



Feedback on Gender Discrimination in draft Rules of the Code on Wages Bill, 2019

(based on a consultation with feminist economists and women's rights activists organized by Oxfam India on 18th August 2020)

Overall context: The rules do not take cognizance of the fact that women's participation in the workplace has been reducing since the 1980s. While this would warrant specific measures to increase workplace participation, the rules not only neglect doing this but also let go of the special measure introduced for women in the earlier labour laws. For example, two of the most important Acts – Minimum wages and Equal Remuneration Act, 1976 – that protected/promoted women's rights have been repealed on the one hand, while on the other hand their pro-women provisions are not incorporated fully in the current wage code.

Patriarchal and gender discriminatory drafting of the rules: A general overview of the rules demonstrates that they are drafted in a typical patriarchal setting which considers that workers are all male and women constitute wives and mothers of workers. For example, the pronoun 'his' is used universally in the document for a worker as well as Chairperson and members of various committees. This should be changed to 'she/ he' or person. This framing also excludes the transgender community completely from the definition of workers. There is no place in the wage slip and Form VI, to write the Sex/Gender of the person. Among the representation of the Central Advisory Board and other committees, there is also a need for a gender specialist who may be able to bring in the nuances of both women's conditions and trans-persons in the deliberations and provisions which is absent as of now.

The language is specifically stereotyping and exclusionary of women. For example, most of the cattle work is done by women but the workers are described in categories such as 'calf-man', 'boat-man' etc. Categories for women such as 'bell-woman' and 'beater-woman' are also highly restrictive. These categories need to be changed to persons, indicating that any gender can do any of the work.

None of the work generally done by women finds a mention in the 600+ skills listed under the rules. The definition of highly skilled workers, as per the rules, are those who have *intensive technical or professional training or practical occupational experience for a considerable period*. The rules thus ignore the fact that a large majority of women are unlikely to get the opportunities to become semi-skilled or skilled or highly skilled workers. Thus the drafting of the rules in their foundation itself are exclusionary of women's interests. The need is to incentivize building skills among women and making adequate provisions for skilling of women.

The standard family for calculation of minimum wages is considered a spouse and two children, which reflects the two child norm. While having more than two children is often neither in the hands of the poor or poor women, their needs and rights, when they are born are denied by rules such as these. While India's fertility is almost at the replacement level, such norms continue to discriminate against poor families which have more than two children. These rules also do not take cognizance of elderly parents or differently abled dependents who are often part of the same family. There is also no mention of the 'Female Headed Household' while determining the minimum wages. Therefore a flawed concept of the family is used in calculating the minimum wages for the worker.

Minimum wages: Calculation of minimum wages using 26 workdays in a month and the rest-days being unpaid days is discriminatory for informal sector workers. The recommendation is to consider a 30 days work month where 4 rest days, one per week will be paid leave. The provision of 6 continuous days of work before availing of rest day is also discriminatory for workers, especially women workers, the most marginalized workers and workers on piece rate, who are unlikely to get continuous days of work. Hence calculating minimum wages per day with inclusion of paid weekly holidays is ethical and just.

There's no clarity on how the wages of 'women workers in agriculture' or workers working on piece rate will be determined in the current rules document. Floor or minimum wages do not cover all workers (e.g. *Anganwari, Asha etc.*) on virtue of them being treated as volunteers and not employees. The definition of workers should include such scheme based workers. Evasions of minimum wages or basic conditions of work by allowing workers to be categorised as volunteers or apprentices should not be allowed. Also, home based workers and platform workers (e.g. *contractors for Urban Company, Swiggy, Zomato etc.*) are out of the ambit of this act. Floor wage should be applicable to such workers as well.

Blind to work conditions of informal sector workers: The rules are generally blind to the work conditions of informal sector workers in general and women in the informal sector in particular. For example we know that 90% of the women workers are in the informal sector. Women's work is mostly as domestic workers, other home based work, as part of SHGs, as scheme based workers and apprentices apart from other forms of work. The private home forms an important site of work for women, but this is excluded from the definition of workplaces. It totally leaves out all private households and hence apprentices, domestic/homebased workers are denied the "worker" status. E.g. *Beedi workers, Sumangali workers* in textile industries. At the same time the definition of an employer is restricted to an industry set up and is not adequate to cover the employment of SHG run enterprises, domestic workers and other home based workers.

Terms such as 'conditions of work' are not defined. Therefore, it is difficult to understand or monitor minimum acceptable conditions of work. At the same time the concept of virtual or on-line inspection of work conditions or self-certification will not be acceptable or possible in these precarious workplaces where violations of workers' rights are more the norm than the exception. Physical inspection will be required. In fact, if inspectors are also women then many problems regarding facilities for women such as toilets, creches etc will be easier to identify.

Inadequate contractual arrangements: 70 percent of the urban women workforce employed in regular jobs do not have a formal written job contract, which is made a requirement under the act and rules. This essentially implies that the provisions of the new code on Wages vis-à-vis Minimum Wages Act and Equal Remuneration Act will not be applicable to these 70 percent of the urban women workforce who are engaged in regular jobs. Workers in irregular employment such as guest faculties at colleges or universities also do not come under the purview of such contracts. Written contracts and electronic payslips, which are mentioned to be produced by workers, is impossible for this category of workers. Hence the employer must be mandated to provide hard copies of pay slips.

While this is the feedback based on the limited mandate of the rules for the Code on Wages Bill, the main feedback is the entire structure and assumptions as well as contents of the Code on Wages Bill as well as the rules are patriarchal and largely exclusionary to women. Hence there will need to be many more consultations and fundamental changes made in order for women's rights and needs as workers to be fulfilled. We request the policy makers to take efforts in this direction rather than merely take feedback on the rules and finalise them.

(Panelists of the consultation included Prof. Ritu Dewan, Vice President, Indian Society of Labour Economics; Prof. Ishita Mukhopadhyay, Department of Economics, University of Kolkata and Dr Sona Mitra, Principal Economist, IWWAGE. This note has been prepared by Amita Pitre with inputs from Rajini Menon, Ranjana Das and Ileana Roy, all with Oxfam India.)