

# SECURING FAIR WAGES

LEGAL REFERENCE TOOLKIT FOR MINIMUM WAGES CLAIMS



JUSTICE VENTURES INTERNATIONAL 2025

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# 1. INTRODUCTION

# ABOUT THE TOOLKIT

Modern Slavery affects around eight million people in India, the majority of whom are bonded labourers.<sup>1</sup> This toolkit has been developed by Justice Ventures International (JVI) to assist partnering advocates and lawyers seeking justice for bonded labour victims through the recovery of minimum wages. It provides an overview of bonded labour by identifying the elements of bonded labour and clarifying key concepts related thereto.

This toolkit provides guidance on securing minimum wage claims for bonded labour victims deprived of the statutory minimum wage through the Code on Wages Act, 2019<sup>2</sup>, which would replace the Minimum Wages Act, 1948. Securing minimum wages in bonded labour cases is important not only because it provides a fresh start and justice to the bonded labour victims but also because it acts as a retribution and deterrent to the bonded labour perpetrator. This toolkit also sets out standard operating procedures for making a minimum wage claim under the Code on Wages Rules in the State of Bihar<sup>3</sup>, which can be a model for initiating cases in other states in India.

## AIMS AND PURPOSE OF THE TOOLKIT

JVI intends for this toolkit to serve as a reference manual that may be used to combat bonded labour through minimum wage claims. It is updated to the extent possible with current research and procedural knowledge. Its main aim is to provide guidance, highlight best practices and set out standard operating procedures for filing minimum wage claims to secure freedom, justice, and restoration for victims of bonded labour. We at JVI expect hurdles in achieving this, also envisaging administrative delays due to the shifting of the legal framework from the Minimum Wages Act, 1948 to the Code on Wages Act, 2019.

Upon the discovery of an incidence of bonded labour, it should be standard practice to file immediate claims for minimum wages before the appropriate authority under the Code on Wages Act, 2019. While the process for prosecuting bonded labour crimes can be long and protracted, the recovery of minimum wages offers a relatively expedient means of providing resources to rescued victims and impacting financially the bonded labour perpetrator.

<sup>1</sup> 2024 Trafficking in Persons Report: India, US Department of State (Available at: <https://www.state.gov/reports/2024-trafficking-in-persons-report/india/>)

<sup>2</sup> Code on Wages Act, 2019 [https://labour.gov.in/sites/default/files/the\\_code\\_on\\_wages\\_2019\\_no\\_29\\_of\\_2019.pdf](https://labour.gov.in/sites/default/files/the_code_on_wages_2019_no_29_of_2019.pdf)

<sup>3</sup> Code on Wages Rules in the State of Bihar <https://www.datocms-assets.com/40521/1632892836-cow-draft-rules-bihar.pdf>

# SUMMARY OF STANDARD OPERATING PROCEDURES

While detailed commentary on the Standard Operating Procedures is set forth in Section IV of this Toolkit, below is a summary of the steps involved in pursuing a minimum wage claim in the State of Bihar.

## Determine the Category of Employment of the Claimant

Timeline:

### NGO

The NGO should determine the category of the claimant's employment (unskilled, semi-skilled, skilled, highly skilled) based on information provided by the claimant.

### ADVOCATE

The Advocate should confirm the claimant category the claimant is working in specified in the Schedule to the Code on Wages Rules.

## Confirm that the Claim is Timely

Timeline:

### NGO

The NGO should ensure that the claim is filed as soon after the rescue as possible, in order to fall within the three-year limitation.

### ADVOCATE

The Advocate should confirm that the claim is being filed within three years from the date on which the minimum wages became payable.

## Determine the Statutory Minimum Wage for that Employment

Timeline:

### NGO

The NGO should determine Bihar's statutory minimum wage for the claimant's employment and ensure it is not below the floor wage fixed by the Central Government. The Statutory Minimum Wage can be accessed [here](#), See note on this link in Section IV.

### ADVOCATE

The Advocate should multiply the statutory minimum wage by the number of days worked to compute the total minimum wages owed.

### Determine if Overtime Wages Are Due

Timeline:

#### NGO

The NGO should communicate with the claimant to determine how many hours he/she was required to work each day or week.

#### ADVOCATE

The Advocate should determine if overtime wages are due and calculate the value of overtime wages at the applicable rate.

### Determine the Wages that were Actually Paid

Timeline:

#### NGO

The NGO should request that the Labour Department or the Child Welfare Committee (as the case may be) review the employer's register and records (including attendance card, wage slip, and inspection book, which is required to detail gross wage, deductions from wage, working hours, overtime, etc.) in order to determine the wages that were actually paid to the claimant.

#### ADVOCATE

If the employer refuses to permit inspection of records, the Advocate should coordinate with the Labour Department or the Child Welfare Committee (as the case may be) in filing an RTI to review the employer's register and records.

### Determine if there are Improper Inclusions in Wages

Timeline:

#### NGO

The NGO should communicate with the claimant to obtain further information on deductions that the employer might have made from the claimant's wages.

#### ADVOCATE

The Advocate should determine if the value of any of the following concessions was improperly included in the wages:

- Any bonuses which do not form part of the remuneration payable under the terms of employment
- House Accommodation/Rent and Utilities
- Contributions to pensions and provident funds

- Conveyance Allowance/Travelling concession
- Special expenses in the course of his employment
- Overtime allowance
- Commission payable
- Gratuity/Retrenchment/Retirement Benefits

### Determine if Unauthorized Deductions Were Made

Timeline:

#### NGO

The NGO should communicate with the claimant to obtain further information on deductions that the employer might have made from the claimant's wages.

#### ADVOCATE

The Advocate should determine if any deductions were made other than the following authorized deductions:

- Fines imposed on him
- Absence from duty
- Damages to goods caused by the employee's negligence
- House accommodation supplied by the employer
- Certain amenities and services as authorized by the Central Government
- Recovery of advances or loans
- Income tax payable by employee
- Repayment of advances from social security schemes
- Payment of fee to Trade Union
- Deductions in course of employment in the Railways



## Calculate the Amount of Wages Due

Timeline:

### NGO

The NGO should assist in calculating the total amount of wages due to the claimant, based on the information provided in Steps 3-7.

### ADVOCATE

The Advocate should calculate the amount due using this equation:

$$[\text{Statutory Minimum Wages} + \text{Overtime Wages Due}] - [\text{Amount Received (excluding improper allowances and in-kind payment)} + \text{Authorized Deductions}] = \text{Minimum Wages Awarded (x 2-10 discretionary)}$$

## Determine the “Appropriate Authority” Before Whom to File a Claim

Timeline:

### NGO

The NGO or Advocate (as the case may be) should file a complaint to the appropriate authority notified under the notification.

### ADVOCATE

The NGO or Advocate (as the case may be) should file a complaint to the appropriate authority notified under the notification.

## Commence Filing Claim

Timeline:

### NGO

The NGO can guide the claimant to file a complaint using Form II in the Appendix to the Code on Wages (Bihar) Rules, 2021. See Appendix for sample Forms.

The NGO should determine if it makes sense to aggregate the claims of multiple employees seeking wages from the same employer, pursuant to Code on Wages Act, Section 45(5).

### ADVOCATE

The Advocate can approach the Inspectorcum-Facilitator to commence a claim.

### Appear Before the Officer for Enquiry

Timeline:

NGO	ADVOCATE
If the NGO must equip the claimant to appear before the Officer (who is appointed by the notification of the State Government)	

### File an Appeal from an Adverse Judgment

Timeline:

NGO	ADVOCATE
After the Officer has determined the claim, the NGO should ensure that the claimant is paid the compensation awarded	<p>The Advocate must ensure that the Officer shall determine the claim within 3 months of filing the complaint.</p> <p>If the employer fails to pay the compensation, the Advocate should ensure that the Officer issues a Certificate of Recovery to the Collector of Magistrate</p>

A low-angle photograph of a woman carrying a large, heavy, round woven basket on her head. She is wearing a dark green sari with a red and white floral pattern. Her face shows signs of strain and sweat. She is holding the basket with both hands. The background is a clear blue sky.

## **2. OVERVIEW OF BONDED LABOUR**

# DYNAMICS OF MODERN-DAY SLAVERY

Human trafficking is the world's fastest-growing criminal enterprise, ranking third globally<sup>4</sup>, valued to be an estimated \$32 billion-a-year global industry.<sup>5</sup> Historically, trafficking in human beings was for the purpose of slavery and was often given legal sanction. Today, although slavery has been formally abolished, there are more than 50 million people trapped in modern slavery, with around 28 million engaged in forced labour.<sup>6</sup>

**Trafficking in persons** has been defined under the Palermo Protocol (The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) as the recruitment, transportation, transfer, harbouring, or receipt of persons using threats or force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>7</sup> Thus, human trafficking contains three components:

1. The act (**what** is done): *Recruitment, transportation, transfer, harbouring, or receipt of persons;*
2. The means (**how** it is done): *Threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and*
3. The purpose (**why** it is done): *Exploitation shall include, at a minimum, the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

The problem of trafficking goes beyond the mere buying and selling of persons for profit. Human trafficking is the result of complex processes of power imbalances, social, economic and political norms, and apathy (or even cooperation) from law enforcement. There are certain root causes that contribute to human trafficking, including migration for work, lack of income opportunities in places of origin, poor social safety nets for women-headed households, high debt, poor policing of border areas, and the low cost of trafficking victims vis-à-vis the returns with the problem disproportionately affecting women.<sup>8</sup> In 2018, for every 10 victims of trafficking detected globally, about five were adult women, and two were girls.

There are several interrelated factors that increase the vulnerability of persons to trafficking. There are elements that push persons into becoming victims, such as poverty, high migratory trends, limited economic opportunities for the primary caregiver of the family, dysfunctional home environments, dysfunctional marriages, domestic violence and other forms of abuse, decline in the

<sup>4</sup> Human Trafficking a Global Enterprise, Available at: <https://freeforlifeintl.org/2020/07/31/human-trafficking-a-global-enterprise/>

<sup>5</sup> The Global Slavery Index, 2023. Available at: <https://www.walkfree.org/global-slavery-index/findings/regionalfindings/overview/>

<sup>6</sup> 2021 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. International Labour Organization and Walk Free Foundation. September 2023 Available at: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf)

<sup>7</sup> Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>8</sup> UNODC, Global Report on Trafficking in Persons 2020 (United Nations publication, Sales No. E.20.IV.3).

sex ratio of girls, gender bias, and the traditional systems of prostitution and political and social insecurity, all of which are commonly called **push factors**. Additionally, elements that pull people towards being trafficked (referred to as **pull factors**) include the lack of informed choices, high demand for commercial sex work and cheap labour, migration, consumerism, and the fact that trafficking requires low investment but yields high returns.<sup>9</sup> The Covid pandemic has aggravated the situation.

Traffickers successfully deceive their victims through various means. Bonded labour victims are trapped through social exclusion (based on caste, religion or ethnicity), worker illiteracy, lack of access to information, employer monopolies on local markets and the dominance of social elites. These factors play a role in transforming a basic economic transaction between a lender and borrower into a mechanism of social control and subordination.<sup>10</sup>

## THE TRAFFICKING PROBLEM IN INDIA: BONDED LABOUR

In its most essential form, bonded labour (a prevalent form of human trafficking) involves the exploitative interlinking of labour and credit agreements between parties. Bonded labour occurs when a worker pledges his labour or the labour of those under his control as security for a debt and either: (1) the real value of the work undertaken is never applied to paying off the debt, or (2) the length and nature of the work that has to be undertaken to repay the debt is never properly limited or defined.<sup>11</sup> Bonded labour is rampant across India and results in separation of families from their communities, inhumane working conditions for 15 to 18 hours a day, physical abuse and sexual exploitation. Poverty, deprivation, illiteracy, unemployment and social inequalities are the primary drivers of this continuing practice. There are 18.3 million people living in 'modern slavery' in India.<sup>12</sup> Over 90% of bonded labourers belong to the Scheduled Caste and Scheduled Tribe communities.<sup>13</sup> 15.1 million of the world's 27.6 million bonded labourers are in Asia and the Pacific.<sup>14</sup> Bonded labour is most frequently encountered in brick kilns, stone quarries, mining, agriculture, construction industries, pulp extracting, carpet industries, agarbathis, domestic work, charcoal making and wood cutting.<sup>15</sup>

Since the enactment of the Bonded Labour System (Abolition) Act, 1976 (the "Bonded Labour Act"), the Ministry of Labour reports that at least 3,13,962 bonded labourers have been released till date.<sup>16</sup> However, this number includes only those bonded labourers who have received formal release certificates and access to government rehabilitation benefits.<sup>17</sup> There are various reasons why a person rescued from bonded labour may not receive proper documents. The Ministry of Labour and Employment as well as the ILO treat the issue primarily as an economic problem with an emphasis on preventing bondage. Consequently, there is no provision for granting relief to labourers already in bondage. Furthermore, perpetrators can often afford the best legal assistance, which enables them

<sup>9</sup> Push And Pull Factors That Perpetuate Human Trafficking. (2022, Jun 09). Edubirdie. <https://edubirdie.com/examples/push-and-pull-factors-that-perpetuate-human-trafficking/>

<sup>10</sup> Premchander, S.; Prameela, V.; Chidambaramanathan, M., Prevention and elimination of bonded labour: The potential and limits of microfinance-led approaches; ILO, 2014. Available at: < [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/publication/wcms\\_334875.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_334875.pdf) >

<sup>11</sup> Terminology, Global Slavery Index. Available at: <<http://www.globalslaveryindex.org/terminology/>>

<sup>12</sup> The Global Slavery Index, 2022. Available at: <https://www.walkfree.org/global-slavery-index/>

<sup>13</sup> Report on Global Alliance against Forced Labour, ILO. Available at: <[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf)>

<sup>14</sup> 2021 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. International Labour Organization and Walk Free Foundation. September 2022 Available at: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf)

<sup>15</sup> Child Labor and Forced Labor Reports: India, Bureau of International Labor Affairs, U.S. Department of Labor. Available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/india>

<sup>16</sup> Annual Report 2021-2022, Ministry of Labour and Employment, Government of India. Available at: <https://labour.gov.in/annual-reports>

<sup>17</sup> Supra at 108. Annual Reports of the Ministry of Labour and Employment only give data on the number of released labourers and on the number of labourers provided rehabilitation assistance.



to escape the hands of justice and makes for feeble deterrence. Advocates for the eradication of bonded labour are forced to develop alternative methods to study the problem due to the absence of official statistics.

# THE RELATIONSHIP BETWEEN BONDED LABOUR AND MINIMUM WAGES

The Bonded Labour Act and related laws delineate the conditions that frequently constitute bonded labour. There are generally four characteristics of a bonded labourer:

1. He is paid less than minimum wage or no wage at all;
2. He forfeits his freedom of employment and the right to take alternative employment;
3. He forfeits the right to move freely throughout India;
4. He forfeits the right to sell his goods or services in the marketplace.

Under the Bonded Labour Act, it is not necessary for all three forfeitures to exist in order to establish bonded labour; forfeiture of just one freedom or right is sufficient. Moreover, the Supreme Court has established that the failure to pay minimum wages in accordance with the MWA creates a rebuttable presumption of bonded labour. In the case of *People's Union for Democratic Rights v. Union of India*<sup>18</sup> the Hon'ble Supreme Court of India stated that: "It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive." Thus, while minimum wage violations do not occur only in the context of bonded labour, a bonded labour victim will always have been denied minimum wages and should seek to recover the same.

<sup>18</sup> *People's Union for Democratic Rights v. Union of India*, 1982 AIR (SC) 1473.



### **3. LEGAL FRAMEWORK**

# OVERVIEW OF THE CODE ON WAGES ACT, 2019

The Code on Wages Act, 2019 replaces four labour legislations in India, namely the Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965, and the Equal Remuneration Act, 1976. Therefore, minimum wage claims under bonded labour cases will be processed under the provisions of the Code on Wages Act, 2019. Chapter II of the Code on Wages Act deals with Minimum Wages, and Chapter III deals with the Payment of Wages.

## FEATURES OF THE CODE ON WAGES ACT

**Definition:** Section 2(k) of the Code on Wages Act defines an employee as “any person employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.” Section 2(l) defines an employer as “a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment.” This definition also encompasses managers, contractors and legal representatives of a deceased employer.

**Fixation of Minimum Wages:** The appropriate Government appointed under the Code on Wages Act fixes a minimum rate of wages on the basis of (a) for time work; or (b) for piece work. Minimum wage on the basis of time of work can be compounded hourly, daily or monthly.<sup>19</sup> The Act also places guidelines for Appropriate Governments to take into account the skill of workers (such as skills of unskilled, skilled, semi-skilled and highly-skilled) and/ or geographical area (the Central Government shall divide the concerned geographical area into three categories, that is to say the metropolitan area, non-metropolitan area and the rural area)<sup>20</sup> while determining the minimum wage.<sup>21</sup> In addition, factors such as arduousness of work due to temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work can be analyzed to fix the minimum wage as well.<sup>22</sup> The Central Government would fix the floor wage taking into account the minimum living standards of a worker in different geographical areas and the State Government may not fix the minimum wage below the floor rate.<sup>23</sup> The Code on Wages Act also requires an employer to pay the employee an overtime rate which shall not be less than twice the normal rate of wages if the employee works on any day in excess of the number of hours constituting a normal working day.<sup>24</sup>

**Content of Minimum Wages:** Section 2(y) of the Code on Wages Act, 2019 defines wages. Wages include salary, allowance, or any other component expressed in monetary terms. This does not include bonuses payable to employees, house rent allowance, or travelling allowance, among other

<sup>19</sup> Code on Wages Act, § 6(4).

<sup>20</sup> Gazette Notification for Draft Code on Wages(central) Rules, 2020 Available at: <https://labour.gov.in/sites/default/files/gazette%20notification.pdf>

<sup>21</sup> Code on Wages Act, 2019 §6(6)(a).

<sup>22</sup> Code on Wages Act, 2019 §6(6)(b).

<sup>23</sup> Code on Wages Act, 2019 §9.

<sup>24</sup> Code on Wages Act, 2019 §14.

remunerations, i.e. for the purpose of bonded labour prosecutions, the accused cannot claim giving housing or house allowance instead of pay to circumvent penalty.

**Applies to all employment:** The most significant difference between Minimum Wages Act, 1948 and Code on Wages, 2019 is that, under Code on Wages Act, the minimum wage scheme is now extended to all types of employment and is not restricted only to scheduled employment. The Code on Wages Act has done away with the concept of scheduled employment. However, the Code on Wages (Central) Rules, 2020 has classified all employments in categories, i.e. unskilled, semiskilled, skilled and highly-skilled.

## FILING CLAIMS FOR UNPAID WAGES

- 1. Who can file the claim:** Any claim with regard to Minimum Wages (or any provision of the Code on Wages Act) can be filed by the employee concerned, any Trade Union which the employee is a member, as well as the Inspector-cum Facilitator.<sup>23</sup> A single application can be filed on behalf of any number of employees employed in an establishment.<sup>24</sup>
- 2. Who can hear the claim:** The appropriate Government will appoint through a notification in the official Gazette one or more authorities to hear and decide the claims under the Code on Wages Act, 2019. The appointed authority must mandatorily not be below the rank of a Gazetted Officer.<sup>25</sup> As per Code on Wages (Bihar) Rules, 2021 this Officer would have a rank equivalent to the level of Under-Secretary of Government of India or above.<sup>26</sup> The authority appointed under this provision shall have the powers of a Civil Court.<sup>27</sup> However, disputes regarding bonus payment is deemed to be industrial dispute.<sup>28</sup> The aggrieved may file an appeal before the appropriate authority appointed by the appropriate Government within 90 days of such order.<sup>29</sup>
- 3. Time limit for filing a claim:** Applicants must bring claims within three years from the date that the claim arises or prove that they had sufficient cause for not making an application during that period.<sup>30</sup> The Code on Wages has increased the time limit for filing a claim from six months under the Minimum Wages Act, 1948 to three years.
- 4. Award:** The appropriate authority may order the payment of compensation in addition to the claim, an amount ten times the value of the original claim, and must decide the award within three months.<sup>31</sup> If the employer fails to pay the compensation, the appropriate authority can issue a Certificate of Recovery to the Collector or District Magistrate where the establishment is located. There are also criminal offences under the Code on Wages Act, punishable by both imprisonment and fines.

<sup>25</sup> Code on Wages Act, 2019 §45(4).

<sup>26</sup> Code on Wages Act, 2019 §45(5).

<sup>27</sup> Code on Wages Act, 2019 §45(1).

<sup>28</sup> Code on Wages (Bihar) Rules, 2021 §51.

<sup>29</sup> Code on Wages Act, 2019 § 45(7).

<sup>30</sup> Code on Wages Act, 2019 § 46.

<sup>31</sup> Code on Wages Act, 2019 § 49.

<sup>32</sup> Code on Wages Act, 2019 §45(6).

<sup>33</sup> Code on Wages Act, 2019 §45(2).

# CODE ON WAGES (BIHAR) RULES

The Draft Code on Wages (Bihar) Rules, 2021, pursuant to Code on Wages (Central) Rules, 2020, has categorised the occupations of the employees into four categories that are to say unskilled, semi-skilled, skilled and highly skilled. An effort has been made to cover the organized and unorganized sectors.<sup>34</sup>

The Draft Code on Wages (Bihar) Rules, 2021 has set forth the computation of minimum wages on the basis of the following:

The minimum wage in the State of Bihar would be fixed on a day basis on the following criteria:<sup>35</sup>

- The standard working-class family, which includes a spouse and two children apart from the earning worker; an equivalent of three adult consumption units;
- A net intake of 2700 calories per day per consumption unit;
- 66 meters of cloth per year per standard working-class family;
- Housing rent expenditure to constitute 10 per cent of food and clothing expenditure;
- Fuel, electricity and other miscellaneous items of expenditure to constitute 20 per cent of minimum wage; and
- Expenditure for children's education, medical requirement, recreation and expenditure

The recommendation of the Advisory Board for fixation of minimum wage and the Consumer Price Index notified by the Labour Bureau Government of India may also be considered while determining minimum wage in arduousness of work like temperature or humidity or hazardous occupations or processes, dangerous operation or underground work.

<sup>34</sup> Refer Schedule E, Draft Code on Wages (Bihar) Rules, 2021, Rule 4(3).

<sup>35</sup> Draft Code on Wages (Bihar) Rules, 2021 §3(1).





# **4. STANDARD OPERATING PROCEDURES FOR MINIMUM WAGE CLAIMS IN BIHAR**

This section outlines the procedures that should be followed when pursuing a minimum wage claim in the State of Bihar. While many of the general steps that apply to filing a minimum wage claim are consistent among states, it is important to check the rules provided by the Appropriate Authority in each Code on Wages States Rules or for such claims. In addition, many states would have amendments to the Code on Wages Act that may affect the procedure for filing a minimum wage claim.

- Step 1: Determine the Category of Employment of the Claimant
- Step 2: Confirm that the Claim is Timely
- Step 3: Determine the Statutory Minimum Wage for that Employment
- Step 4: Determine if Overtime Wages Are Due
- Step 5: Determine the Wages that Were Actually Paid
- Step 6: Determine if There are Improper Inclusions in Wages
- Step 7: Determine if Unauthorized Deductions were Made
- Step 8: Calculate the Amount of Wages Due
- Step 9: Determine the “Appropriate Authority” Before Whom to File a Claim
- Step 10: Commence Filing Claim
- Step 11: Appear Before the Officer for Enquiry
- Step 12: Obtain the Determined Claim and Certificate of Recovery
- Step 13: File an Appeal from an Adverse Order

## STEP 1: DETERMINE THE CATEGORY OF EMPLOYMENT OF THE CLAIMANT

Determine the Category of Employment of the Claimant	
Timeline:	
NGO	ADVOCATE
The NGO should determine the category of the claimant’s employment (unskilled, semi-skilled, skilled, highly skilled) based on information provided by the claimant.	The Advocate should confirm the claimant category the claimant is working in specified in the Schedule to the Code on Wages Rules.
Points to Note	
Based on the information provided by the claimant, the NGO must ascertain the category of employment referring to Schedule E of Draft Code on Wages (Bihar) Rules, 2021. This is necessary as different skilled employee categories will have a different minimum wage rate, notified by the Appropriate Government.	

## STEP 2: CONFIRM THAT THE CLAIM IS TIMELY

Confirm that the Claim is Timely	
Timeline:	
NGO	ADVOCATE
The NGO should ensure that the claim is filed as soon after the rescue as possible, in order to fall within the three-year limitation.	The Advocate should confirm that the claim is being filed within three years from the date on which the minimum wages became payable.

Points to Note
<p><b>Late Claims:</b> If more than three years have passed since the minimum wage claim became due, the Advocate can show “sufficient cause” for not making the application within such period, pursuant to Code on Wages Act § 45(6). The local authority has broad discretion to condone such delays and permit late filings, and the tenor of most court opinions is that liberal interpretation should be given to permit late claims. However, it is critical that an application for condonation of delay be filed and reviewed by the local authority prior to a decision on the merits; if no judgment is made on the condonation application, any wages awarded can be vacated on appeal.</p> <p><b>Important Cases analyzing the “sufficient cause” requirement under the Minimum Wages Act, 1948</b></p> <ul style="list-style-type: none"> <li>• <u>Rambal Ltd v Deputy Commissioner of Labour II (MANU/TN/0639/2015)</u>: The court gives a lengthy explanation of the policy purposes of the MWA and the authority’s discretion to find “sufficient cause” for delays in filing after six months have passed.</li> <li>• <u>Lonand Gram Panchayat v. Ramgiri Cosavi (Supreme Court of India, 1967)</u>: In this case, the employees had relied on the assurances of inspectors and other government officials that proper steps would be taken to remedy grievances in refraining to file a timely claim under the MWA. The Supreme Court found that the employees were not guilty of inaction or negligence since their delay was due to the mistaken belief that relief would be granted through intervention of inspectors, and thus “sufficient cause” was shown.</li> </ul> <p>It is likely that in the Courts would interpret ‘sufficient cause’ under Code on Wages Act harmoniously in order to give it the effect of decisions under the MWA.</p>

## STEP 3: DETERMINE THE STATUTORY MINIMUM WAGE FOR THAT EMPLOYMENT

### Determine the Statutory Minimum Wage for that Employment

Timeline:

#### NGO

The NGO should determine Bihar's statutory minimum wage for the claimant's employment and ensure it is not below the floor wage fixed by the Central Government. The Statutory Minimum Wage can be accessed here: <https://bihar.nic.in>

#### ADVOCATE

The Advocate should multiply the statutory minimum wage by the number of days worked to compute the total minimum wages owed.

### Points to Note

**Government Notifications:** The statutory minimum wage is obtained from the relevant government notification.

## STEP 4: DETERMINE IF OVERTIME WAGES ARE DUE

### Determine if Overtime Wages Are Due

Timeline:

#### NGO

The NGO should communicate with the claimant to determine how many hours he/she was required to work each day or week.

#### ADVOCATE

The Advocate should determine if overtime wages are due and calculate the value of overtime wages at the applicable rate.

### Points to Note

When overtime is due: A normal working day under the Code on Wages comprises of eight hours of work and one or more intervals that shall not exceed one hour.<sup>36</sup> Payment of overtime (at least double the normal rate of wages, with a few exceptions) is due where the claimant has worked more than eight hours a day. The employee will also be paid overtime rate for working on the scheduled rest day<sup>37</sup>

<sup>36</sup> Code on Wages Act, 2019 § 14.

<sup>37</sup> Draft Code on Wages (Bihar) Rules, 2021 §7(4) Available at: <https://labour.gov.in/sites/default/files/gazette%20notification.pdf>



## STEP 5: DETERMINE THE WAGES THAT WERE ACTUALLY PAID

Determine the Wages that were Actually Paid	
Timeline:	
NGO	ADVOCATE
The NGO should request that the Labour Department or the Child Welfare Committee (as the case may be) review the employer's register and records (including attendance card, wage slip, and inspection book, which is required to detail gross wage, deductions from wage, working hours, overtime, etc.) in order to determine the wages that were actually paid to the claimant.	If the employer refuses to permit inspection of records, the Advocate should coordinate with the Labour Department or the Child Welfare Committee (as the case may be) in filing an RTI to review the employer's register and records.

Points to Note
<p><b>Assistance of Inspector:</b> If the employer refuses to provide the requested information, the NGO or Advocate can seek the assistance of an Inspector pursuant to Section 50 of the Code on Wages Act, 2019.</p> <p><b>Record-Keeping Exemption:</b> Under the Code on Wages Act, employers who employ not more than five persons for agriculture or domestic purpose are exempt from keeping strict invoices, muster rolls, payment slips etc. However, when demanded by the Inspector cum Facilitator, the employer must provide reasonable proof of payment of wages.</p>

## STEP 6: DETERMINE IF THERE ARE IMPROPER INCLUSIONS IN WAGES

Determine if there are Improper Inclusions in Wages	
Timeline:	
NGO	ADVOCATE
The NGO should communicate with the claimant to obtain further information on what items were improperly included as part of the claimant's wages.	The Advocate should determine if the value of any of the following concessions was improperly included in the wages:



- Any bonuses which do not form part of the remuneration payable under the terms of employment
- House Accommodation/Rent and Utilities
- Contributions to pensions and provident funds
- Conveyance Allowance/Travelling concession
- Special expenses in the course of his employment
- Overtime allowance
- Commission payable
- Gratuity/Retrenchment/Retirement Benefits

### Points to Note

**Remuneration In-Kind:** If the employee is given any remuneration in kind by his employer, in lieu of the whole or part of the wages payable to him, such remuneration shall be deemed to form part of the wages of such employee provided that the value of such remuneration in kind does not exceed fifteen per cent of the total wages payable to him.<sup>38</sup>

## STEP 7: DETERMINE IF UNAUTHORIZED DEDUCTIONS WERE MADE

### Determine if Unauthorized Deductions Were Made

Timeline:

#### NGO

The NGO should communicate with the claimant to obtain further information on deductions that the employer might have made from the claimant's wages.

#### ADVOCATE

The Advocate should determine if any deductions were made other than the following authorized deductions:

- Fines imposed on him
- Absence from duty
- Damages to goods caused by the employee's negligence
- House accommodation supplied by the employer
- Certain amenities and services as authorized by the Central Government

<sup>38</sup> Code on Wages Act, 2019 §2(y).

- Recovery of advances or loans
- Income tax payable by employee
- Repayment of advances from social security schemes
- Payment of fee to Trade Union
- Deductions in course of employment in the Railways

## Points to Note

**Full list of deductions:** The full list of permissible deductions can be found in Section 18 of the Code on Wages Act, 2019.

**Limit on Deductions:** Deductions cannot exceed 50 per cent of the wages of the employee.<sup>39</sup> In case the deductions exceed fifty per cent, the excess can be recovered under the provisions of the Code on Wages Act. The excess shall be carried forward and recovered from the wages of succeeding wage period(s) as installments so that the recovery in any month shall not exceed the fifty per cent of the wages of the employee in that month.<sup>40</sup>

The Code on Wages Act and the Rules that supplement it has also laid down procedures to intimate the employee regarding how fines and deductions are prescribed.<sup>41</sup>

## STEP 8: CALCULATE THE AMOUNT OF WAGES DUE

### Calculate the Amount of Wages Due

Timeline:

#### NGO

The NGO should assist in calculating the total amount of wages due to the claimant, based on the information provided in Steps 3-7.

#### ADVOCATE

The Advocate should calculate the amount due using this equation:  
**[Statutory Minimum Wages + Overtime Wages Due] – [Amount Received (excluding improper allowances and in-kind payment) + Authorized Deductions] = Minimum Wages Awarded (x 2-10 discretionary)**

<sup>39</sup> Code on Wages Act, 2019 §18 (4).

<sup>40</sup> Draft Code on Wages (Central) Rules, 2020 § 13; Draft Code on Wages (Bihar) Rules, 2022 §12.

<sup>41</sup> Draft Code on Wages (Central) Rules, 2020 § 17, §18.

## Points to Note

### EXAMPLE OF CALCULATION:

The claimant has been working in a Bihar brick kiln for two years, often over 12 hours per day. The minimum wage for brick kiln manufactory w.e.f. 14.03.2024 is Rs.410/- per day under the Minimum Wages Act, 1948.<sup>42</sup> Claimant was only paid Rs. 600 per week. His minimum wages award should be calculated as follows:

Daily Minimum Wage (Rs. 410) x Days Worked (7) = Weekly Minimum Wage Due of **Rs. 2870/-** [Calculate Overtime Payment and include]

Wage Actually Paid – Weekly Wage of **Rs. 600**

Difference Due – **Rs.2270** per week If the claimant worked 25 weeks in the past six months, **Rs. 2270 x 25 = total back wages of Rs. 56,750**

If Authority multiplies by 10, then the award should be **Rs. 56,75,000/-**

## STEP 9: DETERMINE THE “APPROPRIATE AUTHORITY” BEFORE WHOM TO FILE A CLAIM

### Determine the “Appropriate Authority” Before Whom to File a Claim

Timeline:

#### NGO

The NGO or Advocate (as the case may be) should file a complaint to the appropriate authority notified under the notification.

#### ADVOCATE

The NGO or Advocate (as the case may be) should file a complaint to the appropriate authority notified under the notification.

## Points to Note

See the website of the Bihar Labour Resources Department at <https://state.bihar.gov.in/labour/CitizenHome.html> for information pertaining to the “appropriate authority” for filing minimum wage claims.

<sup>42</sup> The Bihar Minimum Wage Notification, 2024 (<https://compliancebook.in/wp-content/uploads/2024/04/BiharRevised-Minimum-Wages-Notification-April-2024.pdf>).

## STEP 10: COMMENCE FILING A CLAIM

Commence Filing Claim	
Timeline:	
NGO	ADVOCATE
<p>The NGO can guide the claimant to file a complaint using <b>Form II</b> in the Appendix to the Code on Wages (Bihar) Rules, 2021. <i>See Appendix for sample Forms.</i></p> <p>The NGO should determine if it makes sense to aggregate the claims of multiple employees seeking wages from the same employer, pursuant to Code on Wages Act, Section 45(5).</p>	<p>The Advocate can approach the Inspectorcum-Facilitator to commence a claim.</p>
Points to Note	
<p>Neither the Code on Wages Act, 2019, Draft Code on Wages (Central) Rules, 2020 or Draft Code on Wages (Bihar) Rule, 2021 contains provisions for the NGO or Advocate to file a complaint on behalf of the employee.</p>	

## STEP 11: APPEAR BEFORE THE OFFICER FOR ENQUIRY

Appear Before the Officer for Enquiry	
Timeline:	
NGO	ADVOCATE
<p>If the NGO must equip the claimant to appear before the Officer (who is appointed by the notification the State Government)</p>	<p>The Advocate can approach the Inspectorcum-Facilitator to commence a claim.</p>

## STEP 12: OBTAIN THE DETERMINED CLAIM AND CERTIFICATE OF RECOVERY

Obtain the Determined Claim and Certificate of Recovery	
Timeline:	
NGO	ADVOCATE
After the Officer has determined the claim, the NGO ensure that the claimant is paid the compensation awarded	<p>The Advocate must ensure that the Officer shall determine the claim within 3 months of filing the complaint.</p> <p>If the employer fails to pay the compensation, the Advocate should ensure that the Officer issues a Certificate of Recovery to the Collector of Magistrate</p>

## STEP 13: FILE AN APPEAL FROM AN ADVERSE ORDER

File an Appeal from an Adverse Judgment	
Timeline:	
NGO	ADVOCATE
	<p>The Advocate must assist the claimant in filing an appeal before the Appropriate Authority by filing Form III under the Schedule in Draft Code on Wages (Bihar) Rules, 2021. See Appendix for Sample Forms.</p>

Points to Note
<p><b>Allowance of Appeal:</b> The Code on Wages Act, 2019 requires the appeal to be filed within 90 days from the date the order is awarded. The 90-day deadline can be extended if it is satisfied that the delay has occurred due to sufficient cause.</p> <p><b>Appropriate Body for Appeal:</b> The appropriate body/authority to whom an appeal must be submitted will be set forth in a notification issued by the state government.</p>





# 5. APPENDIX

Form II - Single Application u/s 45(5) before the Authority appointed u/s 45(1) of the Code on Wages, 2019 [Rule 47]

**FORM-II**  
[See rule 47]  
[SINGLE APPLICATION UNDER SUB-SECTION (5) OF SECTION 45]  
BEFORE THE AUTHORITY APPOINTED UNDER SUB SECTION (1) OF SECTION 45 OF  
THE CODE ON  
WAGES, 2019 (29 OF 2019)  
FOR..... AREA.....

Application No.....of 20.....  
Between ABC and (State the number).....other.....

Applicant  
(Through employees concerned or registered trade union or Inspector- cum- Facilitator  
Address.....

And  
XYZ.....  
Address.....

The application states as follows:

- (1) The applicant(s) whose name(s) appear in the attached schedule was/were/has/have been employed from.....to..... as.....(category) in.....(establishment) Shri/M/s.....engaged in.....(nature of work) which is/are covered by the Code on Wages, 2019.
- (2) The opponent(s) is/are the employer(s) within the meaning of section 2(l) of the Code on Wages, 2019.
- (3) (a) The applicant(s) has/ have been paid wages at less than the minimum rates of wages fixed for their category (categories) of employment(s) under the Code by Rs.....Per day for the period(s) from.....to.....  
(b) The applicant(s) has/ have not been paid wages at Rs..... Per day for the weekly days of rest from.....to....  
(c) The applicant(s) has/ have not been paid wages at overtime rate(s) for the period from.....to....  
(d) The applicant(s) has/have not been paid wages for period from .....to.....  
(e) Deductions have been made which are in contravention of the Code, from the wage(s) of the applicant(s) as per details specified in the annexure appended with this application.  
(f) The applicant(s) has/have not been paid minimum bonus for the accounting year .....
- (4) The applicant(s) estimate(s) the value of relief sought byhim/ them on each amount as under:  
(a) Rs.....  
(b) Rs.....  
(c) Rs.....  
Total Rs.....
- (5) The applicant(s), therefore, pray(s) that a direction may be issued under section 45(2) of the Code on Wages, 2019 for;  
(a) payment of the difference between the wages payable under the Code and the wages actually paid,  
(b) payment of remuneration for the days of rest  
(c) payment of wages at the overtime rates,  
(d) compensation amounting to Rs.....
- (6) The applicant(s) do hereby solemnly declare(s) that the facts stated in this application are true to the best of his/their knowledge, belief and information.

Dated.....

Signature or thumb-impression of the employed  
person(s), or official of a registered trade union  
duly authorized or Inspector- cum- Facilitator.

**Note:** The applicant(s), if required, may append annexures containing details, with this application.



**FORM III**  
(See rule 48)  
**Appeal under Section 49(1) of the Code on Wages, 2019**  
**Before The Appellate Authority under the Code on Wages, 2019**

A.B.C

Address.....APPELLANT

Vs.

C.D.E.

Address.....

RESPONDENT

**DETAILS OF APPEAL:**

1. Particulars of the order against which the appeal is made :  
Number and date :  
The authority who has passed the impugned order:  
Amount awarded:  
Compensation awarded , if any :
2. Facts of the case :  
(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue or fact).
3. Grounds for appeal :
4. Matters not previously filed or pending with any other Court or any Appellate Authority:  
The appellant further declares that he had not previously filed any appeal, writ petition or suit regarding the matter in respect of which this appeal has been made, before any Court or any other Authority or Appellate Authority nor any such appeal, writ petition or suit is pending before any of them.
5. Reliefs sought :  
In view of the facts mentioned above the appellant prays for the following relief(s) :—  
[Specify below the relief(s) sought]
6. List of enclosures:
  - 1.
  - 2.
  - 3.
  - 4.
  - .....

**Date :**

**Place :**

**Signature of the appellant.**

**For office use**

-----  
**Date of filing**

**or**

**Date of receipt by post**

**Registration No.**

**Authorized Signatory**



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