

Dvara Research Comments On Preliminary Draft Code On Wages (Central) Rules, 2020

Dvara Research¹ is a not-for-profit policy research and advocacy institute whose primary mission is to ensure access to financial services for all individuals and enterprises. One of our core areas of interest is the provision of social services, including insurance, pensions and access to basic services provided by the government.

We welcome the decision to frame the Draft Code on Wages (Central) Rules, 2020 [“the Rules”]. The Code on Wages, 2019, which codifies several earlier enactments on the payment of wages, was an important step in extending minimum wage laws to workers in all classes of employment. We also welcome the decision to include a consumption-based minimum wage within the text of the Rules, based on the Supreme Court’s decision in the *Raptakos Brett* case (AIR 1992 SC 504).

We have provided our constructive comments on individual sections of the Draft below in response to the call for public comments by the Ministry of Labour and Employment on 10 July 2020. We hope that these will be addressed in future drafts of the Rules².

¹Dvara Research has made several contributions to the Indian financial system and participated in engagements with key regulators and the Government of India. We were the technical secretariat to the RBI’s Committee on Comprehensive Financial Services for Small Businesses and Low Income Households chaired by Dr. Nachiket Mor. We acted as peer reviewers for the customer protection recommendations made by the Financial Sector Legislative Reforms Committee. Our recent research has given us the opportunity to consult on and extend discrete research inputs to various Committees set up by the RBI and the Government of India, including the Committee of Experts (on data protection) under the Chairmanship of Justice B.N. Srikrishna, RBI’s Committee of Fintech & Digital Banking, the RBI’s Expert Committee on Micro, Small & Medium Enterprises and the RBI’s Committee on Deepening of Digital Payments

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Comments by Rule:

Rule	Issue	Proposed Change	Reason for Proposed Change	Remarks
2(j) 2(t) 2(u) 2(v) 4(3) 4(4)	Rs. 2(j), (t), (u) and (v) define highly skilled, semi-skilled, skilled and unskilled workers respectively. R. 4 provides that the Central Government will divide workers into these classes based on the recommendations of the Technical Committee. It is unclear whether a worker will be slotted into one of these categories before a determination is made by the Central Government.	The following provisos may be added to R. 4: <i>“Provided that nothing in this section shall prejudice the right of a worker to receive at least the lowest category of minimum wage, even where no specific determination on the skill class is made by the Central Government.”</i>	This would clarify that minimum wage is applicable in all cases, whether or not this is specifically included in Schedule E to the Rules. Additionally, it would ensure that no worker receives less than the minimum required for subsistence.	
3(i)	Consumption is calculated based on 3 consumption units, i.e., a spouse and 2 children.	This should be amended to 3.6 consumption units.	The Ministry of Labour Expert Committee arrived at the figure of 3.6 consumption units in 2019 based on the average household size in rural and urban areas. This should be accounted for in the Draft Rules.	Report of Expert Committee on Determining the Methodology for Fixing the National Minimum Wage. (2019). Retrieved from: https://labour.gov.in/sites/default/files/Committee_on_Determination_of_Methodology.pdf
3(ii) to 3(vi)	The calculation of minimum wage is based on 2700 calories per day per consumption unit;	There is a need for a wider discussion of minimum wages to include other requirements, such	We welcome the decision to provide formal recognition to the Supreme Court’s order in the	Ramapriya Gopalakrishnan, A Critique Of The Draft Code On Wages (Central) Rules,

	<p>clothing at 66 metres per family; house rent at 10% of food and clothing expenditure; fuel, electricity etc. at 20% of minimum wage and finally, expenditure for children education, medical requirement, recreation and expenditure on contingencies is to be calculated at 25% minimum wage.</p>	<p>as mobile phones and internet, warm clothes in cold regions and rent in metropolitan cities. There is also a need to ensure that the minimum wage is sufficient to enable contributions into various social security programmes.</p>	<p><i>Raptakos Brett</i> case. We submit, however, that there is a need to consider whether the requirements listed in the judgment set out all the needs of workers in the 21st century. One example of this is the Covid-19 crisis, which has brought the need for smooth internet access into focus. Further, we note that s. 2(y) of the Code on Wages excludes employers’ contribution to Provident Fund and pension schemes, but does not exclude the employees’ contribution. We submit that savings and social security are essential to worker well-being and any minimum wage must be sufficient to include some minimum savings.</p>	<p>2020 (13 August 2020) Livelaw. Retrieved from: https://www.livelaw.in/column/s/a-critique-of-the-draft-code-on-wages-central-rules-2020-161344</p> <p>We submit that the term “frugal comfort” in <i>Raptakos Brett</i>, AIR 1992 SC 504 should be given a flexible interpretation suited to the time.</p>
5	<p>The Draft Rules state that “endeavour shall be made” to revise the dearness allowance that will be paid on the minimum wages on the employees.</p>	<p>The phrase “endeavor shall be made” should be replaced by “the Central Government shall”</p>	<p>The use of the expression “endeavor shall be made” indicates that the provision is directory, and not mandatory. Dearness allowance is essential to neutralize the effects of inflation and to ensure that minimum wage is adequate. This provision should therefore be phrased in mandatory terms.</p>	

11(1)	Floor wages are fixed based on the “ <i>minimum living standards ... as specified in clause (i) of sub-rule (1) of rule 3.</i> ”			We welcome the decision to make an express clarification that the calculation of floor level minimum wage in R. 11 will be based on the same criteria as those in R. 3. However, as noted above, these criteria will need to be reconsidered to take the needs of workers in the twenty-first century into account.
11(4)	The Centre “may” revise the floor wages at an interval of five years.	This provision is framed in directory rather than mandatory terms. Further, the period of five years before revision is too long.	The rule may be rephrased as the Centre <i>shall</i> revise the National Floor Level Minimum Wage. We also submit that the period of five years be reduced to one year.	The ILO reasons that the time period for revision of wages is too lengthy and must take the changing prices into account. International Labour Organisation. (2020). <i>Discussion Paper: Wage code and rules – Will they improve the welfare of low-paid workers in India?</i> (2020), available at: https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_753465/lang--en/index.htm

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