



Minimum Wages Act-Issues and Concerns in India

H. Nasreen Sulthana

Student, LLB(Hons), Tamil Nadu Dr. Ambedkar Law University (tndalu)

Abstract: -

The wages and employment policies relating to the unorganized workers and in particular the issue of minimum wages paid to them had been a subject of considerable discussion among union leaders and labour experts in India. Minimum wages act 1948 is a law that set minimum wages that skilled and unskilled workers must be paid in India. While the minimum wage legislation has to a large extent been effective in providing protection to workers in organised sector, with periodic revision, this has not been the case with the unorganised workers who largely remain outside the purview. This paper highlights the issues and concerns relating to Minimum Wages Act, 1948 in India.

Key words: -

wages, implementation, fixation, labour, working hours

Introduction: -

The term 'labour' is included in the 'concurrent list' of the Constitution which provides for labour legislation both by the central and the state governments. Labour laws for most workers in the informal sector are enforced by the state governments, while that for contractors and casual workers in establishments is regulated by the central government. The Indian economy is characterized by a dualism, i.e., the existence of comparatively well organised sector along the decentralized sector with a large population which is self employed¹. According to the reports, 422.6 million workers out of the total workforce of 457.5 million belong to the unorganised/ informal sector in India. The Minimum Wages act, 1948 derives its principle from article 43 enshrined in the Directive Principles of the Constitution of India which mandates that "the state shall endeavour to secure by suitable legislation or economic organization or in any other way, to all the workers, agricultural, industrial, or otherwise,

¹ <http://planningcommission.nic.in/plans/planned/fiveyr/6th/6planch24.html>

a living wage, conditions of work ensuring a decent standards of life, and full enjoyment of leisure and social cultural opportunities”² in particular to ensure a fair deal to the labour class. Article 39 also reinforces that the state shall in particular direct it’s policy towards securing (a) that the citizen men and women equally shall have the right to an adequate livelihood and (b) that there is equal pay for equal work for both men and women.

Objectives of the Minimum Wages Act: -

- To ensure that the employee can have the basic physical needs, good health and a level of comfort.
- To ensure a secure and adequate living wage for all labourers in the interest of the public.
- To ensure that the employee has enough to provide for his family.
- Ensuring a decent life standard that pertains to the social comfort of the employee.

Minimum wages in India: -

The Minimum Wages act, 1948 provides for fixation and enforcement of minimum wages in respect of schedule employments to prevent sweating or exploitation of labour through payment of low wages. The objective of the act is to ensure a minimum subsistence wage for workers. The Act requires the appropriate government to minimum rates of wages in respect of employment specified in the schedule and review and revise the minimum rates of wages at intervals not exceeding five years. Once a minimum wage is fixed according to the provisions of the act, to pay the said wages to his employees.

The Minimum Wages rate may be fixed at a) time rate, b) piece rate, c) guaranteed time rate and d) overtime rate³. The Act provides that different minimum wage rate may be fixed for a) different scheduled employment, b) adults, adolescent and children, d) different locations or e) male and female. Also, such minimum wage may be fixed by a) an hour, b) day, c) month, d) any other period may be prescribed by the notified authority⁴.

Norms for fixing minimum wages: -

The fixation of minimum wages in India depends upon various factors like socio-economic and agro-climatic conditions, prices of essential commodities, paying capacity and the local factors influencing the wage rate. It is the reason that the minimum wages vary across the country.

In the absence of any criteria stipulated for fixing the minimum wages in the Minimum Wages Act, The Indian Labour Conference in 1957, had said that the following norms should be taken into account while fixing the minimum wages. The norms for fixing minimum wage rate are (a) three consumption units per earner, (b) minimum food requirement of 2700 calories per average Indian adult, (c) cloth requirement of 72 yards per annum per family, (d) rent corresponding to the minimum area provided under the government’s Industrial Housing

² http://nceus.gov.in/Report_Bill_july_2007.htm

³ Section 3(2) empowers the appropriate government to fix minimum rates of wages.

⁴ Section 3(3) lay downs for fixing wages for different employment, classes, person or localities and wage period.

Scheme and (e) fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total minimum wage, (g) children education, medical requirement, minimum recreation including festivals/ceremonies and provisions for old age, marriage etc⁵. Should further constitute 25% of the total minimum wage.

Constitutional Validity of Minimum Wages Act 1948: -

The constitutionality of Minimum Wages act 1948 was challenged in court cases. Judiciary played a role in establishing its constitutionality, affirming that the act safeguards workers interests, ensuring access to essentials like food, shelter, clothing, education, and medical aid. It was emphasized that paying below the minimum wages amounts to forced labour.

Minimum Wages Act is Not violative of Article 19 of the Constitution:-

The first challenge to the validity of the minimum wages act arose in the case of Bijay Cotton Mills Ltd Vs the State of Ajmer⁶. In this matter, a dispute emerged between the company and its workers concerning wage improvements. The company claimed that these provisions hindered the resumption of trade or business unless minimum wages were paid to workers. The company alleged that this act violated Article 19(1) (g) of the Constitution, which safeguard trade and freedom. The Court ruled that the Act's provisions were not unreasonable and were allowed under Article 19 of the Indian Constitution. And the court highlights that these provisions were enacted for the public's benefits, in line with the Directive Principles of State Policy outlined in Article 43 of the Constitution. Although these provisions might pose challenges for employers in conducting or initiating businesses, they were established to safeguard the public interest. So, this act could not be considered unreasonable.

Minimum Wages Act is not violative of Article 14 of the Constitution:-

In the case of N.M Wadia Charitable Hospital v. State of Maharashtra⁷, the court ruled that setting distinct minimum wage rates for various localities is in accordance with the Constitution and the nation's labour laws. As such, establishing different minimum wage rates for different regions is not discriminatory and does not violative of Article 14 which states equality before law.

Minimum Wages Act is not violative of Article 43: -

The importance of providing labourers with wages that cover not only basic survival but also uphold health and dignity is a matter that's difficult to challenge. This aligns with directive principle of state policy found in Article of our Constitution.

⁵ <https://www.toppr.com/guides/legal-aptitude/labour-laws/minimum-wages-act-1948/>

⁶ 1955 AIR 33, 1955 SCR (1) 752, AIR 1955 SUPREME COURT 33

⁷ (1993) III LLJ 536 BOM

However, there are many challenges to minimum wages legislation in India.

Issues in Implementation of Minimum wages: -

Minimum wages are expected to cover the essential current costs of accommodation, food and clothing of small family. Some of the issues and concerns faced in India regarding minimum wages are:

- **Implementation: -**

The vast informal sector makes the enforcement of minimum wage a difficult task in India. According to report⁸, around 35% of total wage workers did not receive any benefit from this scheme 2009-2010. Subsuming the labour laws in one code was done with the intent to improve compliance but how this transition of more and more workers being paid the minimum wage can be enforced remains a mystery.

- **Consumption: -**

Food being an essential requirement of the human body, calories consumption is one of the crucial factors which determines the minimum wage. The code specifies the energy requirement at 2700 kilocalories. Consumption units are measured in the following way:

1 unit for the wage earner, traditionally taken to be a male, 0.8 unit for the spouse, traditionally the female, and 0.6 unit per child, giving the total of 3 consumption units. Many experts think this calculation may not be enough for growing children, apart from being discriminatory. They propose the break-up in 1+1+0.75+0.75 to give an equivalent of 3.5 consumption units, the present calorie requirement of a standard family⁹. The question of non-food consumption which is given much less significance in comparison to the recent trends.

- **Working hours: -**

Contrary to the standard 8 hours, the code stated the total hours of work in a day as 9. This is rather odd in times when the developed countries are trying to reduce the work hours. Moreover, the maximum number of hours of work including a period of rest is 12. This could prove harmful to employees if any of the employers utilise it to reduce the shifts from three to two.

- **Enforcement: -**

Poor enforcement of the act is another prevalent issue in most of the states in India. The issues arise mainly due to lack of awareness amongst the workers about minimum wage provision and their entitlement under the labour laws. Surveys have shown that almost 80% of the workers in unorganized sector earn less than 20 rupees a day and urban wage of 67 rupees¹⁰.

⁸ <https://scroll.in/article/934142/in>

⁹ <https://thewire.in/labour/>

¹⁰ Rising labour concerns for Indian government, Business standard. March 11, 2008

- Coverage: -

The Act does not put minimum wage in rupees terms, but just stipulates that the wage be a 'living wage'¹¹ which is to be decided by labour department in each state. In order to have minimum wage fixed, the employment or industrial activity has to be included in the schedule of employments. Currently the number of scheduled employments in the central government is 45 whereas in the state sphere the number is 1232. The criterion for inclusion in the list of scheduled employment is that there should be at least 1000 workers engaged in that activity of the state. Thus, many activities are excluded from the list.

Suggestions to make minimum wages more effective: -

- Minimum Wage legislation in India requires the active support of workers, trade unions, and labour associations. Implementation of the government policies and legislations is the main problem in the unorganized sector. It would require sincerity on part of the labour departments in each state to determine minimum wage rate on the basis of ethical and humanitarian concerns in order to ensure basic subsistence to workers in unorganized sectors.
- The need of the hour is not only to increase the basic rates of minimum wages but the basic approach towards the whole issue also needs to be changed.
- Developed countries have brought along the term 'fair wage' to emphasize maintaining a living standard that is more than the bare minimum. The Indian concept of minimum wage is still hooked on the aim to ensure that everyone gets a two square of meal but the food is not the only component of a decent living. There is the issue of health, education, social security, and sustainable living which needs to be reviewed.
- The employers and workers should be made aware about the statutorily determined reward for sweated labour.

Conclusion: -

The yet-to-be-implemented code has sparked debate and discussion on the topic of minimum wage. When legislation applied effectively, it might be beneficial for all the major stakeholders. There is a lack of research on the impact of minimum wage on the employment level from determining the wage level that is fair to all wage earners. Therefore, I analysed that there is a need to remove disparity existing among different states in same occupation within same categories of workers and take necessary steps for proper implementation of Minimum Wage Act, 1948.

¹¹ A 'living wage' is the level of income sufficient to allow workers to support their families.

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