

# Rule 3 of the Draft Code on Wages (Central) Rules, 2020: An important milestone

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## Abstract

When Rule 3 of the Draft Code on Wages (Central) Rules, 2020 (hereafter referred to as 'Draft Rules') was notified, the shortcomings of Rule 3(1) in the Draft were highlighted by the discussion paper published by the International Labour Organisation and the recommendations made by Oxfam. This paper argues that despite its shortcomings, Rule 3(1) in the Draft Rules is still an important milestone for the progressive realisation of workers' welfare in India, because it is the first time that the Union Government has shown normative commitment towards ratifying the recommendations of the 15th Indian Labour Conference, 1957. The benefit of calculating the minimum wage as per Rule 3(1) of the Draft Rules, which is in tune with the 15th Indian Labour Conference recommendations, would be that it will ensure that the minimum wages will be set at a quantum higher than usually set by the Committees and Wage Boards appointed by the Union Governments throughout history. Therefore, while it is necessary that the civil society organisations eventually push for a better version of Rule 3(1) in the Draft Rules, it is equally important that they act as watchdogs to ensure full-fledged ratification and implementation of the 15th ILC norms in Rule 3(1) in the Draft Code Rules in the first place.

**Keywords:** Rule 3(1), Draft Code on Wages (Central) Rules, 2020, 15th Indian Labour Conference, Union Government

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## Introduction

The wage, as a concept, straddles two distinct but interconnected realms. On one hand, it serves as a price for hiring labour, subject to market forces. On the other, it is a source of livelihood, determining the extent of well-being of people within a society. The former perspective situates us in the domain of positive economics — an observation and analysis of the wage as it is. The latter, however, takes us into the territory of normative economics — a consideration of what the wage ought to be to ensure a decent standard of living. Various wage concepts, such as minimum wage, need-based wage, and fair wage, stem from this normative viewpoint.

This paper delves into these two contrasting ways of determining the minimum wage in the context of the Draft Code on Wages (Central) Rules, 2020 (hereafter referred to as ‘Draft Rules’), released by the Ministry of Labour & Employment on 10th July 2020. Particularly, it scrutinises Rule 3(1) of the Draft Rules, around which a significant discourse has been formed.

On 10<sup>th</sup> July 2020, the Ministry of Labour & Employment released its gazette notification for Draft Code on Wages (Central) Rules, 2020<sup>1</sup> (hereafter referred to as ‘Draft Rules’). Rule 3(1) of the Draft Rules stated as follows (reproduced verbatim):

3. Manner of calculating the minimum rate of wages. – (1) for the purposes of sub-section (5) of section 6, the minimum rate of wages shall be fixed on the day basis keeping in view the following criteria\*, namely: -

- (I) the standard working class family which includes a spouse and two children apart from the earning worker; an equivalent of three adult consumption units;
- (II) A net intake of 2700 calories per day per consumption unit;
- (III) 66 meters cloth per year per standard working class family;
- (IV) Housing rent expenditure to constitute 10% of food and clothing expenditure;
- (V) Fuel, electricity and other miscellaneous items of expenditure to constitute 20% of minimum wage; and
- (VI) Expenditure for children education, medical requirement, recreation and expenditure on contingencies.

\*The provisions of the rule 3 are based on the criteria declared in the judgment in *Workmen Represented by Secretary vs. Management of Reptakos Brett. And Co. Ltd. and Anr.*, 1992 AIR 504, pronounced by the Hon’ble Supreme Court and on the recommendations of the 15<sup>th</sup> Indian Labour Conference (ILC).

Responding to it, the International Labour Organisation published a discussion paper titled ‘Wage code and rules – Will they improve the welfare of low-paid workers in India?’, wherein it was stated that the rule [Rule 3(1)] needs to recognise that the needs of the workers and their families, as defined in 1957 [15<sup>th</sup> ILC recommendations], lack relevance in the present context owing to changes in economic development, demography, family size, consumption patterns, nutritional intakes and work intensity. (Estupinan, et al.)

On a similar note, Oxfam made a series of recommendations to the Government, stating that under Rule 3(1) of the Draft Rules, the consumption units must be increased, calorific value must be reconsidered, calorific value of 2,700 should be in accordance with Dr. W.B. Aykroyd's formula for an adequate and balanced diet, woman in the household must be considered as one consumption unit, miscellaneous expenses must be increased from 25%, clothing requirement must be increased to 100 centimetres, method of prescribing the housing rent allowance must be reconsidered, etc. (Oxfam 2020)

While the Union Government certainly needs to consider these recommendations to overcome the shortcomings, this paper asserts that Rule 3(1) of the Draft Rules, even in its present form, can still be construed as a significant milestone for the progressive realisation of workers' welfare in India. To further this line of thought, this paper would first track the seminal policy developments surrounding the 15<sup>th</sup> ILC resolution, and then study the calculation of minimum wage by the Committees appointed by the Union Government (since there also exists a gap in academic literature dealing with this subject-matter), to explain how Rule 3(1) of the Draft Rules marks a significant milestone in the history of minimum wage fixation.

## Methodology

This paper adopts a historical and comparative analysis approach to explore the application of minimum wage norms in India. Historical analysis is used to trace the progress made by successive pay commissions, central wage boards, and exercises to determine poverty criteria.

Further, a comparative analysis was conducted on the three wage determination mechanisms — the Pay Commissions, the Central Wage Boards, and poverty criteria. This comparison aims to illustrate how each mechanism, in its own way, has fallen short of the ideals set by the 15<sup>th</sup> ILC.

The data for this research was primarily sourced from official government reports, including those of various pay commissions and wage boards. It was further supplemented with academic literature and case laws. The selection of these sources was guided by their relevance to the topic, authority, and accessibility.

Through this methodology, the paper endeavours to provide a comprehensive understanding of the fixation minimum wage in India, and how Rule 3(1) of the Draft Code on Wages (Central) Rules, 2020, signifies a potential turning point in this historical journey.

## A brief on the 15<sup>th</sup> ILC resolution

According to the Seventh Pay Commission, the 15<sup>th</sup> ILC norms are “the best approach to estimating the minimum pay as it is a need-based wage calculation that directly costs the requirements, normatively prescribed to ensure a healthy and a dignified standard of living” (GOI 2019).

The 15<sup>th</sup> ILC resolution is grounded on the foundation that in a welfare State, the fixation of minimum wages by the Government should be guided by the aim of securing a minimum level of living for the worker. The minimum wage should be need-based, and must ensure that the minimum human needs of the industrial worker are being met, notwithstanding any other considerations. (GOI 1957)

The five norms enshrined in the 15<sup>th</sup> ILC resolution are as follows:

- a) the standard working class family included a wife and two children apart from the earning worker; an equivalent of three adult consumption units; the husband assigned 1 unit, wife assigned 0.8 unit and two children assigned 0.6 units each. (GOI 2015)
- b) a net intake of 2,700 calories per day per consumption unit, as recommended in 1948 by Dr Wallace Aykroyd (first director of the Department of Nutrition at the United Nations Food and Agricultural Organization) for an Indian adult of moderate activity; (GOI 2019)

**Composition of a Balanced Diet**  
(Adequate for the maintenance of good health)

	<b>Oz.</b>
Cereals	14
Pulses	3
Green leafy vegetables	4
Root vegetables	3
Other vegetables	3
Fruits	3
Milk	10
Sugar and jaggery	2
Vegetable oil, ghee, etc.	2
Fish and meat	3
Eggs	1 egg

- c) clothing requirements of 72 yards (65.8 metres) per year per family; or 5.5 meters per month for the average worker's family. (GOI 2019)
- d) the rent corresponding to the minimum area provided under the government's industrial housing schemes (GOI 2015); and
- e) fuel, lighting, and other miscellaneous items of expenditure to constitute 20% of the total minimum wage" (GOI 2019)

Note: The balanced diet requirement amounts are on a per day basis. The table is reproduced verbatim

The resolution also recognised the existence of instances wherein the implementation of the norms would be difficult. It, therefore, provided an escape clause with some conditions, i.e. if minimum wages were to be set below the norms prescribed by the 15<sup>th</sup> ILC, then the concerned authorities must

justify the circumstances that prevented them from complying with the norms proposed by the 15<sup>th</sup> ILC. However, it also added that the escape clause can only be invoked for reasons that are specific to the particular industry, and vague reasons like ‘national economy’ cannot be used to invoke the escape clause.

## Seminal policy developments after the 15<sup>th</sup> ILC resolution

While the Supreme Court, in several judgements, welcomed the 15<sup>th</sup> ILC norms, the Union Government remained unclear with its stance on the ratification of the 15<sup>th</sup> ILC norms. There was a sharp divergence of opinion between the Supreme Court and the Union Government on two key issues: firstly, the juristic identity of the 15<sup>th</sup> ILC norms; and secondly, the immateriality of the capacity of the employer to pay the minimum wages.

On one hand, the Supreme Court has in its several landmark judgements cited the 15<sup>th</sup> ILC’s resolution and approved the calculation of the minimum wages by the wage committees based on the norms set by the 15<sup>th</sup> ILC resolution. The Division Bench of the Supreme Court in *Workmen Represented by Secretary vs. Management of Reptakos Brett. And Co. Ltd. and Anr.*,<sup>2</sup> has not only endorsed the criteria provided by the 15<sup>th</sup> ILC resolution, but also added an additional component to it. Further, the Constitutional Bench of the Supreme Court in *Standard Vacuum Refining Co. of India v. Its Workmen and Ors.*<sup>3</sup> referred to the 15<sup>th</sup> ILC norms with approval.<sup>4</sup> These judgements have remained unturned by larger benches of the Supreme Court.

On the other hand, the Union Government had an inconsistent stance on the 15<sup>th</sup> ILC’s resolution. The 17<sup>th</sup> Session of the Indian Labour Conference, chaired by Sh. Gulzari Lal Nanda (then Union Minister for Labour, Employment and Planning), came to a consensus that *the “legislative and administrative policies of the Central and State Governments and employers; and employees’ organisations should not run counter to the broad lines of policy that may be adopted by the Indian Labour Conference”*. (GOI 1959) Yet the Union Government declined any commitment to be bound by the recommendations of the Indian Labour Conference.

The Second Central Pay Commission (set up in 1957), headed by Justice Jagannadha Das of the Supreme Court, wrote to the Union Government stating that: *“the Commission wishes to know whether the Central Government now stand committed to the adoption, during the current Five Year-Plan, of a policy of need-based minimum wage or pay, determined by the norms laid down by the Labour Conference resolution...”* (GOI 1959)

The Union Government responded by stating that *“The Government desires to make it clear that the recommendations of the Labour Conference should not be regarded as decisions of Government and have not been formally ratified by the Central Government. They should be regarded as what they are, namely, the recommendations of the Indian Labour Conference, which is tripartite in character. Government has, at no time, committed themselves to taking executive action to enforce the recommendations.”* (GOI 1959)

In 1964, D. Sanjivayya, then Union Minister for Labour and Employment, during the Rajya Sabha debates, reversed the Government's official stance by stating that "*we have got to accept the unanimous recommendations of all the tripartite bodies... Therefore, there is no question of disregarding any recommendation of any tripartite body*" (RS 1964).

However, this stance was once again reversed in 1968 by Jai Sukh Lal Hathi, then Union Minister for Home Affairs. While commenting on the Need-Based Minimum Wage, he stated that "*accepting a principle or an ideal in the Indian Labour Conference does not make any commitment as such*" (RS 1968).

Therefore, the stance of the Union Government, when it came to ratifying the 15<sup>th</sup> ILC norms for the calculation of Minimum Wages, was unclear. This was the first key difference between the Supreme Court and the Union Government when it came to their commitment to the norms proposed by the 15<sup>th</sup> ILC.

The second key difference between the Supreme Court and the Union Government was with respect to the 'capacity of the employer to pay' the minimum wage. At the 15<sup>th</sup> ILC, it was agreed that the minimum wage must be "*need-based and should ensure the minimum human needs of the industrial worker, irrespective of any other consideration*". [Emphasis added.]

In the past, when the respective Committees, constituted under the Minimum Wages Act, had fixed a minimum wage and the Government notified it, the employers challenged the notified minimum wage on grounds, *inter alia*, their incapacity to pay. The judgements by the constitutional benches of the Supreme Court in these cases have furthered the objective of the 15<sup>th</sup> ILC, that sought payment of the minimum wage "irrespective of any other consideration", by holding that the employers' capacity to pay the Minimum Wage under the Minimum Wage Act, 1948 is immaterial.

In *Bijay Cotton Mills v. State of Ajmer*,<sup>5</sup> the five judge bench of the Supreme Court rejected the argument of H.M Seervai that "*the provisions of the Act are bound to affect harshly and even oppressively a particular class of employers who for purely economic reasons are unable to pay the minimum wages fixed by the authorities but have absolutely no dishonest intention of exploiting their labourers*" and held that the "*intentions of the employers whether good or bad are really irrelevant*".

In *Crown Aluminium Works v. Their Workmen*,<sup>6</sup> the three judge bench of the Supreme Court observed that there is "one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage." In *Unichoyi v. State of Kerala*,<sup>7</sup> the five judge bench of the Supreme Court referred to the industry's 'capacity to pay' being irrelevant as if it were an axiom. However, Justice P.B. Gajendragadkar opined that "*no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage*". In other words, the industry's capacity to pay will have to be taken into consideration if the upper limit of the Need Based Minimum Wage ends up coinciding with the lower limit of the Fair Wage.

Despite these judgements of the Supreme Court, the first National Commission on Labour (1969) headed by Justice P.B. Gajendragadkar concluded that the industry's capacity to pay ought to

be taken into consideration while fixing the need-based minimum wage. The commission opined that:

“Since most of the Wage Boards have taken into consideration the capacity to pay in fixing the minimum for the respective industries, the wages fixed by them fall in the realm of fair wages, though at its lower level. The need based minimum wage is also a level of fair wage and represents a wage higher than the minimum obtaining at present in many industries, though it is only in the lower reaches of the fair wage. Therefore, the Commission concluded that in fixing the need based minimum wage, the capacity to pay will have to be taken into account. Experience with wage determination since the formula was adopted in 1957, supports this conclusion. The need-based minimum, which is in the range of the lower level of the fair wage, attracts, in its determination, the employer’s capacity to pay... This has to be a pragmatic process, which the wage-fixing authorities will have to keep in mind.” (GOI 1959)

The Commission, in its reasoning, laid emphasis on pragmatism and took the prevailing practice into account instead of setting a benchmark for the fixation of the minimum wage.

Arguably, the stand by the Supreme Court was aimed at achieving an ideal end, wherein the welfare state does not consider the industry’s capacity to pay but fixes the minimum wage in order to meet the minimum human needs of the workers. However, such commitment seemed to be lacking in the Government-appointed Commission’s report, because it formed conclusions based on “what is” rather than “what ought to be” while deciding that the capacity to pay has to be taken into consideration while fixing the minimum wages.

These divergent opinions between the Supreme Court and the Union Government on the 15th ILC resolution provided an unclear policy framework on the relevance or the bindingness of the 15th ILC resolution to the committees calculating the need based minimum wage. The next part of this paper will examine how the committees appointed by the Union Government have dealt with the 15th ILC norms while calculating the Minimum Wages under this policy framework.

## **Policy in Practice**

### **Second Pay Commission**

The Second Pay Commission, headed by Justice Jagannath Das, submitted its report in 1959. The perusal of the report of the Second Pay Commission shows that it did take the 15<sup>th</sup> ILC recommendations into consideration while calculating the Minimum Wage. However, it invoked the escape clause to dilute the 2,700 calories requirement under the 15<sup>th</sup> ILC resolution.

Despite the escape clause under the 15<sup>th</sup> ILC resolution not allowing for its invocation on the grounds of national economy, the Second Pay Commission still went ahead to invoke the escape clause in the name of national economy. According to the Commission's rationale:

“The recommendations of the fifteenth Labour Conference...while they envisage (para. 2 of the recommendations) circumstances, apparently, must be peculiar to particular industry or undertaking. It is not intended that departure from the norms could be made on the ground that the country's economy could not afford a minimum wage determined by those norms. The recommendations, moreover, are expressly meant to be followed during the current Plan period [--] they do not lay down an objective to be achieved progressively as the economy develops and the fruits of development are more equitably distributed...a minimum defined in some external objective term could only be treated as a standard in theory – as a goal to strive for rather than something that could be immediately put into effect.

“An examination of the content and its monetary value shows:

- a) That the minimum remuneration worked out according to the recommended formula may be of the order of Rs 125 as compared with Rs 52.50 which, with some exceptions, is the upper limit of minimum wages fixed under the law;
- b) That it would be 70 to 80 per cent higher than the rates generally prevailing in the organised sectors of industry where wages are fixed either by collective bargaining or through conciliation and adjudication proceedings; and
- c) That it would be well above the highest wages i.e., Rs. 112 (in cotton textiles industry in Bombay – average for 1958) which any considerable number of unskilled workers are at present getting in the country.” (GOI 1959)

Further, the Committee noted that:

“It is not that the entire national income is available for current distribution; a good percentage of it must go towards building up of capital assets, without undergoing distribution. A minimum wage pitched above the level of per capita income, and intended for very wide application is obviously one beyond the country's capacity; in ignoring the vital need for savings and investment, such a wage gives no thought[t] to the future; and a wage that exceeds the highest level, and far exceeds the general level in the organised industries is obviously not one needed for protecting those whose living standards are sub-average.” (GOI 1959)



The Second Pay Commission then went on to dilute the requirement of 2,700 calories as mentioned in the 15<sup>th</sup> ILC resolution. The Commission, in its defence, reasoned that:

“It appears that the Conference had in mind a net intake of 2,700 calories, which in fact, was the figure which Dr Aykroyd himself had considered adequate in view of the somewhat lower metabolism of India. Apart from providing the required calories, a diet has to be balanced and to supply other elements essential for health. such a diet was recommended...There can be little meaning in drawing up a budget satisfying nutritional and other standards, and decreeing that the minimum wage should correspond to the total cost of that budget, without considering whether the economy would be in a position to supply the goods and services postulated. And we have found, in examination, that while the standards set in the particular balanced diet formula may be feasible in respect of cereals and to a large extent in respect of pulses, they are clearly impracticable in the case of other foodstuffs such as fruits, milk, meat, fish and eggs.” (GOI 1959)

Therefore, the committee worked out a balanced diet which took the limits of India’s output of foodstuffs. The committee came up with a diet suitable for an adult man engaged in moderate activity and sent it to Dr V.N. Patwardhan, Director, Nutrition Research Laboratories, Hyderabad, for obtaining his opinion. As revised in the light of Dr Patwardhan’s comment, the suggested diet was as follows:

<b>Sl. No</b>	<b>Food Items</b>	<b>Aykroyd's "adequate diet" (15th ILC) Oz.</b>	<b>Dr. Patwardhan's diet Oz.</b>
1	Cereals	14	15
2	Pulses	3	3
3	Vegetables	1	6
4	Milk	10	4
5	Sugar and gur	2	1.5
6	Oil and ghee	2	1.25
7	Fruits	2	-
8	Fish and meat	3	-
9	Eggs	1	-
10	Groundnut	-	1
<b>Number of calories</b>		<b>2,700 (net)</b>	<b>Over 2,600 (net)</b>

Source: (GOI 2019).

Note: The balanced diet requirement amounts are on a per day basis. The table is reproduced verbatim.

After making the calculations and adjusting it with the consumer price index, the Second Pay Commission came up with the following amount for the minimum wage:

<b>Item of Expenditure</b>	<b>Conference dietary</b>	<b>Commission's dietary</b>
Food	Rs 86.00	Rs 52.00
Clothing & Housing	14.00	14.00
Miscellaneous	25.00	16.50
<b>Total</b>	<b>125.00</b>	<b>82.50</b>

Source: Report of the II Central Pay Commission

Likewise, when compared to the 15<sup>th</sup> ILC norms, the following observations could be made:

**Comparison between the 15th ILC's norms and the Second Pay Commission's parameters on need based minimum wage calculation**

Item	15 <sup>th</sup> ILC recommendations	Second Pay Commission
Family composition	Three consumption units	Three consumption units
Food	2,700 calories per 3 adult consumption units (on the basis of calorie requirement for moderate activity)	Little above 2,600 calories per 3 adult consumption units (on the basis of calorie requirement for moderate activity)
Clothing	72 yards (65.8 metres) per year per family	72 yards (65.8 metres) per year per family
House rent	A minimum housing rent charged by the government for low-income groups	A minimum housing rent charged by the government for low-income groups
Miscellaneous	20% of the total amount	20% of the total amount

Herein, it can be observed that the Second Pay Commission did take the 15<sup>th</sup> ILC recommendations into consideration while fixing the minimum wage, but only in a skeletal way, especially while calculating the calorie requirement. The Commission was able to dilute the 15<sup>th</sup> ILC resolution because of two reasons: first, the invocation of escape clause; and second, the lack of Union Government's commitment towards the ratification of the 15<sup>th</sup> ILC resolution.

### **Third Pay Commission**

The Third Pay Commission, headed by Justice Raghubar Dayal, submitted its report in 1973. In 1970, unlike the Second Pay Commission, wherein the Government had written to the Commission that the 15<sup>th</sup> ILC resolution were merely recommendations, the Third Pay Commission's terms of reference specifically stated that they "*may examine the Central Government employees' demand for a need based minimum wage, which is based on the recommendations of the 15<sup>th</sup> Indian Labour Conference*". (GOI 1973)

The Commission, therefore, went on to calculate the need-based minimum wage in light of the 15<sup>th</sup> ILC norms in the following manner:

14. Computing the cost of food on this basis, and adopting the other norms recommended by the 15<sup>th</sup> ILC, the estimate of the need based minimum wage at the index average of 200 (1960-100) would be as follows: -

**Need-based minimum wage according to the 15<sup>th</sup> ILC norms**

Particulars	Dr. Aykroyd's diet Balanced 3000 calories	Dr. Aykroyd's diet 2700 calories (net) recommended by the 15th ILC
1. Cost of food	Rs.	Rs.
Bombay	243.00	218.70
Calcutta	252.90	227.61
Delhi	232.20	208.98
Madras	227.70	204.93
Average of four cities	238.95	215.05
2. Clothing	10.50	10.50
3. House-rent (Avg. of Integrated Subsidised Housing Scheme rates for the four cities)	25.50	25.50
4. Miscellaneous expenditure at 20% of the total	68.24	62.15
Total Expenditure (Need-based minimum wage)	343.69	313.80

- The housing scheme is formerly known as the Subsidised Industrial Housing Scheme.
- Figures in column 2 have been reduced on a pro-rata basis.
- The cost of food was estimated at the average prices for the twelve months ending 31st October, 1972. Price data collected by the Labour Bureau for the Consumer Price Index for industrial workers was used in estimating the cost of food.

Source: (GOI 1973)

However, after calculating the need based minimum wage based on 15<sup>th</sup> ILC norms, the committee invoked the escape clause on the grounds of national economy and noted that:

“If it (minimum wage) is to be raised to Rs 314, the overall financial implication would be about Rs 600 crores per annum...one has to avoid the danger of setting premature and unwise minimum standards which the country and the economy can ill-afford... It would lead to drastic curtailment of developmental expenditure, and a slowing down of projects which. would further aggravate the present unemployment situation in the country, to the solution of which the Government attaches paramount importance... we feel that the adoption of the minimum remuneration based on the

15th ILC norms at this stage would be tantamount to a misdirection of resources.”  
(GOI 1973)

The Commission then went on to modify the 15<sup>th</sup> ILC norms and came up with its own parameters for what they termed as “need-based minimum remuneration”. When compared to the 15<sup>th</sup> ILC resolution, the third pay commission’s parameters were as follows:

**Comparison between the 15<sup>th</sup> ILC’s norms and the Third Pay Commission’s parameters on need based minimum wage calculation**

Item	15 <sup>th</sup> ILC recommendations	Third Pay Commission
Family composition	Three consumption units	Three consumption units
Food	2,700 calories per 3 adult consumption units (on the basis of calorie requirement for moderate activity)	2,800 calories for the worker (on the basis of calorie requirement for moderate activity) and 2,400 calories for the remaining 2 consumption units
Clothing	72 yards (65.8 metres) per year per family	72 yards (65.8 metres) per year per family
House rent	A minimum housing rent charged by the government for low-income groups	7.5% of the total amount
Miscellaneous	20% of the total amount	20% of the total amount

With respect to the dilution of calorie requirement for the 2 consumption units apart from the worker, the third pay commission reasoned that: “*there did not appear to be any valid reason for treating the activity status of the other members of an employee’s family as anything but sedentary.*” (GOI 1973)

Further, the reason provided by the Commission for deviating from the 15<sup>th</sup> ILC resolution for the calculation of the housing expenditure was that:

A class IV Central Government employee at the lowest level of salary has to pay rent for Government accommodation allotted to him at the rate of 7½ per cent of his pay, and we think that this constitutes a reasonable basis for determining the quantum of the expenditure on housing.” (GOI 1973)

Lastly, the Commission stated that the capacity to pay has to be taken into consideration. The Commission argued that the Supreme Court in *Standard Vacuum Refining Company of India Limited v. Their Workmen*<sup>8</sup> while holding that

“no employer can engage industrial labour unless he pays what may be regarded as a minimum basic wage’... did not consider that basic minimum wage and the need-

based minimum as conceived by the 15<sup>th</sup> ILC to be synonymous”. This position was further made clear in the *Express Newspapers Private Limited v. Union of India*,<sup>9</sup> where the Supreme Court stated that “whereas the basic minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, the minimum wage thus contemplated postulated the capacity of the industry to pay and no fixation of wages which ignored this essential factor of the capacity of the industry to pay, could be supported.”

When compared to the Second Pay Commission, which had only deviated in the case of the calculation of food, the Third Pay Commission deviated in the case of both food and house rent calculations. Both the national economy and the capacity of the industry to pay were taken into consideration and used as a justification for their departure from the 15<sup>th</sup> ILC norms. It was possible to do so because of the lack of commitment of the Union Government towards the ratification of the 15<sup>th</sup> ILC resolution, and the presence of the escape clause in the 15<sup>th</sup> ILC resolution.

#### **Fourth and Fifth Pay Commission**

Unlike the Third Pay Commission, the Fourth and Fifth Pay Commission were not specifically required by the terms of reference to examine the feasibility of the need-based minimum wage based on the recommendations of the 15<sup>th</sup> ILC. Therefore, these commissions did not deal with the 15<sup>th</sup> ILC norms. The Fourth Pay Commission estimated the minimum pay by applying the growth of the total emoluments index to the minimum pay estimated by the Third Pay Commission (GOI 1986). And, the Fifth Pay Commission estimated the minimum pay through the ‘Constant Relative Income Approach’. (GOI 1994)

This development also underlines the importance of the Union Government’s commitment towards the ratification of the 15<sup>th</sup> ILC resolution.

#### **Sixth Pay Commission**

The Sixth Pay Commission, headed by Justice B.N. Srikrishna, released its report in the year 2008.

Like the Second, Fourth, and Fifth Pay Commission, the Sixth Pay Commission too had not received any explicit mention regarding the 15<sup>th</sup> ILC norms in its terms of reference. However, the 15<sup>th</sup> ILC norms still found a place in the Sixth Pay Commission’s report, because the Commission accepted the memorandum submitted by the staff side in Joint Consultative Machinery (JCM), that had calculated and demanded the minimum wage based on the 15<sup>th</sup> ILC norms. The calculation was as follows:

## Fixation of Minimum wage as on 1.1.2006 as per 15 ILC norms

Items	PCU* (In grams)	Per month 3CU* (In kg)	Price per kg. taken by Staff Side (In Rs)	Total cost as per Staff Side (In Rs)	Price per kg. as per prevailing rates (In Rs)	Total cost as per prevailing rates (In Rs)
Rice/wheat	475	42.75	22.00	941	18	769.5
Dal (Toor/Urad/moong)	80	7.2	65.00	468	40	288
Raw Veg.	100	9.00	28.00	252	10	90
Greenleaf Veg.	125	11.25	24.00	370	10	112.5
Other Veg.	75	6.75	26.00	176	10	67.5
Fruits	120	10.80	50.00	540	30	324
Milk	200 Ml	18 Lt.	24.00	432	24	432
Sugar and Jaggery	56	5.00	24.00	120	24	120
Edible Oil	40	3.6	90.00	324	50	180
Fish		2.5	180.00	450	120	300
Meat		5.00	180.00	900	120	600
Egg		90 (no)	2.50	225	2	180
Detergents etc		-	300 P/m	300	200	200
Clothing		5.5 Mt.	80/Mt.	440	80/Mt.	440
Total	-	-	-	5838	-	4103.5
Misc. @ 20%**	-	-	-	1167.60	-	827
Total	-	-	-	7005.60	-	4930.5
Addl. Exp @ 25%***	-	-	-	1751.40	400#	400#
Total	-	-	-	8757.00	-	5330.5
Housing @ 10%****				973.00		^148
Grand Total				9730.00		5478.5

Source: Average market rates in Kolkata, Chennai, Delhi and Mumbai as indicated in the Economic Times & other major dailies (element of 20% has been added to cover the increase in cost in retail sale).

Notes: \*PCU = Per day Consumption Unit 3CU = Three Consumption Units. \*\* 20% Miscellaneous charges towards fuel, electricity, water etc. \*\*\* Additional Expense at the rate of 25% includes expenditure towards education, medical treatment, housing, recreation, festivals etc.

# Has been taken as Rs.400 because separate allowances for education, medical treatment and housing exist in the Government. Consequently, only the expenditure towards recreation & festivals need to be taken in account.

\*\*\*\* / ^ Being the license fee chargeable for government accommodation at an average rate of 3% of the basic pay.

It is pertinent to note that the additional expenditure, as added by the *Reptakos Brett.* judgement in 1992, also found place in the Sixth Pay Commission's calculation of the minimum wage.

When the minimum wage fixed by the Sixth Pay Commission is contrasted with the 15<sup>th</sup> ILC resolution, the following observations could be made:

### Comparison between 15<sup>th</sup> ILC norm and Sixth Pay Commission on Family composition

Family composition	3 consumption units	3 consumption units
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### Comparison between Aykroyd's Adequate Diet and Sixth Pay Commission Diet

Item	15 <sup>th</sup> ILC (As per Dr Aykroyd's moderate diet) (Aykroyd 1937)		Sixth Pay Commission	
	Oz.	Grams	Oz.	Grams
Cereals <sup>10</sup>	14	396.89	16.75	475
Pulses <sup>11</sup>	3	85	2.82	80
Green leafy vegetables	4	113.39	4.4	125
Root vegetables	3	85	3.52	100 <sup>12</sup>
Other vegetables	3	85	2.64	75
Fruits	3	85	4.23	120
Milk	10	295.73 ml	6.76	200 ml
Sugar and jaggery	2	56.69	1.97	56
Vegetable oil, ghee, etc.	2	56.69	1.97	56
Fish and Meat	3	85.04	88.18	2500 <sup>13</sup>
Eggs	1 Egg	1 Egg	1 Egg	1 Egg

### Comparison between 15<sup>th</sup> ILC norm and Sixth Pay Commission on Clothing and Housing

Item	ILC norm	Sixth Pay Commission
Clothing	72 yards or 66 meters per year	5.5 meters per month (i.e., 66 meters per year)
Housing	The rent corresponding to the minimum area provided under the government's industrial housing schemes	10% of the Total Amount



### Comparison between the *Reptakos Brett Co.* judgement and Sixth Pay Commission on Additional Expenditure

Item	<i>Reptakos Brett Co.</i> judgement	Sixth Pay Commission
Additional Expenditure	25% of the total minimum wage.	25% of the total minimum wage.
	It contributes towards the children's education, medical requirement, minimum recreation including festivals / ceremonies and provision for old age, marriages etc.	It includes expenditure towards education, medical treatment, housing, recreation, festivals etc.
	The housing expense was included in the above mentioned total minimum wage while calculating the 25% additional expense.	The housing expense was NOT included in the above mentioned total minimum wage while calculating the 25% additional expense.

The Sixth Pay Commission, when compared to the previous pay commissions, made a substantive effort at compliance with the 15<sup>th</sup> ILC norms. However, the housing expense was calculated as 10% of the total amount, notwithstanding the 15<sup>th</sup> ILC norm that required the housing expense to be calculated based on “*the rent corresponding to the minimum area provided under the government's industrial housing schemes*” (GOI 2008).

Despite the Commission *per se* not fixing the need-based minimum wage based on the 15<sup>th</sup> ILC norms, it still remains the closest that a Central Pay Commission was able to come in fixing minimum salary as per the 15<sup>th</sup> ILC norms, when the Union Government lacked commitment towards the ratification of the 15<sup>th</sup> ILC resolution.

Lastly, it is also pertinent to note that the Commission took the capacity of the Government to pay, among other factors, into consideration. However, it did not lead to a dilution of the 15<sup>th</sup> ILC resolution or the invocation of the escape clause.

### Seventh Pay Commission

The Seventh Pay Commission, headed by Justice A.K. Mathur, submitted its report in 2015.

The Seventh Pay Commission first analysed the approach of the previous six Pay Commissions and remarked that “*directly or indirectly, the ILC norms have always been at the core of the minimum pay calculations made by the previous Pay Commissions. The Commission is also of the view that the ILC norms, along with other supplements (the entire set of seven components), are the best approach*”

*to estimating the minimum pay as it is a need-based wage calculation that directly costs the requirements, normatively prescribed to ensure a healthy and a dignified standard of living.”* (GOI 2015)

However, when compared to the 15<sup>th</sup> ILC resolution, the following observations could be made:

**Comparison between 15<sup>th</sup> ILC norm and Sixth Pay Commission on Clothing and Housing**

<b>Family composition</b>	3 consumption units	3 consumption units
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**Comparison between Aykroyd’s Adequate Diet and Seventh Pay Commission Diet**

Item	15 <sup>th</sup> ILC (As per Dr Aykroyd’s moderate diet) (Aykroyd 1937)		Seventh Pay Commission	
	Oz.	Grams	Oz.	Grams
	Cereals <sup>14</sup>	14	396.89	16.75
Pulses <sup>15</sup>	3	85	2.82	80
Green leafy vegetables	4	113.39	4.4	125
Root vegetables <sup>16</sup>	3	85	3.52	100
Other vegetables	3	85	2.64	75
Fruits	3	85	4.23	120
Milk	10	295.73 ml	6.76	200 ml
Sugar and jaggery	2	56.69	1.97	56
Vegetable oil, ghee, etc.	2	56.69	1.97	56
Fish and Meat	3	85.04	88.18	2500 <sup>17</sup>
Eggs	1 Egg	1 Egg	1 Egg	1 Egg

**Comparison between 15<sup>th</sup> ILC norm and Seventh Pay Commission on Clothing**

Item	ILC norm	Seventh Pay Commission
Clothing	72 yards or 66 meters per year	5.5 meters per month (i.e., 66 meters per year)

### Comparison between 15<sup>th</sup> ILC norm and Seventh Pay Commission on miscellaneous, additional and housing expenses

Item	15 <sup>th</sup> ILC norms	Seventh Pay Commission
Miscellaneous	Constituted 20% of the total amount (including housing expense)	Constituted 20% of the 80% of total amount (excluding housing expense)
Additional expenses	Constituted 25% of the total amount (including housing expense)	Constituted 15% of 85% of total amount (excluding housing expense)
Housing	The rent corresponding to the minimum area provided under the government's industrial housing schemes	3% of the 97% total amount. (Total amount = food, clothing, misc., additional expense, and skill factor)

Herein, it can be observed that despite praising the 15<sup>th</sup> ILC recommendations initially, the Commission went on to heavily dilute the 15<sup>th</sup> ILC norms while calculating the miscellaneous, additional, and housing expense components of the minimum wage. This also explains why the minimum pay fixed by the Seventh Pay Commission resulted in a meagre 14.3% increase, as opposed to a whopping 54% in the case of the minimum pay fixed by the Sixth Pay Commission. Once again, this dilution occurred because the Union Government was not committed to the ratification of the 15<sup>th</sup> ILC resolution.

### Minimum Wage fixation by the Central Wage Boards

The Central Wage Boards were an outcome of the 15<sup>th</sup> ILC resolution, which recommended the setting up of the wage boards as machinery for calculating the minimum wage as per the 15<sup>th</sup> ILC norms. (Tulpule 1968) However, the National Commission on Labour headed by Justice P.B. Gajendragadkar, after examining the functioning of the system of wage boards, reported that: *The fixing authorities have generally accepted the formula (15<sup>th</sup> ILC norms) in principle and departed from it in actual practice when the question of its implementation came.* (GOI 1968)

The Commission also remarked that the “escape clause” under the 15<sup>th</sup> ILC resolution may now be renamed as a “permissive clause”, because the Wage Boards had invoked the escape clause in all instances of minimum wage calculation by it. The Central Wage Boards reasoned that the need-based minimum wage fixed as per the 15<sup>th</sup> ILC resolution would be beyond the capacity of the industry to pay.

Thus, like the majority of the Central Pay Commissions, the Central Wage Boards also did not pay heed to the 15<sup>th</sup> ILC resolution. The underlying cause for this symptom was the Union Government's lack of commitment towards the ratification of the 15<sup>th</sup> ILC resolution, and the invocation of the escape clause on the grounds of the incapacity of the industry to pay.

## Poverty line criteria and minimum wage fixation

In the past, there have been instances wherein the poverty lines have influenced the fixation of minimum wage.

In 1977, The Task Force on Projections of Minimum Needs and Effective Consumption Demand, set up by the Planning Commission, defined the poverty line in terms of the per capita expenditure required for a per capita per day calorie intake of 2,400 in the case of the rural population and 2,100 for the urban population. Further, using the 28th Round (1973-74) of the National Sample Survey (NSS data) relating to the food consumption levels of households, as well as to conversion factors derived from the calorie content of food items, the estimated poverty lines were set for both rural and urban areas at ₹ 49.09 and ₹ 56.64 per capita per month, respectively, at 1973-74 price. (GOI 2019)

In 1981, the Committee of Labour Secretaries of States, under the Chairmanship of the Additional Secretary of the Ministry of Labour, had recommended that in establishing the minimum wage, the consumption basket should consist of 2,400 calories and 2,100 calories per capita per day, in the rural and urban areas, respectively. This recommendation was to a great extent influenced by the poverty line definition used by the Planning Commission, as per the recommendation of the Task Force on Projections of Minimum Needs and Effective Consumption. (GOI 2019)

In 1991, the National Commission on Rural Labour (NCRL) also relied on the work conducted by the Planning Commission Task Force on Projections of Minimum Needs and Effective Consumption Demand to determine the basic minimum floor level wage. (GOI 2019)

The main issue with the poverty lines influencing the fixation of minimum wage was that the qualitative and quantitative structure of the components that went into the determination of the poverty lines substantially differed from the 15<sup>th</sup> ILC norms. For example, the Task Force on Projections of Minimum Needs and Effective Consumption Demand (1977) defined the poverty line in terms of the per capita expenditure required for a per capita per day calorie intake of 2,400 in the case of the rural population and 2,100 for the urban population. However, the 15<sup>th</sup> ILC norms require that the calorie requirement should be at 2,700 calories as per Dr Aykroyd's recommendations.

The poverty line criterion was able to influence the fixation of minimum wage because the Union Government lacked commitment towards the 15<sup>th</sup> ILC resolution. It caused the denial of a higher quantum of the minimum wage that the workers would be entitled to if the minimum wage was calculated as per the 15<sup>th</sup> ILC resolution.

## Significance of Rule 3(1) of the Draft Rules

A common thread that ran in the calculation of the minimum wages by the Central Pay Commission, Central Wage Boards, and by the Poverty Line Method was that either the 15<sup>th</sup> ILC resolution was ignored, or the 15<sup>th</sup> ILC resolution was complied with only in a skeletal way. The

reason for this was both the lack of commitment from the Union Government's end as well as the misuse of the escape clause in the name of the national economy.

In this context, the 15<sup>th</sup> ILC resolution, despite being half a century old, is still relevant because minimum wages have never been calculated based on the norms mentioned therein. Throughout history, since 1957, the Union Government has been reluctant to pay the higher quantum of the amount that would be the outcome of the enumeration of the minimum wage as per the 15<sup>th</sup> ILC norms. It had led to the compromise on the quantum of the workers' wages.

In this context, Rule 3(1) of the Draft Rules makes a radical departure from the past because the footnote to Rule states that:

“The provisions of the rule 3 are based on the criteria declared in the judgment in *Workmen Represented by Secretary vs. Management of Reptakos Brett. And Co. Ltd. and Anr.*, 1992 AIR 504 pronounced by the Hon'ble Supreme Court, and on the recommendations of the 15<sup>th</sup> Indian Labour Conference (ILC).”

It not only portrays the normative commitment of the Union Government towards fixing the minimum wage as per the 15<sup>th</sup> ILC norms, but also holds the potential to grant legal sanction to the 15<sup>th</sup> ILC norms as well as the guideline added in the *Reptakos Brett* judgement. Further, it is also pertinent that, unlike the 15<sup>th</sup> ILC resolution, Rule 3(1) of the Draft Rules does not come with an escape clause.

Therefore, when Rule 3(1) of the Draft Rules is made into a legally binding provision, it would lead to a fixation of the minimum wage without either ignoring or diluting the 15<sup>th</sup> ILC norms, for the first time in the history of minimum wage fixation in India. This would in turn ensure that the workers would receive a higher minimum wage.

Thus, while Rule 3(1) of the Draft Rules is far from being ideal (taking the recommendations of ILO and Oxfam into consideration), it is still an important milestone when it comes to the progressive realisation of the workers' welfare in India.

In a broader socio-political context, while it is very much necessary that the civil society organisations moot for an updated version of Rule 3(1) in the Draft Rules, it is also important for them to remain cognisant of the fact that this is for the first time in history that the Union Government has shown some form of normative commitment towards the 15<sup>th</sup> ILC resolution.

Therefore, even as they focus upon seeking a better version of Rule 3(1) in the Draft Rules, they must also see to it that the Union Government makes a full-fledged ratification of and implements the 15<sup>th</sup> ILC resolution in Rule 3(1) of the Draft Rules, because the successful execution of this rule will largely depend on the Union Government's ability and willingness to penalise offenders. It remains to be seen how the Government plans to ensure adherence, and what penalties will be instituted for non-compliance.

So, have we truly reached our goal because we have 'arrived'? Perhaps not. The introduction of Rule 3(1) of the Draft Rules is indeed a significant step forward, but it is just that — a step. Thus,

while the Draft Rules symbolise progress, they should also serve as a reminder of the continuous journey towards better labour welfare in India.

## Reference

- Estupinan, Xavier, Anoop Satpathy, and Bikash K. Malick. "Wage Code and Rules–Will They Improve the Welfare of Low-Paid Workers?" *International Labour Organisation* (2020): 1-11.
- Katakee, Nimisha. "Rule specific comments on the Code on Wages (Central) Rules as on July 7th 2020 SI No. Chapter Rule/Page No Change Proposed Reasons." *Oxfam* (2020): 1-15.
- Tulpule, Bagaram. "Wage fixation by wage boards." *Economic and Political Weekly* (1968): M55-M60.
- GOI (1957): "Summary Proceedings of the 15<sup>th</sup> Session of Indian Labour Conference", New Delhi: Ministry of Labour, Government of India.
- GOI (1959): "Report of the Commission of Enquiry on Emoluments and Conditions of Service of Central Government Employees", New Delhi: Ministry of Labour, Government of India.
- GOI (1966): "Report of the National Commission on Labour", New Delhi: Ministry of Labour, Government of India.
- GOI (1968): "Report of the Committee on the Functioning of the System of Wage Boards", New Delhi: Ministry of Labour, Government of India.
- GOI (1973): "Report of the Third Central Pay Commission", New Delhi: Third Central Pay Commission, Government of India,  
[http://www.cgspublicationindia.com/Pdf/Pay%20Commissions/Third%20Pay%20Commission/3rd%20CPC%20\(Report,%20Vol%20I\).pdf](http://www.cgspublicationindia.com/Pdf/Pay%20Commissions/Third%20Pay%20Commission/3rd%20CPC%20(Report,%20Vol%20I).pdf).
- GOI (1986): "Report of the Fourth Central Pay Commission", New Delhi: Fourth Central Pay Commission, Government of India,  
[http://www.cgspublicationindia.com/Pdf/Pay%20Commissions/Fourth%20Pay%20Commission/4th%20CPC%20\(Report,%20Part-1,%20Vol%20I%20to%20IV\).pdf](http://www.cgspublicationindia.com/Pdf/Pay%20Commissions/Fourth%20Pay%20Commission/4th%20CPC%20(Report,%20Part-1,%20Vol%20I%20to%20IV).pdf)
- GOI (1994): "Report of the Fifth Central Pay Commission", New Delhi: Fifth Central Pay Commission, Government of India, [http://www.cgspublicationindia.com/5th\\_Pay\\_Commission.aspx](http://www.cgspublicationindia.com/5th_Pay_Commission.aspx).
- GOI (2008): "Report of the Sixth Central Pay Commission", New Delhi: Sixth Central Pay Commission, Government of India.

<http://www.cgspublicationindia.com/Pdf/Pay%20Commissions/Sixth%20Pay%20Commission/6%20CPC%20Report.pdf>

GOI (2015): “Report of the Seventh Central Pay Commission”, New Delhi: Seventh Central Pay Commission, Government of India, [https://doe.gov.in/sites/default/files/7cpc\\_report\\_eng.pdf](https://doe.gov.in/sites/default/files/7cpc_report_eng.pdf).

GOI (2019): “Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage” New Delhi: Ministry of Labour and Employment, Government of India, [https://labour.gov.in/sites/default/files/Committee\\_on\\_Determination\\_of\\_Methodology.pdf](https://labour.gov.in/sites/default/files/Committee_on_Determination_of_Methodology.pdf)

RS (1968): India-Parliamentary Debates, Rajya Sabha Debates. (Vol LXV, No. 4. Col. 693, July 25, 1968)

RS (1964): India-Parliamentary Debates, Rajya Sabha Debates. (Vol XLIX, No. 10, col 2150, September 1964)

## Notes

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<sup>1</sup> Draft Code on Wages (Central) Rules, 2020.

<https://labour.gov.in/sites/default/files/gazette%20notification.pdf>

<sup>2</sup> 1992 AIR 504.

<sup>3</sup> AIR 1961 SC 895.

<sup>4</sup> Workmen Represented by Secretary vs. Management of Reptakos Brett. And Co. Ltd. and Anr., 1992 AIR 504.

<sup>5</sup> 1955 I LLJ 129 SC.

<sup>6</sup> AIR 1958 SC 30.

<sup>7</sup> 1961 I LLJ 631 SC.

<sup>8</sup> 1961 I LLJ (S.C) 232.

<sup>9</sup> 1961 I LLJ 365 SC.

<sup>10</sup> Sixth Central Pay Commission considered Rice/wheat for cereals.

<sup>11</sup> Sixth Central Pay Commission considered dal (toor/urad/moong).

<sup>12</sup> Sixth Central Pay Commission considered raw vegetables.

<sup>13</sup> Total 7.5 kg.

<sup>14</sup> Same as Sixth Pay Commission’s calculation.

<sup>15</sup> Same as Sixth Pay Commission’s calculation.

<sup>16</sup> Same as Sixth Pay Commission’s calculation.

<sup>17</sup> Same as Sixth Pay Commission’s calculation.

<sup>17</sup> Rule 3(1), Draft Code on Wages (Central) Rule