

# What exactly are the current norms for calculating the minimum wage in India?

**Jehosh Paul\***

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## Abstract

The calculation of minimum wages in India has evolved over the years, with various committees and legal frameworks guiding its determination. This paper examines the current norms for calculating minimum wages in India, tracing its evolution from the introduction of the Minimum Wages Act in 1948 to 2021. Despite the Act's repeal and the introduction of the Code on Wages, 2019, no quantitative criteria for the minimum wage calculation have been definitively laid out in the legislation. Academic discourse has offered conflicting assertions on the norms. The paper identifies three primary theses: 1) There's no established standard criterion, 2) The 15th Indian Labour Conference's (15th ILC) resolution serves as the norm, and 3) The resolution of the 15th ILC in combination with the Supreme Court's Reptakos Brett judgment are the guiding norms. By analysing various events, resolutions, and judgments, this research confirms that the current norms are primarily based on the recommendations of the 15th ILC (1957) coupled with the Supreme Court's judgment in *Workmen v. Reptakos Brett* (1992). These norms are crucial in ensuring that minimum wage calculations are aligned with the essential needs of the worker, offering them a dignified standard of living.

**Keywords:** Norms, Minimum Wage, 15th Indian Labour Conference, Reptakos Brett.

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## 1. Introduction

In January 2019, the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage submitted its report to the Ministry of Labour and Employment, Government of India. (GOI 2019) However, in 2021, the Government tacitly rejected the report, by constituting another Expert Group for the determination of the national minimum wage. The press statement by the Ministry stated that the “Expert group will give recommendations to the Government on Minimum Wages and National Floor Wage.” (PIB 2021). Yet, while the Government provided this expert group with a mandate similar to its predecessor, it did not clearly specify which laws or guidelines should be followed in setting the minimum wage.

The existing legal framework, including the Code on Wages, 2019 and the now-repealed Minimum Wage Act, 1948, does not provide any quantitative criteria for the enumeration of the minimum wage. The Code on Wages, 2019 is limited to prescribing only the mechanism for the fixation of minimum wages, namely the notification method and the committee method.<sup>1</sup>

Sahab Dayal in ‘Wage Policy in India: A Critical Evaluation’, after studying the wage policy in India until 1969, stated that “*no norms were laid down under the Act and each authority could develop its own norms; this has manifested itself in the...non-existence of standard criteria*”. (Dayal 1969)

Similarly, several academic works, even if they do not *per se* deal with the question of what are the norms for enumerating the minimum wages, have made passing remarks on what are the norms for minimum wage fixation in India:

- Dr A. Fonseca (Labour Economist of the Indian Social Institute, New Delhi) in ‘Need-Based Wage and Its Implementation’ referred to the 15<sup>th</sup> Indian Labour Conference’s resolution as the norm while expressing his concerns regarding the “difficulties involved in translating the country’s policy on minimum wages into monetary terms” (Fonseca 1969)
- Prof. Babu Mathew (Director, Centre for Labour Studies, NLSIU), et al, in ‘Critiquing the statutory minimum wage: A case of the export garment sector in India’ stated that there are clear guidelines for the determination of the statutory minimum wage based on the 15<sup>th</sup> Indian Labour Conference (hereinafter referred to as the ‘15<sup>th</sup> ILC’) and subsequent rulings of the Indian legal system. (Mathew et al. 2018)
- Renana Jhabvala in ‘Minimum Wages Based on Worker’s Needs’ referred to the 15<sup>th</sup> ILC norms and its modification by the Supreme Court in *Reptakos Brett and Co.* judgement as to the legal norm on the fixation of the minimum wages.(Jhabvala 1998)
- Lastly, a recent Economic & Political Weekly editorial, ‘Another Committee for Minimum Wages’, also asserted that “the enumeration of the minimum wages is based on two key features: first, the recommendations of the 15<sup>th</sup> Indian Labour Conference (1957), and second, the Supreme Court judgement in *Workmen v. Reptakos Brett* (1992)...” (EPW 2021)

Herein, there are three kinds of conflicting assertions that emerge in the academic discourse. First, there are no norms as such that could be considered a standard criterion; second, the 15<sup>th</sup> ILC resolution is the norm; third, the 15<sup>th</sup> ILC norms coupled with the *Reptakos Brett.* judgement are the norms for the enumeration of the minimum wages.

To evaluate the truth value of these conflicting theses, a systematic study of the evolution of the norms on minimum wage fixation is necessary. However, there is a gap in the academic literature that has systematically examined the norms for the fixation of minimum wages under the Minimum Wages Act or the Code on Wages.

In this context, this paper aims to answer: *What exactly are the current norms for calculating the minimum wages in India?*

To address this question, the paper analyses analysing the evolution of the norms on minimum wage in India from 1948 to 2021.

## 2. The evolution of norms for the calculation of minimum wage

While the Minimum Wage Act, 1948 (now repealed) provided a broad framework for the fixation of Minimum Wage, it did not mention any concrete parameters based on which the Minimum Wages ought to be calculated. Section 4 of the Act dealing with ‘Minimum rate of Wages’ is the closest that the Minimum Wage Act came to prescribing the contents of the Minimum Wage. It stated that:

“Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of -

- (a) a basic rate of wages and an allowance...hereinafter referred to as “cost of living allowance”, or
- (b) a basic rate of wages with or without the cost-of-living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or
- (c) an all-inclusive rate allowing for the basic rate, the cost-of-living allowance and the cash value of the concessions, if any.”<sup>2</sup>

However, the Act did not define the meaning of the “basic rate of wages”. Thereby, it left a gap in the legislation, for the appropriate Government to fill in – based on its discretion – while determining the Minimum Wages.

Section 5 of the Act<sup>3</sup> provided for the ‘procedure for fixing and revising minimum wages’. Two methods by which the appropriate Government can fix minimum wages are the committee method and the notification method. Under the committee method, the appropriate Government can “appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be”. And, under the notification method, the appropriate Government is required to publish its proposal on minimum wage for the

information of the stakeholders who are likely to be affected and wait no less than a period of two months before taking it into consideration.

In the same year as that of the Minimum Wage Act coming into force, the Industrial Policy Resolution (1948) laid emphasis on promoting fair wage agreements in the more organised industries. In November 1948, the Central Advisory Committee, a statutory body under the Minimum Wages Act, appointed the tripartite Committee on Fair Wages to “determine the principles on which fair wages should be based and to suggest the lines on which these principles should be applied”. (GOI 1966)

The Fair Wage Committee decided that the lower limit of the ‘fair wage’ would be the minimum wage and the upper limit of it would relate to the capacity of the industry to pay. But the minimum wage would be the bottom-level wage, and no other wage could exist below that level. (GOI 1949)

After having defined the position of the Minimum Wage in the wage structure, the Fair Wage Committee laid down the broad framework to determine the minimum wage for a “standard working class family”. According to the committee:

1. A standard working-class family should be reckoned as one consisting of three consumption units, supported by a single male earner including his wife and two children below the age of 14.
2. The wage should cover five categories of needs considered essential for the worker’s well-being. It would consist of food, clothing, housing, light & fuel and other miscellaneous needs.
3. Lastly, while calculating the minimum wage, the norms for food category should be based on Dr W.B. Aykroyd’s formula for an adequate and balanced diet.

This framework for the calculation of the minimum wage, as laid down by the Fair Wage Committee, still remained largely qualitative in its character – because it did not state how these parameters could be used to arithmetically calculate the minimum wage and arrive at a number. The First Five Year Plan (1951-56) considered it inadequate because it did “not form an adequate basis for a uniform policy in determining the wage rates and effecting the wage adjustments” (GOI 1957). At this juncture, the Union Government entrusted this task to the tripartite Indian Labour Conference to “evolve in as precise terms as practicable the ‘norms’ and standards which should guide the wage fixing authorities including wage boards in settling questions relating to wages” (GOI 1955).

In 1957, the 15th Indian Labour Conference (ILC) was conducted in New Delhi, and the tripartite committee that headed the conference consisted of representatives from the government, industry, and workers. This tripartite committee became the first of its kind in laying down the quantitative framework for the minimum wage calculation in India. According to the Seventh Pay Commission, the 15<sup>th</sup> ILC norms were “*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 five norms accepted by the Committee were as follows:

- a) the standard working class family included a wife and two children apart from the earning worker<sup>4</sup>; an equivalent of three adult consumption units<sup>5</sup>; 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<sup>6</sup> (first director of the Department of Nutrition at the United Nations Food and Agricultural Organization) for an Indian adult of moderate activity;

**TABLE II.—Composition of a Balanced Diet**

*(Adequate for the maintenance of good health)*

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

- c) clothing requirements of 72 yards<sup>7</sup> (65.8 metres) per year per family; or 5.5 meters per month for the average worker's family. (GOI 2019)
- d) a minimum housing rent charged by the government for low-income groups (GOI 2019) or 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 per cent of the total minimum wage" (GOI 2019)

However, the Committee also recognised the existence of instances wherein the implementation of the norms would be difficult. It, therefore, provided an escape clause: if minimum wages were to be set below the norms prescribed by the 15<sup>th</sup> ILC then the concerned authorities ought to justify the circumstances that prevented them from complying with the norms proposed by the 15<sup>th</sup> ILC.

Furthermore, at the 15<sup>th</sup> ILC, it was also agreed that 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. Lastly, in a welfare State, the fixation of minimum wages by the

Government would be guided by the aim of securing a minimum level of living for the worker and the nature of the labourer's work would not serve as the yard-stick to arrive at the quantum of wages. (GOI 1957)

The norms arrived at by the 15<sup>th</sup> ILC in 1957 were deeply rooted in the recommendations of the Fair Wage Committee in 1948. It took almost a decade for the five “needs” of the workers highlighted by the Committee on Fair Wages (food, clothing, housing, and light and fuel) to be translated from a qualitative form to a concretised and quantified form in the five norms arrived by the 15<sup>th</sup> ILC.

In 1991, with more than three decades having passed since the 15<sup>th</sup> ILC resolution, the Supreme Court of India added a sixth element to the norms for the quantification of the minimum wages. The Supreme Court in the case of *The Workmen represented by Secretary v. The Management of Reptakos Brett & Co. Ltd. and Ors.*,<sup>8</sup> took the socio-economic aspect of the wage structure into consideration, and observed that

"the concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way-behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry" and held that the “children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage.”

By virtue of this judgement, the Supreme Court added an additional component to the existing norms, as a guide for fixing the minimum wage in the industry. According to the Supreme Court, the wage structure comprising these six components was a minimum wage at the subsistence level.

The calculation of minimum wages by the committees, therefore, was now guided by the six elements enshrined in the *Reptakos Brett Co. Judgement* which was in turn based on the 15<sup>th</sup> ILC resolution.

In 2020, after the Code on Wages, 2019 came into force, the six elements that the Supreme Court recognised in the *Reptakos Brett Co. Judgement*<sup>9</sup> were incorporated into Rule 3 of the draft Code on Wages (Central) Rules, 2020.<sup>10</sup> Since 1948, the draft Rule 3 has been the closest to a statute that provides the quantitative criteria for the calculation of the minimum wages. It elucidates six quantitative criteria for the ‘manner of calculating the minimum rate of wages’. It states that:

- (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 per cent of food and clothing expenditure;
- (V) Fuel, electricity and other miscellaneous items of expenditure to constitute 20 percent of minimum wage; and
- (VI) Expenditure for children education, medical requirement, recreation and expenditure on contingencies to constitute 25 percent of minimum wage;

The footnote to Rule 3 states that it is “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)”. However, it does not follow the same rationale when it comes to the calculation of the housing rent allowance. It is because the *Reptakos Brett Co. Judgement* required that rent allowance to be based upon “a minimum housing rent charged by the government for low-income groups”, whereas draft rule 3 states that the “housing rent expenditure to constitute 10 per cent of food and clothing expenditure”. Further, in the absence of any explicit mention, it is also still not conclusive as to whether the 2700 calories would be arrived at based on Dr Aykroyd’s adequate level diet that was adopted by the 15<sup>th</sup> ILC and affirmed by the *Reptakos Brett Co. Judgement*.

In addition to the Draft Code on Wages (Central) Rules, 2020, around nine states<sup>11</sup> have also released their own draft rules for the calculation of minimum wages. These remain identical to the Draft Code on Wages (Central) Rules, 2020. For instance, the Karnataka government released its draft rules for the implementation of the Code on Wage in 2020, which contained the same six criteria as specified in Draft Code on Wages (Central) Rules, 2020.

However, this Rule by virtue of being in its draft stage, it has not yet come into force. Therefore, the norms prescribed by the *Reptakos Brett Co. Judgement* as per the 15<sup>th</sup> ILC recommendations are the current norms for the calculation of the minimum wages in India. Hence, the thesis which states that the “enumeration of the minimum wages is based on two key features: first, the recommendations of the 15<sup>th</sup> Indian Labour Conference (1957), and second, the Supreme Court judgement in *Workmen v. Reptakos Brett (1992)*” is correct.

It is also important to note that while the six norms prescribed by the *Reptakos Brett Co. Judgement*, in tune with the 15<sup>th</sup> ILC recommendations, provides a theoretical framework for minimum wage fixation, in practice, it has been often different. Prior to the Code on Wages, 2019, the actual schedules of employment under the Minimum Wages Act and their revisions across states varied widely. Each state had its own schedule of employment and minimum wage rates, leading to significant discrepancies across the country.

## Conclusion

The National Commission on Labour, headed by Justice P.B. Gajendragadkar in 1968, reported that “the minimum wage fixing authorities have generally accepted the formula in principle and departed from it in actual practise when the question of its implementation came”. (GOI 1968) The Code on Wages, 2019 tries to overcome this by not retaining the concept of ‘scheduled employment’ (GOI 2019) and laying down the overarching framework for the enumeration of the minimum wages, which is largely in compliance with the Reptakos Brett Co. Judgement. It also provides for a National Floor Wage, which ensures that the minimum wage fixed by the appropriate Government does not fall below it. However, the actual implementation and enforcement of it remains to be seen. Additionally, the revision of minimum wages continues to be a politically sensitive issue, and it remains to be seen how the various stakeholders will respond to the changes in the minimum wage rates in different sectors and regions in the future.



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## Notes

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<sup>1</sup> Under Section 8 of The Code on Wages, 2019, the procedure for fixing and revising minimum wages is detailed. For fixing or revising minimum wages, the appropriate government can appoint committees to conduct enquiries and give recommendations regarding the fixation or revision of the minimum wages. Alternatively, it can publish its proposals for fixing or revising the minimum wages through a notification, ensuring that all pertinent information is available to the affected parties.

<sup>2</sup> Section 4 of the Minimum Wage Act, 1948.

<sup>3</sup> Section 5 of the Minimum Wage Act, 1948.

<sup>4</sup> On the basis of Dr. Aykroyd's formula (as enunciated in Health Bulletin No. 23, 1937), this yielded 3 consumption units per earner. While the worker was treated as 1 consumption unit and his wife 0.8 unit, the two children together were equated to 1.2 units by the Fair Wage Committee - by averaging the coefficients for children of different age groups and multiplying the average by two.

<sup>5</sup> Dr Aykroyd worked on nutrition for nearly 30 years. In 1935, he was appointed Director of the Government's nutritional research centre in India, situated in Connor in Kerala.

<sup>6</sup> The provision for clothing is based on an average for the whole of India, but 72 yards of clothing per annum per family did not presumably envisage the provision of woollen clothing and it may not have been enough to cover the requirements of a family in the cooler regions of the country.

<sup>7</sup> The optimum diet would include more vitamins and less protein in its calorie content, while an adequate diet would include more protein and less vitamins.

<sup>8</sup> Workmen Represented by Secretary vs. Management of Reptakos Brett. And Co. Ltd. and Anr., 1992 AIR 504.

<sup>9</sup> *Id.*

<sup>10</sup> Draft Rule 3 of Draft Code on Wages (Central) Rules, 2020.

<sup>11</sup> Karnataka, Rajasthan, Uttar Pradesh Haryana, Tamil Nadu, Maharashtra, Madhya Pradesh, Punjab and Odisha. The list, however, is not exhaustive.