

DEFEND WORKERS' RIGHTS!

OPPOSE NDA'S ANTI-WORKER AMENDMENTS TO LABOUR LAWS!

The incessant violation of the workers' rights in the name of labour reforms under the current political establishment has hit another low. The NDA government has already been making amendments in labour laws in order to push its programmes like 'Make-in-India', 'Skill India', 'Digital India' and 'Ease of doing Business' thereby enabling companies to work in India and squeeze labour. The Central Ministry for Labour and Employment is also consolidating 43 labour laws into 4 major laws. In this backdrop, recently on 10th August 2017, a bill called the Code on Wages Bill 2017 was introduced in the Lok Sabha. The proposed legislation intends to "subsume, amalgamate, simplify and rationalize" the relevant provisions of the following four central labour enactments relating to wages, namely, (a) Payment of Wages Act, 1936; (b) Minimum Wages Act, 1948; (c) Payment of Bonus Act, 1965; and (d) Equal Remuneration Act, 1976. The proposed changes are alarming and outrightly favour the management instead of the workers. Given below are some of the problematic provisions of the proposed bill.

Schedules of Employment: In the proposed bill, the Schedules of Employment categorizing skilled, semiskilled and unskilled labour have been removed and wages have been defined with universal applicability. This might be useful for those workers who are not listed in the Schedule like domestic workers (except in 13 states, they do not appear in the Schedule, hence the rule of minimum wages is not applicable to them). But this will have a negative impact on the semi-skilled and skilled workers who are entitled for higher wages as per the Schedule as their base line of wages is reduced.

Criteria for fixing wages: As per Section 6 of the proposed Code, the minimum wage rates shall be fixed for timework and piecework and the wage period can be by the hour, by the day or by the month. As per Section 6(6) "*the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary*".

The Supreme Court has repeatedly stated that minimum wages should be determined by need-based criteria that extend beyond basic physical needs. It is also not defined as a factor of the quantum of production. The need-based criteria for fixing minimum wages should include specific nutrition requirements (defined in calories), clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure. In a specific case of 1992 *Workmen Represented by Secretary v. Management of Reptakos Brett*, the Supreme Court laid down the following six criteria for minimum wage determination:

(1) 3 consumption units for one earner; (2) Minimum food requirements of 2700 calories per average Indian adult; (3) Clothing requirements of 72 yards per annum per family; (4) Rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme; (5) Fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total Minimum Wages; (6) Children, education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 percent of the total minimum wage).

The Code on Wages, 2017 has done away with all of this. Even though the states are required to take into account, cost of living calculated from 'time to time' under Section 7(2), this provision is very ambiguous and not mandatory. This clearly violates the criteria for fixing minimum wage standards established by the Supreme Court.

Working Hours and Overtime: Under Section 13 of the proposed Code, the government can fix the number of hours of work, which shall constitute a normal working day. But the following category of workers can be excluded: (a) Employees engaged on urgent work or in any emergency, which could not have been foreseen or prevented; (b) Employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; (c) Employees whose employment is essentially intermittent; (d) Employees engaged in any work which for technical reasons has to be completed before the duty is over; and (e) Employees engaged in a work, which could not be carried on except at times dependent on the irregular action of natural forces.

This means that the existing definition of overtime of work beyond 9 hours per day and 48 hours per week is being sought to be done away with. By removing a clear definition of overtime and allowing complimentary and intermittent work to exceed normal hours, the proposed bill opens the door to compulsory overtime without extra payment.

Concessions to Employers with respect to Payment of Bonus: The provision of exemption of new establishments in the Payment of Bonus Act, 1965, from paying bonus has been further expanded in the Code on Wages, 2017 using an ambiguous language for defining new establishments. Now the definition includes “trial running of any factory” and “prospecting stage of any mine.” Accordingly under the bill, not only are new establishments exempt from providing bonuses, but existing establishments can also escape liability by being on “trials runs” or at “prospective stages” in order to gain exemption from paying bonuses to their employees. There is no time limit for these “trial runs” or “prospective stages.”

The bill further undermines transparency by prohibiting authorities from disclosing balance sheets without the express permission of the employer. Here the presumption is that statements and particulars submitted by corporations and companies are accurate without requiring proof of accuracy from the corporation or company. Unions/ Workers will have to approach the Tribunal/Arbitrator for any clarification who must be satisfied that such clarification is necessary.

Arbitrary Wage deductions: Section 18 of the Code permits employers to deduct wages based upon the performance of an employee which may deem to be unsatisfactory; and to “recover losses”. In the absence of any due process to be followed before making such deductions, this provision will be misused by the employers for making arbitrary, punitive and vindictive deductions from the workers.

Gender Based Discrimination: Even though Section 3 talks about prohibition of discrimination on grounds of gender, the Code on Wages, functionally dismantles the mechanisms available within the *Equal Remuneration Act, 1976* for promoting women’s employment and seeking accountability for gender based discrimination.

Labour Inspectors are replaced by Facilitators: The Code on Wages, 2017 replaces commissioners and inspectors with “facilitators” appointed to “supply information and advice to employers and workers concerning the most effective means of complying with the provisions of the code”. Facilitators will also be responsible for undertaking inspection consistent with inspection regimes set forth by state governments. However, the bill requires state inspection schemes to provide for web-based inspection schedules (s.51(2)). The surprise inspections are going to be missing. Further, there is also a provision of web-based self-certification scheme within the IT-enabled service.

Putting Limitations on Trade Union Activities: Workers' contribution to trade union shall be limited to membership fee. The bill explicitly prohibits them from contributing for promoting common social or political activities.

Dilution of Penal Provisions to Employers: Under the *Minimum Wages Act, 1948*, payment of less than minimum wage is punishable with imprisonment upon the first offence. In the case of *Sanjit Roy v. State of Rajasthan* (1983), the Supreme Court has observed that non-payment of minimum wages amounts to constitutionally prohibited forced labour.

In contrast, in the proposed bill, there is a shift from criminal liability to civil liability in matters pertaining to wages, payment of wages and payment of bonuses. Employers violating the Code will be given the opportunity to comply with provisions of the Code or give reasons for violation prior to receiving any penalty. Those who commit offences can be acquitted if the offences are compounded.

No Fixed Time Line for Revision of Wages: In the *Minimum Wages Act, 1948* there is a provision for the revision of minimum wages as and when required, which must not exceed five years. It is a major bargaining point for trade unions. This provision has been modified in the Code on Wages, 2017. Section 8 of the Code on Wages, 2017 states “The appropriate Government shall **review or** revise minimum rates of wages at an interval of five years.” It virtually removes the time line for revision by introducing the words review or revise and make it optional.

The proposed provisions go against Articles 41 (Right to Work), 42 (Just and Humane Condition of work and maternity relief), 43 (Living Wage), in so far as an employers are encouraged/allowed to introduce short term employment, increase the number of overtime hours, reduce outgo on wages, overtime, bonus and reduces the collective rights of workers to demand and receive company’s audited accounts. Workers were at a disadvantage to begin with. What the Code on Wages 2017 does is to accentuate the blockades and make it more difficult for them to organise and struggle collectively against Employers.

PUDR, therefore, calls on the workers to organise to stall the adoption of the Code on Wage Bill by the Parliament. We believe that collective struggle is the only hope to let ourselves heard.