

## A brief legal history of the Minimum Wages Act (1948) and its implementation in India

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### Abstract

This report aims to provide a guide to track the development in the Minimum Wages Act since the Independence of India. Other goals include checking the related legal recourses available at the moment, studying the Act's implementation in various states and noting its recent adjudication. The paper begins with a historical overview of how the Act came into being as well as a view on the amendments made into it. The constitutional mandate given to the Legislature so as to create such a law is also studied. The report then proceeds to examine the concrete implementation of the statutes as revealed by various government and academic reports. The legal resources available in case of violations of fixed minimum wages are traced; notice is made of recent cases of violations that have been taken to Court. Finally, we conclude that the Minimum Wages Act is a special legislation with the power to affect the lives of millions; therefore the rules and implementation of such an Act must of paramount importance to both central and state governments.

### A Historical Perspective: Origins, Objectives and Purpose

In 1943 the Standing Labour Committee and the Indian Labour Conference set up a Labour Investigation committee so as to inquire into the matters relating to working conditions and minimum wages. In 1946 the Standing Labour Committee suggested a specific legislation exclusively dedicated to the issue of minimum wages (Srija 2014, p. 2). A tripartite committee also known as the Fair Wages Committee was established which aimed to set a policy for "fair wages". According to Ghosh and Nandan (2015) this report, submitted by the Standing Labour Committee, became the basis for enacting the minimum wage policy of India.

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*The Minimum Wages Act of 1948* was one of India's first legislations relating to working rights. The Act laid down detailed procedures for setting and listing minimum wages in various industries (Roy 2017, p. 3050). The fixation of wages was to be made by appropriate governments (Central and State levels), for different scheduled employments (based on skilled and unskilled labour, agricultural and non-agricultural employments, and minimum wages determined for different industries across various States in India) under their domain for a specific time period (Srija 2014). British India did not have any laws relating to minimum wages, which were determined by an agreement between the employer and the employee (often based on unequal bargaining power between the two parties; Labor Bureau, Ministry of Labor and Employment, 2005). The purpose of the Minimum Wages Act was therefore to provide more rights to the workingman.

The notion of universal, ensured minimum wage is enshrined in the national Constitution, mainly in the Directive Principles of the State of Policy (Article 39 and 43). Article 39 reads that the State shall make sure that the all citizens have the right to an adequate livelihood and that there is equal pay for equal work for both men and women. Article 43 discusses the State's obligation to protect through both legal and economic means the citizen right to work for a dignified living wage, i.e. a wage capable of providing a decent life standard.

The Tripartite Committee on Fair Wages appointed in 1948 defined three different levels of wages: a living wage, a fair wage, and a minimum wage (Sampath 2016). Living wages were defined as salaries allowing a person to afford a decent standard of living for himself and for his/her family. This definition of dignified wages was considered as the nation's ultimate goal (Mehboob M & Asmat R 2016). However, it was also suggested that wage levels should take into account the national level of industrial capacity. A third factor in equating fair wages should be based on productivity. The committee acknowledged that general wage levels were low and stated that an equilibrium must be created between employee subsistence and general productivity. Finally, the minimum wage was to be determined not only on the basis of subsistence but also on labour efficiency. These observations and objectives formed the essence of the Minimum Wage Act (Mehboob M & Asmat R 2016).

The Objective of the Act was to protect workers from labour exploitation (Chandra Bhavan Boarding and Lodging Bangalore v. State of Mysore and Another, 1969). Goals regarding the restriction of excessively low wages and the 'unfair' competition these implied were relegated to further policies (Kotiswaran P 1992). Protection from exploitation was to be achieved by providing a representation

and speedy compensation process. The provision of an advisory committee and advisory board was to give equal representation to the workingman and the employer so as to reduce the unequal bargaining power characterizing their relationship. The Act thus provided a quick remedy to labour disputes through a summary procedure which would ensure citizen protection with penalty and subsequent prosecution of offending party.

## **Development over the years**

The National Floor Level Commission introduced in 1991 the idea of a National Floor Level Minimum Wage aiming to reduce the disparity between minimum and more generally different levels of average wage across the country. The National Floor Level Minimum Wage has been updated from time to time, keeping in view the rise in the consumer price index and according to recommendations from the Central Advisory Board. It is to be noted that the National Floor Level Minimum Wage is not a statutory measure. This means that the State does not have an obligation to increase the minimum wage in accordance with advices emitted from this body, which works instead as more of a persuasive means for uplifting the minimum wages (Ministry of Labor and Employment).

The Minimum Wage Law is assisted by other legal instruments. These include the Payment of Wages Act of 1936, the Payment of Bonus Act of 1965 and the Equal Remuneration Act of 1976.

## **Comparison of minimum wages between federated states**

While the Minimum Wages Act is a Central legislation, the actual rules referring to Minimum Wages arrangements are mostly (in most professions) set out by the authorities of the federated States. Thus it would perhaps be a good exercise to compare two States who have predominantly voted for left-leaning governments and see how they fare in relation to each other. Another interesting exercise would be to compare two states with a numerous workforce employed in the primary sector.

It is usually understood that the labour market provides higher wages when there are efficient collective bargaining mechanisms in place. The type of parties who have facilitated this bargaining process include the Labour Party in the United Kingdom and self-identified Left parties in India. For the first comparison, that between two states run by left-leaning parties, we shall look at West Bengal and Kerala. Both States have known to be populated with Left supporters and both championed the Land Ceiling act when it was first implemented in the 1970s.

A report by the Labour Bureau (Ministry of Labour and Employment 2011), states the minimum wage for Agricultural activities as amounting to Rs.167 per day in West Bengal and Rs.150 in Kerala. However, in an article by Syria (2014), further studies by the author lead to the claim that the actual wages in Kerala amount to Rupees. 331 for men and Rs. 239 for women whereas in West Bengal they only amount to Rs.113 and Rs.100 respectively. Further, in a report by (Sarkar 2015, p.17), it has been shown that in 2014, the daily wages of plantation workers in Bengal amounted to Rs.95 in comparison to Rs.216.53 in Kerala. There is a stark variation in the rates decided by the respective governments and thus the actual wages being paid. This shows that the government's determination and policy relating to minimum wages is not by itself enough of a driving force to ensure higher wages for the workers. State action must be coupled with strong collective bargaining through trade unions which ensure that the workers get a fair hand at negotiating the wages for themselves and do not only rely on the rates fixed by the government. It is imperative here to point out that the minimum wage set should be treated as the floor and the workers should indeed only negotiate amounts over and above that level, as is the case in Kerala. However, in states like West Bengal even the minimum standard is breached. One must also be wary of the fact that over-unionisation might actually be harmful insofar as it may lead employers to look for cheaper migrant labour from other states, a trend which is visible in the information contained in the Census of India (Office of the Registrar General & Census Commissioner, India 2001). We can clearly see a wave of workers from Tamil Nadu and the neighbouring states migrating to Kerala in search of better salaries.

For our second comparison, we shall be comparing an agrarian state – Uttar Pradesh - with West Bengal. Uttar Pradesh provides a fair comparison considering that agriculture in the state has been highly researched upon and is the dominant sector employing according to Awasthi (2014) a great number of workers. As per the report of Labour Bureau (2013), minimum wages in the cotton textiles sector has been steadily superior in Kolkata than in Kanpur from 1967 to 2012. In fact, on a comparison of real daily wages, one can see that they have decreased in Kanpur from Rs.4.13 to Rs.3.61 whereas Kolkata has on the contrary seen a slight increase in real wages. The report shows that, from a historical perspective, West Bengal has fared better than Uttar Pradesh, providing its workers better wages even though it is still far behind the truly pro-labour state of Kerala.

The Central Government might pass the Minimum Wage Code Bill soon (Khetarpal 2017). This legal act would allow the central government to set a wage below which no state government could endeavour. Though this might seem like a progressive step, whether it would actually benefit the labour

would depend on the Federal Government's political choices. The Centre could give in to regional powers and thus set a low floor that would not have any positive effect on current standards.

### Minimum Wages and the recent violations

The implementation and enforcement of the Minimum Wages Act has however taken a step back. After the recent protest by labourers of 23 steel utensil factories in both Wazirpur at Jantar Mantar, it is understood that the developments in labour regulation are yet to be translated into reality. The labourers were not provided with the wages dictated by the central Government. They decided to take action so as to retrieve the wages they were legally entitled to and they were successful at doing so (Hafeez 2011).

In the case of *Aijaz Ahmad Malla v State of J&K* (Aijaz Ahmad Malla v State of J&K,[2017]) the petitioner, a sweeper in the respondent's school in the region of Jammu and Kashmir, had been denied his minimum wage, and was threatened to be disengaged when he protested. The court dismissed the case and commanded the school authorities to regularize the services and provide the petitioner with the wages prescribed by the Statute. This recent case from September, 2017 highlights the improper implementations of the Act even decades after its first implementation.

The case *Jitendra Nath Upadhyaya v State of Jharkhand and another*, (Jitendra Nath Upadhyaya S/o Krishn Jee Upadhaya v State of Jharkhand and another [2017]) dealt with a situation wherein the principal employer, who was also the petitioner, had not paid his employees their due wages. It was held by the Hon'ble bench of the Jharkhand High Court that the claims by the petitioner were factually and legally incorrect; thus they were dismissed. He was instead forced to abide by an earlier order asking him to pay the wages to his employees, along with compensations. The statements of the workers were evidence of the fact that the petitioner had deliberately restrained from providing wages to his employees, and was making frivolous claims before the court (Jitendra Nath Upadhyaya S/o Krishn Jee Upadhaya v State of Jharkhand and another [2017]).

Another instance of violation of the Minimum Wages Act, 69 years after its first implementation, is the case of *Kerala State Electricity Board v Kurien.E. Kalathil* (Kerala State Electricity Board v Kurien. E. Kalathil [2000]). This case involves an agreement that had been executed between the First Respondent and the Kerala State Electricity Board for the construction of a dam. The Government of Kerala had revised the wages payable under the Minimum Wages Act. However, the labourers were denied the revised payment by the Kerala State Electricity Board. This matter was subsequently dismissed by the

Court, directing the Board to provide the labourers with their legally entitled wages along with interest. All these instances indicate a need for a more effective implementation of the Act in the federated states.

Any contravention of the provisions of the Minimum Wages Act shall result in repercussions and may also lead to revoking the license of the contracting party in violation of its responsibility (PWD Employees Union, through President and others v State of Gujarat and others [2017]). In situations where the contractors do not fulfil their duties under the Minimum Wages Act, the principal employer shall be obligated to do so from now on (PWD Employees Union, through President and others v State of Gujarat and others [2017]).

Article 23 of the Indian Constitution provides us with fundamental protection against ‘any similar forms of forced labour’. The case of *PUDR v Union of India*, (PWD Employees Union, through President and others v State of Gujarat and others [2017]) provides an extensive discussion on the topic of *Forced Labour*. The case involved the Delhi Administration, Delhi Development Authority, and the New Delhi Municipal Committee as principal employers to contractors responsible for necessary arrangements ahead of the Asian Games, 1982. The contractors hired labourers from various states through jamadars, who received a commission, deducted from the earnings of the labourers. An organization engaged in social service and ensuring democratic rights to the citizens filed a writ before the court.

They claimed that the construction workers were being deprived of their fundamental rights as well as the rights guaranteed by the labour laws of the country. Apart from addressing questions on maintainability of the writ and the standing of the petitioner organization, the bench opined on the conditions that must be fulfilled for the violation of the Minimum Wages Act, 1938. The bench opined that the legal words “any other form of forced labour...” were wide enough to include the idea of minimum wages provided to the workers. It was stated that even if remuneration was paid and the actions were voluntary in nature, it would still be classified as forced labour. Neither the compulsion of social and economic circumstances nor other physical compulsions wherein there is a loss of alternatives for the individual can ever act as a justification to contravene the constitutional provision. In this case, the labourers were provided with a meagre Rs. 9.25 a day, out of which a rupee was deducted as commission for the jamadars.

The ground realities of the implementation of the Minimum Wages Act have been discussed in a Public Interest Litigation (*Social Jurist v Government of N.C.T of Delhi* [2012]) filed by an NGO Social Jurist against the Delhi Government. It was alleged that the current statutory rates were not being provided, thus impacting the lives of 60 lakh workers. Certain norms for calculating Minimum Wages had been listed by the Hon'ble Supreme Court in the case of *Workmen v/s Raptakos Brett Co. Limited* (Workmen v/s Raptakos Brett Co. Limited [1992]). These had been ignored; unreasonable and insufficient wages had instead been prescribed by the Delhi Government (*Social Jurist v Government of N.C.T of Delhi* [2012]). The petitioner, Mr. Ashok Agarwal on behalf of the NGO, stated that the wage rate prescribed by the statute for an unskilled worker approaches around Rs.13,584 per month, thus differing from the actual estimates of Rs. 6000 per month for males and Rs.5000 per month for females. The petition also brings to notice the deteriorating impact on the life of such families as they struggle to meet their daily needs and live in almost sub-human existence. The right to life of these workers is violated as a result, even more so by the indifferent attitude taken by the Government. Although there have negligible prosecutions alleging non-payment of minimum wages, the current average wage rate is half that of the amount prescribed by the Statute (*Social Jurist v Government of N.C.T of Delhi*, [2012]).

The case of *Bandhua Mukti Morcha v Union of India*, (*Bandhua Mukti Morcha v Union of India* [1984]) provides an insight into the working conditions of the labourers at some of the stone quarries in the districts of Faridabad, Haryana. A large number of the labourers were employed as bounded labourers and were not allowed to leave, implying the poor enforcement and implementation of the welfare laws passed for the benefit of this class. The petition prayed to end the “miseries, suffering and helplessness of these victims of the most inhuman exploitation”. A major factor for the increased number of violations is the ineffective compensating mechanisms. Meagre penalties are prescribed and the issue appears to be a matter of indifference.

The Industrial Tribunal may, in certain circumstances, alter the fixed wage rate of the employees. However, The Industrial Disputes Act does not provide for Industrial Tribunals to reduce the fixed minimum wage payable to employees (*Shib Prosad Ghosh v District Judge*, [1963]). This has been provided under Section 25(1) of the Industrial Disputes Act. The bench in *Shib Prosad Ghosh v District Judge* (*Shib Prosad Ghosh v District Judge*, [1963]) ruled that the Industrial Tribunal may increase the wage rate with consideration to the nature or concern of a particular industry; it cannot, however, reduce it. The case involved employees of the Gholaspur Bus Syndicate, a Union of Bus owners. The respondent state had amended the minimum wage of the petitioners to Rs.100 from the initial Rs.87. The Syndicate, however, based upon an agreement and the award by the Industrial Tribunal, continued



the payment of Rs.87. This reduction in payment was contested and compensation was sought. The employer, in this case the respondent, was directed to abide by the provisions of the order of the State and provide for the altered wages plus compensation.

The bench in the case of *South India Estate Labour Relations Organisation v State of Madras*, (South India Estate Labour Relations Organisation v State of Madras, [1955]) held a similar view. They opined that the Industrial Disputes Act and the Minimum Wages Act, 1948 function on different terrains and are thus not contradictory in nature (South India Estate Labour Relations Organisation v State of Madras, [1955]). The Industrial Disputes Act deals with investigation and settlement of industrial disputes, whereas the Minimum Wages Act cover the issues regarding the fixing of wages in industries where an effective regulation of wages is absent (South India Estate Labour Relations Organisation v State of Madras, [1955]). The rule of implied repeal cannot be used here.

There also existed confusions regarding the overlap of the object of the Payment of Wages Act (Mukesh Garg v Munney Khan and another, [2015]). Reliefs claimed under Section 20 of the Minimum Wages Act were dodged by alleging non-maintainability of the petitions (Mukesh Garg v Munney Khan and another, [2015]). The position was clarified in the case of *Mukesh Garg v Munney Khan and another* (Mukesh Garg v Munney Khan and another, [2015]). The bench ruled that any confusion between the employer and the employee regarding the amount payable as a wage must be settled using the provisions of the Minimum Wages Act, 1948. All cases with respect to enforcement of wage payment are to be dealt by the Payment of Wages Act, 1936. Therefore, all cases involving payment of wages that are less than the minimum wage ascertained must be enforced with regards to the provisions of Minimum Wages Act (Mukesh Garg v Munney Khan and another, [2015]).

Apart from the development and protection of the pay scale of permanent employees, there lay a difference in opinion with regards to temporary workers. The Division Benches of two different High Courts had provided contradicting judgments regarding the question of whether or not temporary employees would be protected under the Minimum Wages Act. The Honourable bench of the Punjab and Haryana High Court in the case of *State of Punjab and others v Jagjit Singh and others* (State of Punjab and others v Jagjit Singh and others [2016]) ruled in the affirmative. It was stated that if the temporary employees held similar responsibilities as permanent workers, or were capable of discharging them when required, and if they held similar qualifications, they must be protected under the Minimum Wages Act (State of Punjab and others v Jagjit Singh and others [2016]).



The courts have displayed concern over the non-payment of wages. The Hon'ble bench of the High Court of Orissa in *General Security and Information Services (Private) Limited v Chief Rolling Stock Engineer of East Coast Railway Administration, B B S R and Three others* (General Security and Information Services (Private) Limited v Chief Rolling Stock Engineer of East Coast Railway Administration, B B S R and Three others [2012]) considered non-payment of wages in the case as a violation of the fundamental rights of the workers, under Article 21 of the Indian Constitution. It was stated that the courts have the authority to order a compensation of ten times worth the wage in question, considering the acute and grave effects of the non-payment of wages (*General Security and Information Services (Private) Limited v Chief Rolling Stock Engineer of East Coast Railway Administration, B B S R and Three others* [2012]). The Minimum Wages Act is a welfare legislation. It cannot be thought of as an unfettered power provided to the legislature for it to determine the minimum wages for each of the scheduled employments (*Chairman, Panihati Municipality v Secretary, Panihati Municipal Labour Welfare Union and Another* [1964]). This idea is derived from the court's ruling in the case of *Chairman, Panihati Municipality v Secretary, Panihati Municipal Labour Welfare Union and another* (*Chairman, Panihati Municipality v Secretary, Panihati Municipal Labour Welfare Union and Another* [1964]).

In this case, the petitioners had claimed that the Minimum Wages Act provided uncontrolled and arbitrary powers to State Governments. The Chairman, in this case, had dismissed seven workers without providing a valid reason, and a claim has been made by the union for the reinstatement of the workers and payment of the arrears of wages. One of the contentions was that the legislation of 1948 was invalid for it violated the Bengal Municipal Act by interfering with the responsibilities of the Commissioner's to discuss on the salaries and allowances of the employees (*Chairman, Panihati Municipality v Secretary, Panihati Municipal Labour Welfare Union and Another* [1964]).

Recently, since the Domestic Workers Social and Security Act, 2010, domestic workers have been included under Schedule 27 of the Minimum Wages Act. Post-alteration of the Minimum Wages Act to include Domestic Workers under its purview, there exists a fixed income that is to be paid according to hours of labour.

### **Legal remedies available for violations of minimum wages**

The obvious legal remedy for the violations in the payment of minimum wages is available under the section 12 of The Minimum Wages Act, 1948. It can be coupled with section 21, *Contract Labour (Regulation and Abolition) Act, 1970* wherein the aggrieved can move against a contractor registered under

the Act. In case there are discriminatory practices between male and female workers, Article 14 of the Constitution of India can also be invoked along with the Equal Remuneration Act, 1976.

The matters under the Minimum Wages Act can be taken up before the Labour Commissioner appointed under section 20 of the Act. Violations under the Contract Labour Act can be taken up by the Courts on the application made by the inspectors appointed under the Act. For violations of Equal Remuneration, authorities appointed under section 7 of the Act can be approached. Moreover, all the claims can be taken up the High Courts under Article 226 and by the Supreme Court under Article 32 of the Constitution of India, as these courts have original jurisdiction. Further, courts can also take cognisance of violations of such labour laws through public interest litigation wherein a third party files a suit for the aggrieved individuals. (People's Union for Democratic Rights v Union of India and Others, [1982])

## Conclusion

The Minimum Wages Act, 1938 is a special legislation, intending to meet certain socio-economic objectives. It attempts to vindicate the exploitation of the rights of those, in their majority poor, and illiterate, who are in a socially and economically disadvantageous position. It is imperative, therefore, that such legislations not only appear on paper but also act as reassurance against the exploitation so as to improve the faith of people in the system. The State Governments are obligated to ensure compliance with the socio-economic legislations, the failure of which would amount to a violation of the Right to Life protected under Article 21 of the Indian Constitution. This is even more important in the case of the marginalized and disadvantaged sections of society, who by way of poverty, illiteracy etc. are unable to enforce their rights assuring them of a life of basic human dignity as provided under the Directive Principles of State Policy (Bandhua Mukti Morcha v Union of India, [1984]).

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