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FAIR PAY, STRONG ECONOMY: THE TUG OF WAR BETWEEN MINIMUM WAGES & FINANCIAL STABILITY OF THE EMPLOYEE

~ Meet Talreja¹

Abstract

The economy is undoubtedly getting stronger and will surely grow more but, are the labourers who contribute a lot in this growth, growing along with the economy? Do they even get paid fairly for what they sweat? Do they get enough for survival? To protect these rights Government has set certain laws which provide them with minimum wage and other certain facilities for dignified life that will be explored in the course of this paper.

Keywords

Employer, Labours, Minimum Wages, Cost of Living Index, Basic Human Rights, Dignified Life.

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INTRODUCTION

In a developing economy like India where the problem of unemployment is very common and the bargaining skills of labour is poor, the odds of worker getting exploited for cheap labour and cost cutting of the riches is very high. In an attempt to fix the problem of poor labours “*THE MINIMUM WAGES ACT, 1948*” was enacted and enforced by the government to fix certain minimum wages which should be provided to any labour working in the country.

WHO ARE LABOURERS?

Contrary to common parlance, labour here means one who is mentioned as an employee and to whom this act applies. Section 2(g) which explains the definition of scheduled employment says that the Scheduled employment is the one which is mentioned in the Schedule of this act. Which further divides employment into two parts (as described in the schedule of the Minimum Wages Act)

PART I

The Part one of the Schedule lists some 12 types of employment which are all described according the type of industries a labour work in

1. worker of a woollen carpet making or shawl weaving Industry.
2. worker of a rice, flour, or dal mill.
3. worker in any tobacco (including bidi making) manufacturing unit.
4. worker who is in plantation work such as cinchona, rubber, tea, or coffee.
5. worker working in an oil mill.
6. worker working under any local authority
7. worker who is in work of construction or maintenance of roads or in building operations.
8. worker of a stone breaking or stone crushing industry.
9. worker of any lac manufacturing industry.
10. worker of any mica works.
11. worker who works in public motor transport.

12. worker of any tanneries and leather manufacturing industry.

PART II

The Part 2 of the Schedule mainly covers the agricultural activity it covers all kind of work which can be called as farming.

It covers all type of employment in agricultural field, which is any kind of farming, including cultivation, tillage of soil, harvesting, dairy farming, etc. Further it also includes any kind of horticultural commodity, raising of livestock, bees or poultry farming and much more. Basically, it has a wide scope which includes every single activity done on a farm land by a farmer. Including any delivery, storage, carriage, and transportation to market of all the farm products that are been produced.

- Central government or State government (under sec 27 of the act) can by notification in public gazette make changes in the schedule.

NATIONAL MINIMUM WAGES

The concept of national minimum wages was first raised when the problem of the workers getting exploited came into account and the act was made to protect the rights of the poor workers, but it faced various problems in the past it was not so easy to decide a particular amount for the workers. This faced a serious issue of the socio-economic condition of the labourers. The states and central governments were never unanimous on the need for national minimum wages as the socio-economic condition varies from state to state, and industry to industry due to various factors such as cost of living index, living standard, agro-climatic factors and so on which caused lot of harm to regional uniformity.

So, in order to bring regional uniformity and bridge the gap between the socio-economic conditions of the labours of different regions the power was given to state government to decide the minimum wages to be given to labourers in their state/region. This was a practical approach to the problem where uniformity is concerned, but the outcomes were still unsatisfactory as it led to a lot of discrimination in the class of labourers and much more various problems.

The Regional Labour Ministers' Conference replaced the six Regional Minimum Wages Advisory Committees, which had been established in 1987 to promote regional uniformity. In 1985, the 28th

Labour Conference recommended a national minimum wage for subsistence, below which no wage could be fixed. From there the central government adopted the concept of **national floor-level minimum wage** which was the amount under which no wages were to be provided to any labour in the state, basically, it was the base minimum wage to be given per day, more can be given/decided by the individual state governments. The national floor level minimum wage was first fixed as ₹ 35 in the year 1996 based on the suggestion of the National commission on Labour in the year 1991, which are generally revised after every 5 years. The national floor level minimum wage in the year 2019 was ₹ 178 which remained unchanged till date

You might be curious to know how are those wages structured by state dedicating different labourers, well there are different types of wages that are to be kept in mind while considering the wage structure of the labourers

WAGE STRUCTURE

- **Minimum wage:**

The wage which is to be paid by the employer to keep a worker just above the poverty line can be understood as a minimum wage. There is no as such clear definition of word minimum wage, presumably because it would be difficult to set a particular amount for all the different natures of the work in various industries. So, in general terms it can be understood that the bare minimum necessity of worker such as food cloth and shelter must be at least satisfied by that amount what we can call a minimum wage of a person. This narrow definition and understanding were challenged in the case *Unichoyi v. Kerala Government*, it was held in this case that "the Act contemplates that minimum wages rates should be fixed in the scheduled industries as it fulfils dual intention of providing subsistence and maintenance of the worker and his family and preserving his efficiency as a worker."²

² Unichoyi And Others vs The State of Kerala, AIR 12, 1962 SCR (1) 946.

The following five standards were taken into consideration by the Tripartite Committee of the Indian Labour Conference in 1957 for the first time in fixation of the "minimum wage."

“(i) The standard working class family (3 consumption units for one earner). (ii) Minimum food requirements (based on a net intake of calories, as recommended by Dr. Avkroyl for an Indian adult of moderate activity). (iii) Clothing requirements (estimated at per capita consumption of 18 yards per annum x average four family members 72 yards. (iv) Housing (the rent corresponding to the minimum area provided for under Government Industrial Housing Scheme). (v) Fuel, lighting, and other 'miscellaneous' items of expenditure (Constituting 20% of the total minimum wages).”³

- **Fair wage**

The concept of fair wage is evolved looking at the problem of industries and class discrimination in between workers of different industries. Wages must not only be calculated keeping in mind the worker but also the problem of employer i.e., Industries must be taken in consideration. The industries' capacity to bear the financial burden must also be considered. Fair wage can be understood in such a way that the wage given to worker should be sufficient for him to provide is family with food shelter and clothing but should also not exceed his wage-earning capacity in the class establishment he belongs to. Basically, fair wage means the earning capacity and the work load.

Minimum wage is the lower limit of Fair wage.

- **The living wages**

Keeping in mind the labours' right to a dignified life the concept of living wage was evolved which says that only food shelter and clothing cannot be considered as basic needs of human life. All the other basic needs of a human being apart from food clothing and shelter to lead a dignified life such as health education and other such social needs must be

³ S.P. Jain, Industrial and Labour Laws, (Dhanpat Rai & CO. (p) LTD).

fulfilled. Various methods such as the Cost of Living Index in order to see what a human need to lead a basic but dignified life are used.

The Fair Wage Committee defined the "living wage" as follows in its 1949 report, which was made public by the Ministry of Labor of the Government of India:

“The living wage should be sufficient for the male earner to provide for himself and his family not only the essentials of food, clothing, and shelter but it should also provide him with bit of a comfort to his family which includes education of his children, any medical care required to his family, an insurance against any mis happenings and also his also his needs for survival in old age, and many other such social requirements must be fulfilled.

CONSTITUTIONAL VALIDITY

Time and again since the enactment of the act the constitutional validity of *THE MINIMUM WAGES ACT 1948*, was being challenged in the court of the law. Some of the common grounds of challenge were Article 19(1)(g) & Article 14 of the Indian Constitution. However, the Judiciary played a key role in establishing the constitutional validity of the act and protecting the rights of poor labourers. Judiciary was also of the opinion that if not paid the minimum wages the employer can be liable for forced labour.

The constitutional validity of the Minimum Wages Act, 1948 was first challenged in the case, *Bijay Cotton Mills Ltd. v. The State of Ajmer, 1954*⁴. There was a dispute arose between industry and the workers being exploited, the industry in its defence pleaded before the court that some of the provisions of this act were unconstitutional and must be struck down as they restricted the company to resume the business until the dues were paid which led to difficulties in managing the business, therefore it is a violation to **Article 19(1)(g)** which guarantees freedom of trade and business

However, the Supreme Court of India held that these provisions were not violative of the Article 19(1)(g) of The Indian Constitution and were permissible as the provisions of this act were imposed for the benefit of the general public as empowered by article 43 of the Indian Constitution which states Directive Principle of State Policy. Concluding that Supreme court said though some

⁴Bijay Cotton Mills Ltd v. The state of Ajmer, AIR 33, 1955 SCR (1) 752.

provision of the act may feel restrictive and many employers may find it difficult to continue the business with certain restrictions those restrictions are imposed to protect the interest of general public so, it cannot be held unreasonable and struck down on these grounds.

The act is non violative of the **Article 14** of the Indian constitution which guarantees Right to equality before law. The difference in the minimum wages paid to workers in different states was not due to inequality but rather to differences in living standards, socioeconomic conditions, the cost of goods, and cost of living indices, according to Shri Mallikarjuna Kharage, India's Union Minister for Labor and Employment. It was perfectly acceptable to be done in order to ensure regional consistency in the class of workers

Also In the case, *N.M. Wadia Charitable Hospital v. State of Maharashtra, 1986*,⁵ Bombay High Court held that fixing different wage rate in different localities was not Inequality. It was allowed by the Constitution of India and The Minimum Wages act 1948 provisions Hence, variation in minimum wage rate of the different states is not a violation of Article 14.

ISSUES

The minimum wages act's provisions allow the Government to revise the national minimum rate of wage only once in a period of 5 years. Which in the time of rapidly increasing rate of inflation is quite too much, especially in the Metropolitan cities. Also, since the year 2019 the national floor level wage is ₹178 which remains unchanged till date which is not at all fair for workers to survive such a pandemic in the same basic wage and till after 3 years it remained unchanged.

The criteria on what the states and central government decide the rate of minimum wages are not properly defined, the commonly used method is only using cost of living index, which changes every year but the law allow government to revise minimum wage once every 5 years only. Also, that is not the only accurate method to decide the minimum wage.

Government providing facility to make availability of food, shelter, house, education, and medical aid are not easily accessible to labourers due to their unawareness, and are misused by other peoples who are not in actual need of those resources.

⁵ N.M Wadia Charitable Hospital v. State of Maharashtra and Ors, (1993) III LLJ 536 Bom.

Lack of interest from the side of government employees providing compliances with the facilities. The employees appointed to comply with the duty to provide all these facilities show very low interest in fulfilling their needs.

Non-compliance with the law is the major factor which diminishes the whole point of making a law that protects rights of poor labours. The penalties/imprisonment terms are kept so minimal the industrialist exploiting labourers would not be afraid of the small penalties viz easy for him to be paid.

Lack of education facility and awareness to labour which ultimately leads them to more vulnerable situation to be easily pulled out of. Labourers being function as a hard worker since ages are totally unaware about what facilities are being given to them or their children to educate themselves in order to attain a better life. This cycle continues and time and again they get exploited.

SOLUTION

The term of revision of the national minimum wages must be reduce to once a year as due to increasing rate of inflation it is hard to survive in same basic income for the years. Moreover, during the time of pandemic or some natural calamity it should be revised more often as those are the time where labourers are the one most affected.

Clear definition of the criteria to be used to calculate/decide the national minimum wages must be given. Most importantly the wages must be decided keeping in mind the purchasing power parity of the workers of their region. which would be one of the accurate ways to decide wages rather than just relying on the cost of living index.

The employers must not exploit uneducated labourers and extort the resources made available to them at a cheaper cost by government, instead the resources should make them accessible to them.

The penal provisions of the act can be made more stricter in order to avoid non compliances of the act which would further lead to the full accomplishment of the purpose of making law viz protecting the rights of the labourers.

Government make the resources/facilities easy accessibility by making the administrative process of such departments simple so they do not face difficulties to access their right.

The major problem of awareness of labourers for whom so much facilities are made available must be solved foremost. Governments must enforce compulsory education of children and must conduct awareness campaigns to make adults aware of their rights

Legal assistance which is not so easily available to those getting exploited must be made available. And must be made aware of their legal rights.

CONCLUSION

All in all, the enactment of The Minimum Wages Act, saved a lot of workers from getting exploited for cheap labour by fixing certain minimum wages. The act also empowers the worker with their basic human rights Moreover, it also provides with guarantee of their right to get paid for overtime, the right to get rest breaks during long working hours, and to join a trade union which helps them represent themselves as a community in a whole.

However, few changes regarding implementation can make the whole purpose fruitful. Although, the rights are been provided and empowerment is being done the strict implementation and compliances of the law would further more make it practical to approach for the rights provided. Some extra changes in penal provision and additional powers to authorities making the implementation can serve the purpose of stricter implementation of the act. By making it more applicable Government can ensure a better life for labours.