remuneration levels.<sup>45</sup> This problem may be further aggravated with emerging fluidity between time rated and piece rated components of wages. In recent years, platform work (or gig work), which is usually not remunerated by the hours worked but by the amount of tasks performed, has received considerable attention.<sup>46</sup> Such studies have generally focussed on the decentralisation of control in the form of platform work and impersonal,

<sup>43</sup> Braverman, H. *Labor and monopoly capital: The degradation of work in the twentieth century*. New York, NYU Press, 1998. Thompson, P., The capitalist labour process: Concepts and connections. *Capital & Class*, vol. 34, n. 1, 2010, 7-14; Thompson, P., & Laaser, K., Beyond technological determinism: revitalising labour process analyses of technology, capital and labour, *Work in the Global Economy*, vol. 1 n. (1-2), 2021, 139-159.

<sup>44</sup> Forms of hierarchies could also include varying degrees of skill, age and/or number of years worked at the firm. On the relation between skills and the sector of “unskilled” work in India, see Rajendra, A., Skills in ‘Unskilled’ Work. A Case of Waste Work in Central India, *Third World Quarterly*, 2022.

<sup>45</sup> Piece rates are defined as wages which are paid based on a given output quantity. However, this does not necessarily indicate that piece-rated workers would have different payment cycles than time-rated workers, they may be similar or overlap. There is little data on the frequency, modality and periods of time and piece-rated work in India, but this would be highly crucial for a further investigation on the correspondence between legal standards and economic realities.

<sup>46</sup> Rani, U., & Dhir, R. K., Platform work and the COVID-19 pandemic. *The Indian Journal of Labour Economics*, vol. 63 n. 1, 2020, 163-171.

algorithmic supervision,<sup>47</sup> as well as on the employment status of such gig workers.<sup>48</sup> These changes in management practices have further weakened the power of the individual worker over the labour process, given that it has become much harder to access the employer. Further, indirect incentive systems make it trickier to employ strategies of everyday resistance without facing immediate cuts in wages or loss in employment.<sup>49</sup> This has particularly drawn the attention to the state and law-makers in order to introduce new work regulations addressing changing modalities of remuneration resulting from shifts in working conditions and workplace organisation.

However, the example of platform work particularly shows how wage politics is not only depending on workplace conditions, but also on access and power over the law-making process. Therefore, as a third line of conflict, the dynamics of legal institutions need to be investigated. India is a federal state with labour law included in the Concurrent list of the Constitution, which means that both the Central and State governments can participate in the legislative process.<sup>50</sup> States can amend central rules, which has been done extensively, for example by individually adjusting working time directives during the Covid pandemic. For example, while the Central Factories Act prescribes a maximum of eight hours work per day, several states such as Uttar Pradesh, Rajasthan, Himachal Pradesh and Gujarat extended their working hours up to 12 hours.<sup>51</sup> Therefore, the relation between economic and political power within institutionalised frameworks, codes of conducts, and organisations has to be unpacked at several scales: at the central, state, and sectoral levels, as well as bargaining procedures within the firm. A closer look at the Wage Code not only

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<sup>47</sup> Verma, R. K., Ilavarasan, P. V., & Kar, A. K., Inequalities in Ride-Hailing Platforms. In Atique, A., Parthasarathi, V., *Platform Capitalism in India*, 177-198, London, Palgrave Macmillan, 2020.

<sup>48</sup> Kasliwal, R., Gender and the Gig Economy: A Qualitative Study of Gig Platforms for Women Workers. *Observer Research Foundation, ORF Issue Brief*, n. 359, 2020.

<sup>49</sup> Ara, I., Urban Company Sues Workers for Protesting Against 'Unfair Labour Practices'. Protest Called Off, <https://thewire.in/rights/urban-company-sues-workers-for-protesting-against-unfair-labour-practices-protest-called-off>, The Wire, 23.12.2021, (accessed July 4, 2022).

<sup>50</sup> On the jurisdiction of labour under the constitution, see Constitutional Provisions by the Ministry of Labour, <https://labour.gov.in/constitutional-provision> (accessed July 4, 2022).

<sup>51</sup> PRS Legislative Research, Relaxation of labour laws across states, *PRS Online Blog*, 2020, <https://prsindia.org/covid-19/covid-blogs/relaxation-of-labour-laws-across-states-34>, (accessed July 4, 2022).

illuminates some aspects of inclusion and exclusion in legal procedures, but also of workplace conflict lines and household consumption.

### 3. Situating the Wage Code of 2019 in India's Labour Law Framework

#### 3.1 The Labour Law Reform 2019-2020

Recognising the need for labour law reforms due to their parallel (and partly incompatible) nature, the Second National Commission on Labour in 2002 had recommended to streamline existing laws in order to make them more compatible with each other.<sup>52</sup> As observers have highlighted, both Congress-led governments as well as the Bharatiya Janata Party currently in power have shared the aim to initiate labour law reforms. After two decades of consultations with business associations and trade unions, the Labour Ministry passed the Wage Code in 2019, followed by Occupational Safety, Health and Working Conditions Code, the Industrial Relations Code, and the Social Security Code in 2020. This did not happen without resistance – on 8 December 2020, leading Indian trade unions had organised a general strike in fear of weakening labour rights and social protection standards.<sup>53</sup> It is expected that these new laws concern 500 million employees.<sup>54</sup>

Since the Wage Code determines *who* is considered a wage earner, i.e. a person in employment, it has significant implications for the other three Codes as well. The Wage Code Bill opens up several divisions, and earners have to ask themselves the following questions: Is my work regarded as work? Otherwise, I am not part of any wage legislation. How much is my

<sup>52</sup> Government of India, *Report of the Second National Commission on Labour, 2002*, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjAycHy5d34AhUouaQKHfVDGQQFnoECAUQAQ&url=https%3A%2F%2Fvvgnli.gov.in%2Fsites%2Fdefault%2Ffiles%2FReport%2520of%2520the%2520Second%2520National%2520Commission%2520on%2520Labour%2520Vol.%2520I.pdf&usg=AQvVaw0G5jPMgR1jhQZcOnErwxHG>, (accessed July 4, 2022).

<sup>53</sup> Several national unions had called for the strike, including Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), Self-Employed Women's Association (SEWA), United Trade Union Congress (UTUC) as well as protesting farmers. Times of India, *Trade unions support farmers agitation, saying Bharat Bandh on December 08 Successful*, December 11, 2020, (accessed July 4, 2022).

<sup>54</sup> Parliament passes Wage Code Bill to ensure Minimum Wages to Workers. Economic Times, 02.08. 2019, (accessed July 4, 2022).

pay worth in relation to prices and profits? In other words, the skewed definitions of a ‘wage earner’ arbitrarily determine and thereby hollow out the social security entitlements and protections defined under the other three Acts. The following sections analyse how the three spheres of collective bargaining relations at the shopfloor (production), minimum standards of consumption (reproduction) and the legal-political sphere of state regulation become articulated in the Wage Code. In order to understand the shifts and continuities in the new laws, those sections draw on a larger historical lineage of wage regulation in India.

### ***3.2 Frontiers of the Wage Code, 2019***

#### ***3.2.1 The Legal Sphere of Wages in India***

The legal framework of labour regulation emerged particularly out of the tensions arising of the two World Wars, its rising profits, and social movements it brought about.<sup>55</sup> At the end of the First World War, workers’ demands became a pressing issue at the national as well as international level. India became one of the first states to join the ILO in 1919 as a separate delegation from the British colonial government. Thus, India’s move to join the ILO has generally been interpreted by historians as a crucial step towards independence.<sup>56</sup> Faced with growing political resistance, increasing economic strength of Indian businesses, and workers demanding their share in war-time profits, the British government passed its first law regulating social security: The Workman’s Compensation Act, 1923. This law laid out a compensation scheme for injured workers for the first time, thereby crucially determining who was included and excluded from the definition of a “workman”, depending on

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<sup>55</sup> On the importance of the 1940s as a period of emerging labour regulation, see Ravi Ahuja ‘Produce or Perish’. The crisis of the late 1940s and the place of labour in post-colonial India’, *Modern Asian Studies*, vol. 54, n.4, 2020.

<sup>56</sup> Rodgers, G., India, the ILO and the Quest for Social Justice since 1919. *Economic and Political Weekly*, 2011, 45–52; Van Daele, J., Van Goethem, G., & Rodríguez García, M. (eds.), *ILO Histories Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century*. Peter Lang AG, Internationaler Verlag der Wissenschaften, 2011. Mosse, David, D., ‘Help Them Move the ILO Way’: The International Labour Organization and the Modernization Discourse in the Era of Decolonization and the Cold War. *Diplomatic History*, vol. 33 n. 3, 2009, 387–404.

the nature of wage-based work.<sup>57</sup> With the Act of 1923 being merged in the Social Security Code of 2020, these definitions still form the core of employment relationships today. This was further expanded with the Payment of Wages Act in 1936, a law to distinguish between legal and illegal fines to be deducted from wages.<sup>58</sup> By introducing differentiated rights based on the number of wages paid, this contributed to distinctions between wage earners. The mode of payment, including periods of pay as well as the legitimisation of deductions became dependent on these divisions. Emerging out of the British Royal Commission on Labour (1928), this was the beginning of a long series of categorization of wage levels and job roles continuing until today. Further, the Act raised the question whether “wages” would consist of dearness allowance as inflation compensation and an additional bonus or should simply take into account a “basic” time or piece rated wage. In a number of cases in the Bombay High Court during the 1940s and 1950s, the dearness allowance and the bonus component became detached from the basic wage in terms of legal definitions.<sup>59</sup> The Payment of Wages Act, 1936 therefore significantly contributed to the creation of the partly overlapping, parallel legal structure that the Labour Code in 2020 aimed to address.

This structure was further expanded after the Second World War. With large-scale strikes in all major industrial centres, the government passed the Industrial Disputes Act in 1947 to regulate the negotiation process between employers and employees. The Act became the centre-piece of tripartite relations in India. In order to avoid strikes, it sought to nominate representative trade unions designated to negotiate with employers on behalf of workers in a given enterprise. However, it also led to the exclusion of those trade unions who were not recognised by the state, thereby foreshadowing the weakness of the union movement, particularly in the unorganised sector today.

However, in the 1980s, the Supreme Court acknowledged the differentiation between general Contract Law and contracts regarding labour relations. In *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly & Anr.* 1986, Justice (Judge) D.P. Madon and A.P.

<sup>57</sup> On the Workman’s Compensation Act, see Vijayaraghavan, L., Labor Standards and the Workmen's Compensation Act: A Study of Indian Law and Cases. *ICFAI Journal of Employment Law*, vol. 7 n. 1, 2009.

<sup>58</sup> Government of India, The Payment of Wages Act, 1936 (No. 4 of 1936).

<sup>59</sup> State Of Bombay vs K. P. Krishnan and Others, 18 April, 1960, 1960 AIR 1223. See the discussions and summaries of previous discussions in *Circular of Employers Association of Northern India*, Cawnpore 17.1.1940.

Sen recognised the “inequality of bargaining power” between employers and employees as the “result of the great disparity in the economic strength of the contracting parties.”<sup>60</sup> By taking into account these power imbalances between the individual worker and the hiring firm, this judgement marked a landmark case in the country, since it recognised the need for collective organisation of workers resulting out of their relative weakness vis-à-vis employers.

The Wage Code does not always explicitly recognise this unequal bargaining relation. As a minimum requirement, a company needs to employ more than 10 people for the laws to apply. In order to file a complaint against misconduct or non-payment of wages, one has to identify the principal employer. This is not often easy due to subcontracting and those categorised as “self-employed”, e.g. in the case of street vendors or gig workers.<sup>61</sup> In the name of formalization, these workers would be left out by the new Act, especially home workers, particularly women.<sup>62</sup> Further, the Wage Code contains references to different definitions of wage earners varying between “workers”, “employees” and “gig workers” without indicating the specificities of each category justifying these distinctions.<sup>63</sup>

Further, there is only meagre security of enforcement. The ‘inspector of the law’ is now an “inspector-cum-facilitator”,<sup>64</sup> thereby highlighting the dominant purpose of the law to assist a smooth business process rather than guaranteeing labour rights. Even if any misconduct by employers is detected, the maximum fine is capped at Rs. 50,000, and Rs. 1,00,000 or imprisonment up to three months in case of a second violation of employee’s rights within a period of five years.<sup>65</sup> Even though the Parliamentary Standing Committee on Labour found that this would be too low as a punishment, this has not been altered before implementation.

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<sup>60</sup> 1986 AIR 1571, 1986 SCR (2) 278, Abs. 2.4

<sup>61</sup> Government of India, Ministry of Law and Justice, The Code on Wages, 2019 (No. 19 of 2019), Section (l) (iii) :3). On matters of self-employment, see the work of the founder of the Self Employed Womens’ Association (SEWA) Ela Bhatt: Bhatt, E. R., *We are poor but so many: The story of self-employed women in India*. Oxford, Oxford University Press, 2006.

<sup>62</sup> On women homeworkers and their scope for mobilisation: Hensman, R., Organizing against the odds: women in India’s informal sector. *Socialist Register*, 37, 2001.

<sup>63</sup> Code on Wages 2019, section 1, sub-section 2 (g), (k): 2.

<sup>64</sup> ibid. (t): 3.

<sup>65</sup> Code on Wages, Section 54.

### ***3.2.2 The Scope for Shop-floor Negotiations and Managerial Control in Wage Laws***

These variations in definitions have far-reaching implications at the shopfloor with regards to management practices as well as the scope it would leave for bargaining. In an attempt to encourage voluntary agreements between employers and employees, the new Codes supports the formation of factory-level “Works Committees” and “Grievance Redressal Forums” for conflict resolution.<sup>66</sup> By strengthening bipartite institutions, the Codes seek to exclude the state as much as possible from negotiations, particularly by making it more difficult to approach labour courts.<sup>67</sup> Therefore, it may be stated that the new Codes do not take into account the unequal bargaining relationship between employers and employees and therefore may raise concerns over the mechanisms of negotiations envisioned.

As far as incentive payments are concerned, there has been a significant shift in the functioning of bonus payments in India. A closer look at the emergence of bonus legislation allows to trace back understandings of productivity and the value of someone’s work as a share in production. Before the Bonus Act was passed in 1965, employers mostly paid bonuses according to their own ex-gratia discretion at festivals, as well as in relation to workload and profits. However, as the social historian Sarkar has shown, these gestures were part of keeping workers from leaving the factory, especially in times of crises.<sup>68</sup> After half a century of various court rulings around bonus, the Bonus Act inscribed a right to bonus of 8,1/3% (two months) of the basic wage regardless whether profits had occurred during that year or not.<sup>69</sup> In this form, it had generally obtained the function of at least some degree of profit sharing. On the other hand, the 1950s also saw the rise of bonus schemes related to individual workload. Particularly in the textile sector, such quality and quantity bonuses led to

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<sup>66</sup> Government of India, Ministry of Law and Justice, Code on Industrial Relations, 2020, Section 3.

<sup>67</sup> Code on Wages, Section 45.

<sup>68</sup> Sarkar, A., ‘The City, Its Streets, And Its Workers: The Plague Crisis in Bombay, 1896-1898’, in Ravi Ahuja, ed., *Working Lives and Worker Militancy: The Politics of Labour in Colonial India*, Delhi: Tulika, 2013.

<sup>69</sup> Government of India, Ministry of Labour and Employment, The Payment of Bonus Act, 1965.

an increased overlap between time-rated and piece-rated occupations.<sup>70</sup> Given that not all workers are entitled to bonus payments, this component of the total wage bill has opened new conflicts over wages on the shopfloor.

In the new Wage Code, bonus rules have been extended from applying only to enterprises employing more than 20 workers to all firms. This may reflect the reality of growing bonus incentive payments, especially in the gig economy sector, which makes such an extension necessary. However, bringing bonus disputes to court may be more difficult than in cases of other wage disputes: Whereas disputes on basic wage rates can be brought before a local administrative officer to be tried in magistrate courts, bonus disputes involve industrial tribunals at the sectoral level through a two-member body comprising representatives from both unions and employers associations.<sup>71</sup> In essence, while bonus disputes continue to be organised along the lines of collective agreements, basic wage rates envisioned in the Code are mostly negotiated individually. This may undermine the general principle of employee's protection and preference for collective agreements arising out of the recognition of the unequal bargaining relationship between both parties at the labour market.

By rolling back the protection of collective bargaining institutions, the main role of the state is now relegated to fixing minimum wages – But these minimum wages do not always have to correspond to wages actually fixed by parties involved at the firm-level. In other words, there is a tension between minimum wages fixed in the legal-political sphere and the actual scope of negotiation on the ground.<sup>72</sup> Further, note that even the definitions of “minimum” wage standards are not solely based on need-based concerns but also concern production-related standards. Under the Minimum Wages Act, 1948, subsistence rates are calculated for scheduled sectors of the economy based on both piece rates and time rates. These rates are determined by state governments based on a) a given regional price level and b) a certain workload, either per hour or per piece, determined together with firms operating in the sector.<sup>73</sup> This means that

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<sup>70</sup> One study of the textile sector in Ahmedabad highlights this point in a particularly striking way. See A.K. Rice (1958): *Productivity and Social Organization: The Ahmedabad experiment*, London, Tavistock Publications, 1958.

<sup>71</sup> Industrial Relations Code, Section 47.

<sup>72</sup> Grimshaw, D., Bosch, G., & Rubery, J., Minimum wages and collective bargaining: what types of pay bargaining can foster positive pay equity outcomes?. *British Journal of Industrial Relations*, vol. 52 n. 3, 2014, 470-498.

<sup>73</sup> This was reflected in the assignment of the “appropriate government” to fix

minimum wages are only guaranteed for a quantity of work which is equally determined by the Act. As legal scholars Chopra and Apte have described in their analysis, such differences in earnings arising due to piece-rated payment systems were rendered “purely personal” in the Minimum Wages Act.<sup>74</sup> By fixing a given piece rate, the actual wage obtained during a certain period would then only depend on the individual productivity. Consequently, this Act forfeited the right to approach a court on such individual differences in piece rate earnings, even if subsistence standards were not met. In other words, the determination of workloads was not included in the terms of references of these committees. Thus, this was completely left to the discretion of employers.<sup>75</sup> Despite the merging of the Minimum Wages Act into the Wage Code, this problem still remains. The following section will further elaborate the tensions inherent in different “minimum” concepts which have become part of the Wage Code canon.

### **3.2.2 Wages and Cost of Living Standards**

The minimum wage legislation and its considerations for the calculation of cost-of-living standards lie at the core of the new Code.<sup>76</sup> Therefore, it is necessary not only to look at the emergence of the Minimum Wages Act, 1948 and its positioning in the Wage Code, 2019, but also at the dearness allowance as a separate wage component intended at stabilising wages and protecting them from inflation. The concept of Dearness

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<sup>73</sup> 3.2)a) a minimum rate of wages for time work (“minimum time rate”); 3.2)b) a minimum rate of wages for piece work (“minimum piece rate”); 3.2)c) a minimum rate of remuneration to apply in the case of employees employed on piecework for the purpose of securing such employees a minimum rate of wages on a time work basis ‘guaranteed time rate’” (Minimum Wages Act, 1948).

<sup>74</sup> for example, Chopra, D. S., Apte, S. A., *The Minimum Wages Act, 1948. Provisions, State amendments, commentary and rules made by central and state governments*. Eastern Law House, Calcutta, 1973, 86. D. S. Chopra had been one of the authors of the Payment of Wages Act, 1936.

<sup>75</sup> This could be listed as one of the main reasons why the Minimum Wages Act remains criticised until today for its relatively low levels of implementation. See, for example, ILO, *Global Wage Report, 2020-21. Wages and Minimum Wages in the time of COVID-19*, Geneva, 2021.

<sup>76</sup> Economic Times, “Parliament passes Wage Code Bill to ensure Minimum Wages to Workers.”, August 2, 2019, <https://economictimes.indiatimes.com/news/economy/policy/rajya-sabha-passes-wage-code-bill/articleshow/70501009.cms?from=mdr>, (accessed July 4, 2022).

Allowance was introduced during the World Wars to compensate for soaring food prices, first in-kind then in cash.<sup>77</sup>

The dearness allowance opened up several conflicts. For example, which sections of the workforce would be entitled to such payments – whether only the lower sections or all workers should receive dearness allowance payments to stabilise their wages. While the subsequent Pay Commissions have secured dearness allowances for government and municipal employees, they were not always paid in the private sector and depended on sectoral agreements. According to the last Pay Commission, the percentage of dearness allowance of the total wage stands at 28 per cent in July 2021 from 17 per cent during the year before.<sup>78</sup> The different claims to dearness allowance payments thus increased inequalities between varying sections of the workforce.

Indian debates on the relation between wages and prices during the Second World War still resonate with contemporary deliberations on inflation. The economist Gadgil postulated that particularly dearness allowance payments to the working class would create dangerous inflationary spirals wherein higher wages would fuel further price spikes.<sup>79</sup> Therefore, he argued that industrial wages needed to be aligned with the national per capita income, wages in other sectors such as cottage industries and agriculture, as well as levels of productivity. However, this contradicted the overall argumentation of employers, particularly in relation to legislative processes: that the working class was too small a category to be accounted for and therefore needed no special attention. This exposes the political character of these debates on inflation– if the working class was really such a small and insignificant proportion of the population, how could it cause and contribute to price volatility all over the country?

With inflation remaining a crucial factor in diminishing earnings, the question of who is entitled to these payments still remains. Many industrial court cases such as the recent Supreme Court Ruling No. 19 of 2019 revolved around these issues, ruling that not all employees have a

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<sup>77</sup> Gadgil, N. V. (Chairman), *Report of the Dearness Allowance Committee*. Government of India Publication, Delhi, 1953.

<sup>78</sup> <https://www.ndtv.com/business/7th-pay-commission-hike-in-da-dearness-allowance-and-basic-pay-likely-in-july-3091490>, June 24, 2022, (accessed July 4, 2022).

<sup>79</sup> The economist D. R. Gadgil is mostly known for his *Gadgil formula* which he developed as vice chairman of the Planning Commission to allocate funds during the fourth and fifth planning period. For his observations and wages and inflation during war time, see Gadgil, D.R. and N.V. Sonavi, *War and Indian Economic Policy*. Gokhale Institute of Politics and Economics, Pune, 1944.

claim on allowances beyond the basic pay.<sup>80</sup> The Wage Code mainly leaves the question of dearness allowance in the hands of the Central Pay Commission which determines the amount of the allowance for public sector workers and thus provides a (voluntary) orientation for the private sector.

The draft of the Minimum Wages Bill introduced to parliament in 1946 sought to define wage standards for those economic sectors “in which no arrangements exist for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally low.” Legal scholars have generally interpreted this Act as an implementation of the international convention within the Indian context given that the Constitution Preamble directly refers to Article 224 of the ILO Minimum Wages Convention.<sup>81</sup> This conceptualisation sought to bring in the government as a regulating body where unions would be too weak or unable to obtain recognition for collective bargaining procedures under the Industrial Disputes Act. This accepted and deliberately created a division between organised and unorganised sectors, carving out a niche for the government to regulate these enterprises. Since the Act aimed at fixing minimum wages on an industry-cum region basis, the Act became covered by the concurrent list of the 7<sup>th</sup> schedule of the Government of India Act, 1935. Under the Act, the Government drew up a list of scheduled industries under its purview: Schedule 1 includes various small-scale industries, schedule 2 agricultural enterprises.<sup>82</sup>

When the 15<sup>th</sup> Indian Labour Conference (ILC) was constituted as a tripartite body, the aim was to develop a nation-wide minimum wage

<sup>80</sup> The Regional Provident Fund Commissioner West Bengal vs Vivekananda Vidyamandir on 28 February, 2019. Transfer case no 19 of 2019 arising out of T.P.(C) No. 1273 of 2013, <https://indiankanoon.org/doc/126246109/>, (accessed July 4, 2022).

<sup>81</sup> Chopra, D. S., Apte, S. A., *The Minimum Wages Act, 1948. Provisions, State amendments, commentary and rules made by central and state governments*, Eastern Law House, Calcutta, 1973.

<sup>82</sup> These industries in schedule 1 include Employment in any woollen carpet making or shawl weaving establishment 2. Employment in any rice mill, flour mill or dal mill 3. Employment in any tobacco (including *bidi* making) manufactory 4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee 5. Employment in any oil mill 6. Employment under any local authority 7. Employment on the construction or maintenance of roads or in building operations 8. Employment in stone breaking or stone crushing 9. Employment in any lac manufactory 10. Employment in any mica works 11. Employment in public motor transport 12. Employment in tanneries and leather manufactory. See sections 2(g) and 27 (11) of the Minimum Wages Act, 1948.

standard.<sup>83</sup> As an advisory body, the ILC only had the power to recommend policies to the government without any enforcement mechanisms. In their final report, the main proposals included the quantification of the minimum wage to be provided for a family consisting of one (male) breadwinner, a wife and two children consuming a) 2700 calories of food per day as a worker, plus a total of two additional consumption units for wife and children, b) 72 yards (65.8 metres) of cloth per year and c) housing at the cost of social housing provided by the government plus d) additional 20 per cent of income for fuel, lighting and other miscellaneous items of expenditure (Government of India, 1957). The main controversy arose over the conference resolution regarding food and the calorific formula developed. This attempt to translate calorific values into monetary equivalents was indeed unique to the Indian developmental state. The Conference sought to establish the idea of the male breadwinner based on nutritious standards. These calculations were based on extensive studies on the quantity of food necessary for work tasks, with the idea that household work would require comparatively less nutrition. However, Wallace Akroyd, the nutritionist in charge of calculating these budgets did not conduct studies on the strain of household work, but simply deducted calories from women's and children's energy needs in relation to the main breadwinner's wage. According to the Conference, this formula was to be applied to be translated into wages according to the All-India Consumer Price Index. Despite the 15<sup>th</sup> ILC providing a reference for the calculation of minimum wages until today – especially in the context of defining need-based standards - its practical implementation has remained limited.<sup>84</sup> The ILC also discussed qualitative standards to determine food baskets – whether differences in consumption e.g. related to meat should be recognised was never decisively regulated.<sup>85</sup> This tension between the minimum wage

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<sup>83</sup> The Indian Labour Conference was set up in structure as a “miniature model of the International Labour Conference”. See *Economic Weekly*, May 05, 1955. For the summary of the ILC: Indian Labour Conference (ILC). Summary of proceedings of the Indian Labour Conference (15th session, New Delhi, 11th-12th July, 1957), 1958.

<sup>84</sup> Even right after the passing of the resolution, the Second Pay Commission in 1959 did not follow its recommendations and set the minimum wage at Rs. 80, arguing that in practice, the calorific values determined by the 15<sup>th</sup> ILC would be too high.

<sup>85</sup> For example, the *Wage Board of the Textile Industry* remarked in 1958 that it was better opt for nutritional choices without meat (p. 21). Similarly, the *National Commission on Labour* in 1969 suggested that rather than increasing the minimum wage, working class households should spend their money on healthier food such as “leafy vegetables” to

calculated on the basis of consumption and the wages resulting from a process of negotiation between the state, workers and businesses remains still unresolved.

Even though the Equal Renumeration Act came into force in 1976, there are several structural discriminations in the Minimum Wages Act, 1948 which make it possible until today to pay women lesser wages than men. For example, whereas it is illegal to pay different wages for equal work, it is not illegal to pay different wages for different occupations. Data from the National Sample Survey Office (NSSO) shows that the gender pay gap in India was 28% during 2018-19, with widening tendencies during the pandemic.<sup>86</sup> These minimum wage divisions based on scheduled employments continue to persist in The Wage Code Bill.

At the tripartite forum of the 46<sup>th</sup> Indian Labour Conference in 2018, the Minimum Wage had been recommended at the level of Rs. 18000 per month, based on the calorific intake formula introduced at the 15<sup>th</sup> ILC.<sup>87</sup> The Supreme Court confirmed this in the Raptakos Case 2008.<sup>88</sup> The new minimum wage committees, however, are now shifting away from these need-based calculations. In an attempt to move beyond the regional differences in minimum wages, the Central Government had fixed the national floor wage at Rs. 178 a day in 2019, to be revised every five years. This is falling way short of earlier calculations and it remains unclear how this figure has been determined.

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ensure adequate rates of nutrition. Government of India, *Report of the National Commission on Labour*, 1969, 236.

<sup>86</sup> On developments during the pandemic, see Walter, D. and Ferguson, S, *The gender pay gap, hard truths and actions needed*. UN Women (Asia and the Pacific), September 19, 2022, <https://asiapacific.unwomen.org/en/stories/op-ed/2022/09/the-gender-pay-gap-hard-truths-and-actions-needed>, (accessed October 10, 2022).

<sup>87</sup> Government of India, Labour Ministry, *Summary Record of Discussions of the 46th Session of the Indian Labour Conference, July 20-21, 2015*, Vigyan Bhawan, New Delhi. [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQno6gzd34AhUBuKQKHz92BCsQFnoECA4QAQ&url=https%3A%2F%2Flabour.gov.in%2Fsites%2Fdefault%2Ffiles%2F46-ILC-Record\\_of\\_Discussion.pdf&usg=AOvVaw04hVRIHbz9Ybu3rYiWY5YU](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQno6gzd34AhUBuKQKHz92BCsQFnoECA4QAQ&url=https%3A%2F%2Flabour.gov.in%2Fsites%2Fdefault%2Ffiles%2F46-ILC-Record_of_Discussion.pdf&usg=AOvVaw04hVRIHbz9Ybu3rYiWY5YU), (accessed July 4, 2022).

<sup>88</sup> Workmen Employed Under IT Shramik Sena vs M/S Raptakos Brett and Co. Ltd on 25 February, 2008. Appeal (civil) 1585-1587 of 2008, <https://indiankanoon.org/doc/613120/>, (accessed July 4, 2022).

<sup>88</sup> For example, Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullabhai & Ors on 10 March, 1976. 1976 AIR 1455, 1976 SCR (3) 591, <https://indiankanoon.org/doc/191016/>, (accessed July 4, 2022).

In 2021, the Indian government set up a new committee for the fixing of minimum wages under the chairmanship of Ajit Mishra, director of the Institute of Economic Growth. The Mishra Commission is already the second such forum to determine standards for minimum wages within two years, following the “Expert Committee on Determining the Methodology for Fixing the National Minimum Wage” in 2019.<sup>89</sup> This has reopened a debate on the conceptualization of minimum wages, particularly with regards to the multiplicity of minimum wage standards comprising of nearly 2,000 different occupations for more than 400 different categories and varying skill levels and whether a unified, national floor wage would be more desirable.<sup>90</sup>

#### **4. The Wage Code as a Shift in Economic, Socio-Political and Legal Values**

The problem of wage laws in India is not that they are too bureaucratic, or too protective of the formal sector, but that the change of the legal system has become an end in itself to ease the standards of foreign companies to invest in India. According to the largest business association in India, CII, this had been the main aim of these reforms. Workers’ concerns are hardly featuring in these deliberations.<sup>91</sup> The parallel structure and fractures between wage earners are maintained in the new law as it limits worker access to wage components such as dearness allowance, bonus and social security entitlements. Since the judicial sphere has such a great impact on wage determination, it is crucial to note that the new law seeks to increase the hurdles to approach the court on wage matters. The growing number of legal definitions and practices resulting out of case law during the last five decades have led to greater legal mechanisms of

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<sup>89</sup> Another Committee for Minimum Wages, *Editorial, Economic and Political Weekly*, vol. 56, n. 25, Jun 19, 2021, <https://www.epw.in/journal/2021/25/editorials/another-committee-minimum-wages.html>, (accessed July 4, 2022).

<sup>90</sup> Shyam Sundar, S. K., India’s Expert Committee on Minimum Wages – A Questionable Exercise? *The Wire*, 05.06.2021, <https://thewire.in/labour/indias-expert-committee-on-minimum-wages-a-questionable-exercise>, (accessed July 4, 2022); Jayaram, N., Protection of Workers’ Wages in India: An Analysis of the Labour Code on Wages, 2019. *Economic and Political Weekly*, vol. 54, n. 49, Dec 14 2019, <https://www.epw.in/engage/article/protection-workers-wages-india-labour-wage-code>, (accessed July 4, 2022).

<sup>91</sup> Confederation of Indian Industry (CII) (2020), Labour Reforms can help reshape India’s growth trajectory, CII Blog, October 20, 2020, <https://www.ciiblog.in/labour-reforms-can-help-reshape-indias-growth-trajectory/>, (accessed July 4, 2022).

exclusion. As the discussion on the intersections of wage problems has shown, two aspects should be considered in particular: the implications of the law on social reproduction, and on the institutional level.

Satpathy, Estupiñan and Malic (2021) have demonstrated that the extension of the minimum wage coverage potentially provides the ground for a universal, nation-wide floor which could guarantee adequate payment for all.<sup>92</sup> However, they also highlight that this would depend on the institutional set-up. This has led other observers to fear a race-to-the bottom in the minimum wage legislation, should different levels within the state be made obsolete in favour of an All-India minimum wage.<sup>93</sup> Therefore, the question opened up by the minimum wage debate touches the deep foundations of labour law and its relation to other fundamental rights, given that minimum wages policies lie at the intersection between social protection including safety nets for subsistence and remuneration matters. One answer to these matters has been provided by the Asian Floor Wage (AFW) concept which seeks to ensure a minimum wage not only in India, but in all countries part of the global textile value chain.<sup>94</sup> Recognising the social functions that wages perform, the AWF is a calorie-based family wage, expressed in Purchasing Power Parity (PPP) in order to make it comparable between countries and thereby transforming it into a transnational tool for collective bargaining.

As far as institutional mechanisms of bargaining are concerned, apart from the minimum wage laws, the Wage Code incentivises shifts towards individual wage bargaining over collective bargaining. Further, not only are inter-firm or sectoral wage levels discouraged, but the Code also marks a further withdrawal of the state from industrial relation matters. This change in the institutional level playing field can be seen in the changed role of the “inspector-cum-facilitator” or simply in the states’ absence in clearly defining who is a worker before the law, thereby further contributing to divisions of the labour force. Similarly, this is reflected with regards to access to courts. With the Code encouraging out-of-court settlements, it makes it harder to hold employers accountable. As grass

<sup>92</sup> Satpathy, A., Estupiñan, X., & Malick, B. K., Wage code and rules—Will they improve the effectiveness of minimum wage policy in India? Available at SSRN, 2020.

<sup>93</sup> Shyam Sundar, S. K., India's Expert Committee on Minimum Wages – A Questionable Exercise? *The Wire*, June 5, 2021, <https://thewire.in/labour/indias-expert-committee-on-minimum-wages-a-questionable-exercise>, (accessed July 4, 2022).

<sup>94</sup> Bhattacharjee, A., & Roy, A. (2016). Bargaining in Garment GVCs: The Asia Floor Wage. In D. Nathan, M. Tewari, & S. Sarkar (Eds.), *Labour in Global Value Chains in Asia (Development Trajectories in Global Value Chains)*, Cambridge, Cambridge University Press, 2016, 78-93.

root research from Ajeevika Bureau shows, workers may also prefer out-of-court settlements since they can save a significant amount of time and resources.<sup>95</sup> However, the evidence clearly indicates that courts have a tendency to avoid criminal charges for employers in order to protect the smooth and stable functioning of their firms. Given the lower possibilities for fines under the new Code, their financial liability is also likely to decrease. Thus, these shifts may exacerbate the unequal relationship between employer and employees.

## 5. Conclusion

The effects of the new Wage Code still need to be seen, given that the implementation has been rolled out slowly since July 1, 2022.<sup>96</sup> However, the pandemic has already underlined the importance of taking up new directions to solve the tension between wages (un)-paid and subsistence standards. A vast number of workers, particularly migrant workers, did not have enough money for their everyday needs during the lockdowns.<sup>97</sup> Thus, the pandemic has thrown the spotlight onto the multi-layered effects of the pandemic induced decline of economic production and crises on the shop-floor, the absence of institutional forums for claiming work-based rights and demands, as well as dwindling resources for household consumption. Workers had to rely on state support in the form of food rations and cash transfers,<sup>98</sup> since the flexibility provided by the enabled employers to either terminate or put work contracts on hold, as well as delaying wage payments.

This underlines the importance of a three-level approach to wages which this paper has presented. The erosion of possibilities for trade union involvement at the shop-floor appear at a moment where workers'

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<sup>95</sup> This has been indicated to me during interviews during October 2021. See also Ajeevika Bureau, Across India, workers complain that employers used lockdown to defraud them of wages they are owed, *Online Report 2020*, <https://scroll.in/article/959428/across-india-workers-complain-that-employers-used-lockdown-to-defraud-them-of-wages-they-are-owed>, (accessed July 4, 2022).

<sup>96</sup> New Labour Codes from July 1? *Newslick*, June 27, 2022. <https://www.newslick.in/new-labour-codes%20From-july-1-trade-unions-continue-oppose-changes>, (accessed July 4, 2022).

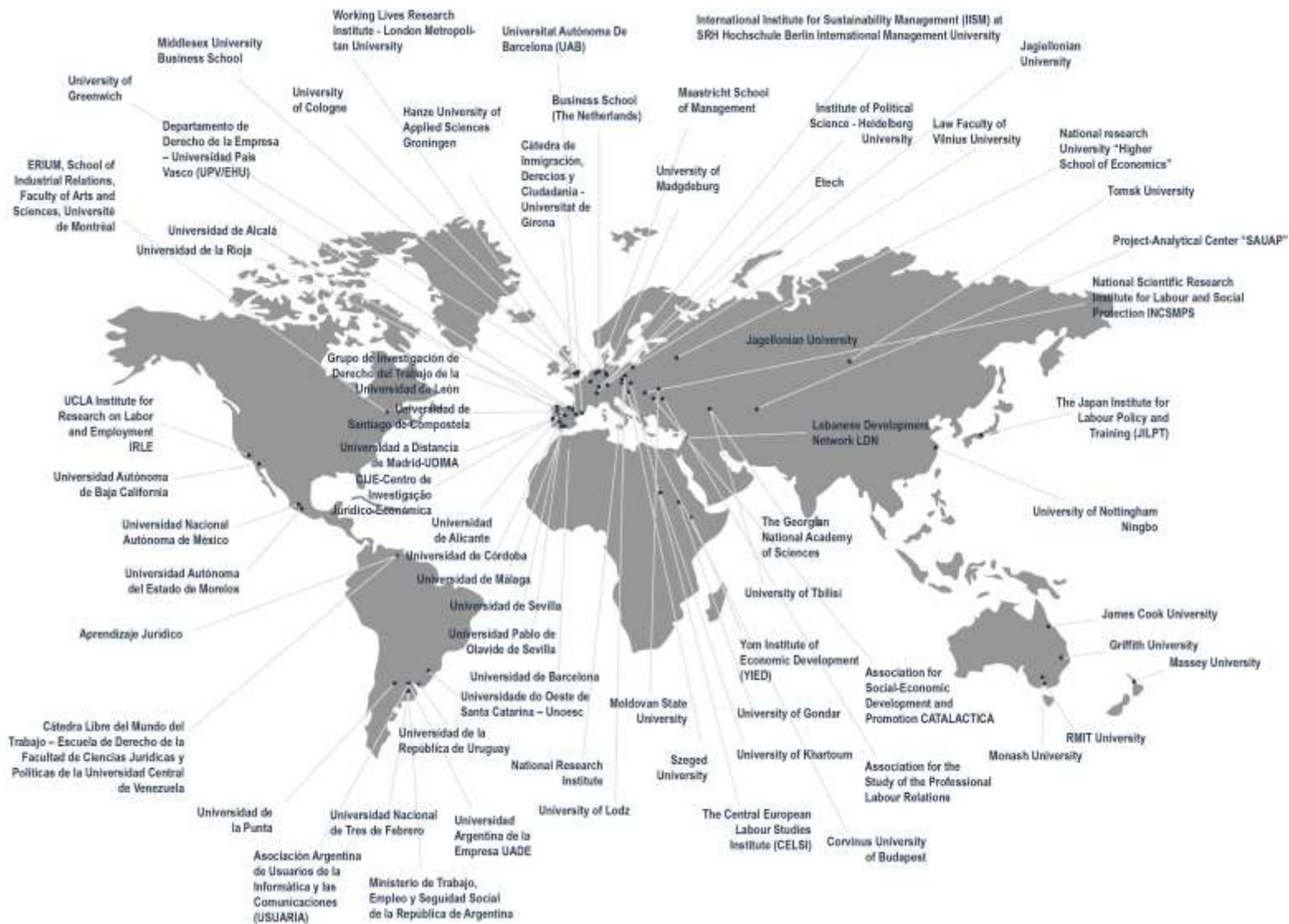
<sup>97</sup> Nanda, J., Circular Migration and COVID-19 (August 30, 2020). Available at SSRN, 2020.

<sup>98</sup> Khera, R., A review of the coverage of PDS. *Ideas for India*, 2020. <https://www.ideasforindia.in/topics/poverty-inequality/a-review-of-the-coverage-of-pds.html>, (accessed July 4, 2022).

organisations have demonstrated that they have gained strength in the last years, as the general strike against the new Codes has shown. Nonetheless, these changes at the firm-level have far-reaching implications with wage regimes shifting towards further fragmentations of the total wage bills and systems of incentive payments. This calls for a new concept to tackle the relation between reproduction and wages.

Based on the current framing of the Wage Code, the conflicts inherent in wages are likely to increase even further. This could have significant implications not only for individual wages and the amount of money which can be received for a given task, but also for the value of work in society. Laws which undermine the potential for collective bargaining, contribute to a downward shift in the economic value of work, an unequal institutional level-playing field as well as negative impacts on the social value of work.

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