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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **COMPARATIVE ANALYSIS OF THE DEFINITION OF WAGES IN INDIA: A LABOUR LAW PERSPECTIVE**

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## **INTRODUCTION**

The definition of wages is crucial in labour law, as it determines the financial entitlements of workers and regulates employer obligations. In India, multiple labour laws historically provided different definitions of wages, leading to confusion in wage calculations and disputes. The Code on Wages, 2019, was enacted to provide a uniform definition applicable across wage-related legislations. However, the interpretation of "wages" under the Code has sparked debates regarding its inclusions and exclusions, particularly in relation to allowances and bonuses. This research aims to analyze how the definition of wages has evolved in India and how it compares to international labour standards.

## **HISTORICAL BACKGROUND**

The historical background of wages in India has evolved significantly from the colonial era to the post-independence period, shaped by labour movements and various legislative reforms. During British rule, wages were characterized by exploitation, with agricultural workers paid in-kind or low cash wages, and industrial labourers subjected to poor working conditions and meagre compensation. Early labour reforms, such as the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948, aimed to address these inequities by ensuring timely payment and setting minimum pay levels. However, these laws were limited in scope and failed to offer a comprehensive solution, particularly for workers in the unorganized sector, where the wage gap remained significant. Post-independence, India introduced key labour laws like the Industrial Disputes Act, 1947, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and the Payment of Bonus Act, 1965, which further aimed to protect workers' rights and provide social security benefits. Despite these efforts, the labour law framework remained fragmented, leading to inconsistencies in wage determination across sectors.

The Code on Wages, 2019 represents a significant attempt to consolidate and modernize India's wage laws, addressing historical gaps and ambiguities. The Code provides a comprehensive



definition of wages, encompassing basic pay, allowances, and commission, while excluding bonus, overtime, and employer contributions to social security. This move was intended to unify the various wage-related legislations and reduce the complexity for employers and employees alike. By simplifying wage regulations and improving transparency, the Code on Wages, 2019 aims to ensure better financial security for workers, though challenges remain, particularly in the unorganized sector, where wage compliance is still a concern. The evolution of wages in India highlights the ongoing struggle for equitable compensation, with the Code on Wages, 2019 marking a crucial step forward in the journey toward fairer and more transparent labour practices.

The concept of wages has undergone significant transformations in Indian labour law:

**1. Pre-Independence Era:**

- The Payment of Wages Act, 1936 was one of the earliest legislations defining wages, focusing on timely and fair wage payments.
- The Minimum Wages Act, 1948 established a legal minimum wage for different employment sectors but contained a distinct definition of wages.

**2. Post-Independence Developments:**

- The Industrial Disputes Act, 1947 included another definition of wages, creating interpretational discrepancies.
- The Equal Remuneration Act, 1976 sought to eliminate gender-based wage disparities but adopted a different wage concept.

**3. Labour Code Reforms:**

- The Code on Wages, 2019 consolidates wage-related provisions and introduces a uniform definition to streamline compliance and enforcement.

## **COMPARATIVE ANALYSIS OF THE DEFINITION OF WAGES IN INDIA**

In India, tracing the development from colonial-era legislations like the Payment of Wages Act, 1936, to the modern Code on Wages, 2019, the pre-2019 wage definitions were fragmented, leading to ambiguity in legal interpretations and employer compliance burdens. This highlights the inconsistencies in wage definitions across different laws, which often resulted in litigation<sup>1</sup>.

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<sup>1</sup> R.K. Gupta, Evolution of Wage Laws in India: A Critical Review, 45(2) Ind. J. Lab. L. 123 (2019)



The Code on Wages 2019, focusing on its effect on minimum wage standardizes the definition of wages, its exclusions - such as bonuses exceeding 50% of total remuneration may reduce statutory benefits for workers<sup>2</sup>. India's wage laws have historically been complex, the UK follows a more straightforward approach under the Employment Rights Act, 1996. The Indian approach, even post-2019, remains overly detailed and difficult to implement, whereas the UK model ensures greater clarity and employer flexibility<sup>3</sup>.

The Judicial interpretations in disputes between workers and employers, courts struggled with multiple definitions of wages under different laws. The judicial inconsistency in interpreting wages led to uncertainty for both employees and employers<sup>4</sup>. The compliance challenges arising from the new definition of wages under the Code on Wages, 2019, how small and medium enterprises (SMEs) face difficulties in restructuring salary components to comply with new wage calculations. Certain exclusions (e.g., house rent allowance) impact total compensation, making take-home pay less predictable<sup>5</sup>.

In India, covering various wage-related statutes, the multiplicity of wage definitions led to compliance issues, especially in industries with contractual and informal workers<sup>6</sup>. Labour relations and wage laws in India, offering an in-depth discussion on collective bargaining and wage negotiations. The wage disputes often arise due to unclear legal definitions, making it difficult for trade unions to negotiate fair wages<sup>7</sup>. The lack of a uniform wage definition often led to legal battles over what should be included in wage calculations<sup>8</sup>.

Prior to the Code on Wages, 2019 India had several labour laws that defined wages differently. The lack of uniformity in these definitions created inconsistencies and confusion in wage-related matters. Below are some examples of different definitions of wages from various statutes. The term wages is defined as "any remuneration payable to a person for work performed, either directly or indirectly, in cash or kind, including any bonuses or overtime

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<sup>2</sup> Anirudh Singh, Impact of the Code on Wages, 2019 on Labour Rights, 36(4) Nat'l L. Sch. J. 67 (2020).

<sup>3</sup> Pooja Menon, Comparative Analysis of Wage Laws in India and the UK, 12(1) J. Emp. Rel. & Lab. Pol'y 87

<sup>4</sup> Vijay Kumar, "The Legal Definition of Wages: Ambiguities and Implications," 22(3) Ind. J. Socio-Legal Stud. 145 (2018)

<sup>5</sup> Neha Sharma, "The Code on Wages and Its Compliance Challenges," 15(2) J. Ind. L. Rev. 56 (2022).

<sup>6</sup> Gopal Krishnan, Labour Laws in India: An Overview (Oxford Univ. Press 2017).

<sup>7</sup> S.C. Srivastava, Industrial Relations and Labour Laws (Vikas Publ'g 2019).

<sup>8</sup> B.R. Ghaiye, Law of Wages and Minimum Wage Determination (E. Book Co. 2015).

payments". However, it excludes the employer's contribution to the Provident Fund, certain bonuses (unless specifically prescribed), gratuity, and any sums payable upon the termination of employment<sup>9</sup>.

The exclusion of certain benefits like gratuity or Provident Fund contributions caused confusion in interpreting what exactly should be considered as wages. The Minimum Wages Act defined wages more narrowly, focusing on basic pay and dearness allowance but excluding allowances that were not part of basic pay<sup>10</sup>. The lack of inclusion of allowances like House Rent Allowance or other performance-based incentives led to disparities in wage determination across sectors.

"Wages" refers to all forms of remuneration, including salary, allowances, or any other payments, made or payable to an employee for work performed<sup>11</sup>. However, it does not include specific amounts such as contributions to the provident fund, gratuity, or other bonuses unless expressly specified. Different laws excluded or included various components of wages, such as bonus payments and retirement benefits, leading to varied interpretations.

The Code on Wages, 2019 consolidated and standardized the definitions of wages across the various statutes in India. The Code provides a comprehensive definition of wages as "all remuneration capable of being expressed in monetary terms, which is payable to a person for work done, either directly or indirectly, including basic pay, dearness allowance, and other allowances." However, it excludes certain payments like retirement benefits, House rent allowance, gratuity, and special allowances<sup>12</sup>.

The Code on Wages now provides a uniform definition of wages for purposes of multiple legislations related to labour law, such as the Payment of Wages Act, Minimum Wages Act, Equal Remuneration Act, and Payment of Bonus Act. This is an improvement over the previous laws where definitions differed across acts, leading to confusion and inconsistency. Case laws have also reflected the issues arising due to inconsistent definitions of wages. The court had to decide whether certain allowances paid to workers should be considered part of

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<sup>9</sup> Payment of Wages Act, Section 2(vi), No. 4, Acts of Parliament, 1936 (India).

<sup>10</sup> Minimum Wages Act, Section 2(h), No. 11, Acts of Parliament, 1948 (India).

<sup>11</sup> Employees' Provident Funds and Miscellaneous Provisions Act, Section 2(21), No. 19, Acts of Parliament, 1952 (India).

<sup>12</sup> Code on Wages, Section 2(yy), No. 29, Acts of Parliament, 2019 (India).

wages under the Minimum Wages Act, 1948. The court ruled that special allowances that were linked to the cost of living were part of wages. However, the decision raised questions about the distinction between allowances and wages<sup>13</sup>.

Dearness Allowance should be included as part of wages. This judgment highlighted the ambiguity in the law regarding which components of compensation should be treated as wages<sup>14</sup>. Court cases such as these led to ongoing debates over what should be included under wages, often creating legal uncertainty and confusion about employees' entitlements. The Code on Wages, 2019 provides clarity in defining wages, particularly by standardizing allowances and remunerations that are to be counted as wages, thus avoiding discrepancies between the various labour laws. the uniform definition of wages will reduce litigation and simplify compliance for both employers and workers<sup>15</sup>.

The inconsistencies in earlier wage-related laws caused unnecessary complications in businesses, especially in cross-sector comparisons. The Code's unified definition is expected to reduce compliance costs and promote fairness in wage determination across sectors<sup>16</sup>.the inconsistencies in definitions of wages across different labour laws and how the Code on Wages aims to address these issues by creating a single, coherent definition. Srivastava emphasizes that a uniform definition will likely reduce litigation and compliance burdens<sup>17</sup>. Countries like the United States, United Kingdom, and Australia have long adopted a unified approach to defining wages for employment-related statutes, including for minimum wage, overtime pay, and retirement benefits. In these countries, wages are generally understood to include basic pay, bonuses, and allowances related to work performance or cost of living, and often exclude pension contributions and gratuity.

The Code on Wages, 2019 aligns with global standards by standardizing wage definitions across laws. This harmonization ensures consistency and reduces the potential for discrepancies that could arise from different interpretations in individual laws. The Code on Wages, 2019 introduces a more inclusive definition of wages compared to previous laws.

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<sup>13</sup> M/s. Assam Oil Co. Ltd. v. Workmen, A.I.R. 1960 S.C. 1264 (India).

<sup>14</sup> Management of Western India Match Co. vs. The Workmen , A.I.R. 1964 S.C. 472 (India).

<sup>15</sup> Sandeep K. Sharma, A Study on the Code on Wages, 2019 and Its Impact on Indian Labour Laws (Publisher, Year).

<sup>16</sup> The Code on Wages: A Step Towards Labour Reforms" published in Labour Law Journal(2020)

<sup>17</sup> "Labour Laws in India" by S.C. Srivastava



Under the previous legal framework, wages were primarily limited to basic pay, with several exclusions for allowances such as house rent allowance (HRA), special allowances, bonus, and overtime. The exclusion of these components made it difficult for employees to calculate their total earnings for social security or other benefits. However, it still excludes bonus payments, overtime, employer contributions to pension schemes, and gratuity. This aligns with older laws to some extent but introduces greater clarity and a more modern approach. The most significant change is the inclusion of commission as a regular part of wages, which had been excluded in earlier legislations. Supreme Court clarified that allowances such as house rent allowance and special allowances are not part of wages under the Industrial Disputes Act, reinforcing the exclusion of allowances<sup>18</sup>. The Court explained that bonus and overtime should not be counted as wages for the purposes of statutory deductions<sup>19</sup>. India's definition of wages, as outlined in the Code on Wages, 2019, aligns with certain principles of international labour standards but deviates in some aspects. The International Labour Organization (ILO) provides a broad definition of wages that includes all remuneration provided by the employer in return for work. According to ILO Convention No. 131, wages should cover all payments made in cash or kind for work performed, which could be seen as a more comprehensive approach than India's exclusion of bonus and overtime from the definition<sup>20</sup>.

India's exclusion of bonus and overtime from the definition of wages may not fully align with international practices, where these are often considered part of a worker's total compensation. However, India's Code on Wages, 2019, is a step closer to international standards in terms of its broad inclusion of allowances and commission<sup>21</sup>. The Code on Wages, 2019 brings significant clarity and consistency to the definition of wages, consolidating definitions that were previously fragmented across various statutes. The Code's uniform definition helps streamline wage-related compliance, reduce legal ambiguity, and create a standardized framework for calculating wages. This will likely enhance both employer and employee understanding of wage entitlements, promote fairness, and reduce disputes over wage-related matters.

The Code on Wages, 2019 enhances workers' financial security by providing a more

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<sup>18</sup> Bharat Petroleum Corporation Ltd v. Employees' Union (2018) 2018, Civil Appeal No. 6027 of 2013

<sup>19</sup> Employees' State Insurance Corporation v. F. R. Rustomji (1976) 1976, 2 SCC 529

<sup>20</sup> ILO Convention No. 131, Article 1, Minimum Wage Fixing Convention, 1970.

<sup>21</sup> S. P. Jain, Labour Laws in India, 2nd ed., Eastern Book Company, 2018

comprehensive and transparent framework for calculating wages. By including commission and allowances as part of wages, workers are likely to see an increase in the amounts considered for benefits such as Provident Fund contributions, which were not always the case under the older definitions. Moreover, the reduction in ambiguity regarding what constitutes wages can help workers better understand their compensation and rights, improving their financial security.

However, the new definition may create compliance challenges for employers. The inclusion of commission and allowances as part of wages could increase the payroll burden for employers, especially those in industries where commission-based earnings are significant. Moreover, the continued exclusion of bonus and overtime from the definition could lead to legal challenges regarding whether certain payments should be included in wage calculations. The Delhi High Court clarified that overtime is not considered part of wages under the Minimum Wages Act, potentially complicating calculations for workers whose pay includes overtime<sup>22</sup>.

## CONCLUSION

The Code on Wages, 2019, marks a significant step in harmonizing India's labour laws. The uniform definition of wages improves clarity for employers and regulatory bodies. However, exclusions from the wage definition may impact workers' financial security. Further Amendments and judicial interpretations will determine the law's effectiveness in ensuring fair wages. The Code on Wages, 2019 offers a more comprehensive and modern definition of wages compared to the older labour laws, reducing ambiguity and enhancing the scope of what constitutes wages. The inclusion of commission and allowances marks a progressive step, but the exclusions of bonus and overtime payments may still create compliance issues for employers. India's definition of wages partially aligns with international labour standards, but differences remain, especially in terms of how bonus and overtime are treated. Ultimately, the new definition enhances workers' financial security by including more components in their wages but also creates compliance challenges for employers who must adapt to the changes in wage structure.

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<sup>22</sup> M/s. Nestle India Ltd v. Assistant Labour Commissioner, 2012, Delhi High Court.