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## **IF NOT THE NATION- A NATIONAL MINIMUM WAGE OBJECTIVE**

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### **Abstract**

*India is a vast secular nation with many cultures, religions, practices as well as differences, deficiencies. It is a developing nation with its socio-economic status in paradigm. The minimum wage purposes to achieve a floor on this, It worked well until the employers found the loophole of fixing the minimum wage to be the maximum, where the workers suffered with India's developing economic standards and global market, where value of rupees fell. Struggles and toil of workers wasn't compensated on equal grounds throughout the nation. It differed from state to state based on their economic socio standards, a worker in Karnataka would get a different minimum wage from that of Tamil Nadu. Which is why a proposal of National Minimum wage becomes the need of the hour, everywhere the worker moves, settles or works, there is a bare necessity on the employer to follow that floor. If the nation doesn't improve to the dynamic change of the world and its trade for protection of labour, then who would? This paper focuses on why national minimum wage is the need of the hour in comparison with a sovereign which has already a National Minimum wage and how it is effectively functioning regardless of division of power between the states and centre.*

### **Keywords**

Labour, National, Minimum, Wage, Policy, Legislation

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### **1. Introduction**

Minimum wage is a concept is derived its origin and authority from the Constitution of India where the preamble sets forth the objective to be humane and just with socialistic

pattern where on the Directive principles of state policy Art.43 of the Constitution of India states that "The State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage (emphasis added) conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities" based on this principle the Act of Minimum Wages Act 1948 came into force. The constitution in its concurrent list provides for the term "labour" and gives authority to the states entire to make labour legislations. For most workers who are in informal sector, the state governments initiate the labour laws whereas for the contractors and casual labours are centre governed and regulated. When the central government enacts labour laws it has big impact throughout the nation in regards with the wage level even in informal sector which is otherwise known as Unorganised Sectors.

### **1.1 Research Questions**

1. Whether National Minimum Wage policy if the need of the Hour?
  - (a) What about the Existing structure of Minimum Wage Act,1948?
2. Whether a National Minimum Wage in UK and Australia be compatible to the Indian Economy?

### **1.2 Research Objective**

- To study and understand the history of minimum wages in Indian Economy
- To Analyse the need for National Minimum wage policy
- To compare and analyse the concept of implementation of national minimum wage policy in India with other Jurisdictions.

### **1.3 Research Methodology**

This article would be a doctrinal based research. There are various methodology used in this article including Content Analysis Method with secondary data collection from books and articles. The methodology that is being adopted in the said project is purely doctrinal in nature. The research is completely relying on primary resources such as statutes and also secondary resources such as notices, commentaries and various books of eminent authors have been referred and cited. The said research paper also has a high reliance on the study articles and other works of eminent universities/colleges and also websites have also been referred.

## **2. Labour Legislation: A Minimum Wage Analysis**

### **2.1 Minimum Wages Act**

Minimum Wage legislation is considered as the main legislation which serves and helps the workers to balance themselves however, there are certain provision in the Act

which doesn't cover up certain sectors on applicability of how the minimum wage will be divided, few of them are the domestic workers, agriculturalists otherwise known as unorganised workers.(India Today,2017) The awareness of the Minimum wage Act is very much required to every sector to know his/her rights, to policy of minimum wage is necessary to promote awareness and exploit maximum work, and the fair wage agreements to be promoted.

For Schedule Employment the Minimum Wage Act 1948 specifies certain minimum wage, which is mostly decided through negotiation in the Ministry of Labour, settlement between the employer and the employee before this enactment of the Act, sometimes the minimum wage varied according to persons, age, and socio economic background. After the enactment of the said Act the government is required to keep minimum wage as per the employment in the schedule, the Act to keep in touch with the current standards and rate is expected to be revised and reviewed every interval of not exceeding Minimum wages. Once a Minimum wage is fixed by the government it is not the employers discretion to look onto the same and change. (India Together, 2017)

The minimum wage is fixed by three types of rates such as time rate, the other is Piece rate, based on time two rates are present: guaranteed time rate and overtime rate. The Act of course focuses on certain crux problem such as fixing minimum wage for people of different schedule employment, 2. Different works in the same employment 3. Different locations, 4. Adult, adolescent and children 5. Male or female is also identified and considered on amount of work they do. It can be for a day or hour or even on month basis or a period as prescribed by an authority.

### **3. National Minimum Wage**

#### **3.1 Historical Background**

This concept of National Minimum Wage policy first came into picture on August 11, 2017 where the Modi government unleashed its delayed labour reform agenda. The government introduced into the Lok Sabha the code on universal Minimum wages for the working population throughout including the unorganised sector. The wage code is said to comply along with exiting central legislation such as 1. The Minimum Wages Act,1948 2. The Payment of Wages Act,1926, 3. The Payment of Bonus Act,1965 and 4. The Equal Remuneration Act,1976.

“The wage code is for simplification, rationalisation and making it less cumbersome. No way workers' right is being infringed. It's going to bring in a historical change in the

wages for workers and universal minimum wages will be implemented for the first time,” along with that the very much needed concept have been discussed which is summed in short “Forty crore unorganised sector workers can avail the universal minimum wage. The Bill has a very large perspective. It is in no way exploitation of workers,” he added (Bandaru Dattareya, 2018).

The Code on Wages Bill proposed by the Union government will not fix a single national level minimum wage for the whole country, but will vary across states and geographies.

“It provides for national minimum wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the national minimum wage, notified for that area by the Central Government,” the text of the Code on Wages Bill 2017, introduced in Lok Sabha by Labour and Employment Minister Bandaru Dattareya on August 10, said. (Somesh Jha, The Hindu, 2018)

The Labour Minister also said that The Minimum Wage Act 1948 is old and rusty and that it needs revision on the norms of the fixation of minimum wages and that it is not upto the basic living requirement of the present condition(Economic Times,2018). The issue which are urgent and primarily looked into will be terms on number of units per family, inclusion of dependant parents and treatment of women and children on par with the men with no discrepancy however, in reality in many sectors it is not so, there are discrimination between the male and female on the factor that females work less than men and has less capacity while nature of work is same or similar.

With effect from July 1 this year, the Labour Ministry announced a hike in the National Floor Level Minimum Wage from ₹160 per day to ₹176 a day and sent advisories to states for compliance.(The Hindu Business Line,2018) However, till April 1 this year, at least 11 States, including Andhra Pradesh, Gujarat, Arunachal Pradesh, Himachal Pradesh, Manipur, Nagaland, Tripura and Tamil Nadu, had fixed their minimum wage level below the National Floor Level Minimum Wage of ₹160 recommended by the Central government as on that date. (Ministry of Labour, 2018)

### **3.2 Code of Wages Bill, 2017**

The code was brought forth by the law ministry and put forth before Lok Sabha on 10.08.2017 and it subsumes the four existing laws. If they codified universally and national minimum wage is made in practice then all the four Acts will be repealed. This would remove the multiplicity and complex definitions and authorities without compromising wage security or social security to the workers. There will statutory National Minimum Wage for

different geographical areas without any state difference. This will be the minimum cap whereas the state can go above and beyond. The state cannot fix a wage below the National Minimum Wage which ensures an improvement over the wages Act that is presently existing which is rusty and old, this is an advancement to a current situation and economic situation of India.

The payment of wages is proposed to be paid through online digital mode or cheque would not only promote digitalization of India but also give an extension in regards with the wage and social security.(FE BUREAU, Financial Express,2017) Separate provision of Appellate Authority has been made between the claim authority and the Judicial Forum and separate Judicial mechanism of labour law courts to be set up for speedier and faster redressal.

Further, the Code on Wages Bill 2017, in the clause 9 (3), clearly states that the Central Government, before fixing the national minimum wage, may obtain the advice of the Central Advisory Board, having representatives from employers and employees.(Press Information Bureau,2017) Therefore the Code provide for a consultative mechanism before determining the national minimum wage. Some reports have also been appearing in the media regarding the revised methodology for calculation of minimum wages by enhancing the units from three to six. It was purely a demand raised by Trade Unions in the recent meeting of the Central Advisory Board on Minimum Wages.(GN Bureau, Governance now,2017) However, it is clarified that such proposal is not part of the Code on Wages Bill. The Code of Wages Bill clause 9(3) which clearly states that the central government before fixing the national minimum wage could obtain the advice of the Central Advisory Board having representatives from employers and employees.

## **4. Current Policies**

### **4.1 Labour Legislation (Das K.S, 1998)**

**Table 1: Type of Intervention**

<b>Acts</b>	<b>Description</b>
The Minimum Wages Act, 1948	To enable worker in bargain wages and other condition of work.
The Trade Unions Act, 1926	To enable unions to raise voice on behalf of employees and workers in industrial disputes on wages
The Equal Remunerations Act, 1976	Assuring and granting equal remuneration for equal or similar work regardless of gender.

The Industrial Disputes Act,1947	To organize and conduct the queries as to the payment of wages and solve the disputes arise there in.
The Payment of Wages Act, 1936	To provide minimum compensation for work done by the labourers according to their sector and work in schedule..
The Contract Labours (Regulation and Abolition) Act, 1970	This legislation assures that the contractors don't default in payment of wages to the labourers. Upon the contrary, the principal employer will be Held liable. <sup>11</sup>

## **4.2 Issue of Wage Policy**

Due to poor fixation of even a wage policy or enforcement and implementation and coverage in various parts of the country, there have been doubt regarding in clear creation of wage policy especially with regards to unorganised sector it is expected to be not possible. Issue that are concerned and to be faced in India regarding Minimum Wages are as follows:

### **4.2.1 Norms for Fixing the Minimum Wage**

The Act does not fix a minimum wage in rupees but wage is stipulated and pictured as living wage when the minimum is still in trouble. The 15<sup>th</sup> labour conference for minimum wage along with the Supreme Court of India have come up with guidelines that a minimum wage of 8 hrs of work should be able to cover up necessities of the workers basic requirements.

It also has a clause in MWA that if the minimum wage is not revised and reviewed in five years the wage which continued before has to continue. Which leads to unaccountability of the authorities and their laziness. However, there was a recommendation by National Commission on Rural Labour in 1990 to overcome this, to make timely revision of wages and be lined to the VDA. On basis of Consumer Index price, the enhancement of wage should be enhanced however, this implementation how far has been considered by states is still a question.

### **4.2.2 Coverage**

To have a fixed minimum wages in the Minimum Wages Act the worker's employment and the industrial activity is to be included in the schedule of employment. In current central government is 45 whereas state has 1232 and the criteria for inclusion in the particular list that there should be minimum of 1000 workers working in the activity of the state. On basis of this many activities are left out and excluded mainly in the unorganised sectors many numbers of workers are outside the purview of Minimum Wages Act, 1948(Business Today,2017).

### **4.2.3 Implementation**

The Minimum Wages Act 1948 biggest drawback is that it is poorly implemented. The Act states and empowers the government and concerned states to identify their unorganised sectors and fix a minimum wage. In certain circumstances certain industries are exempted from paying the minimum wage fixed by the government. The Intervals at which the Act is reviewed and implemented according to the present circumstances is huge and not within the prescribed period of 5 years. It is the lapse of the administrative work and not unaccountability exists, which makes this policy designing the biggest loophole (Sonal K, 2017).

However, this has no impact over the organised workers as they will have to a certain extent a recognition and fixed wage by the employer himself but in unorganised sectors it is nearly impossible to identify the employer, then where does the question of minimum wage arise. To determine the amount of work done by these sectors is huge and takes a lot of effort from the government, which the government is lazy to do. The employers are scattered and in millions be it a sole proprietor, small trade or enterprise. This has left them vulnerable to law and legal standards, on fear about losing their job, they don't complain if they get minimum than the minimum wage fixed if at all by their state governments. Employers even if they give the minimum wage, they just stick to it and keep it as maximum they can pay.

### **4.2.4 Enforcement**

Poor enforcement is a main issue prevalent in India. Due to lack of legal awareness, their legal rights and remedies available the issue arises in regards with minimum wage provisiona in labour laws. The unorganised sector almost 80% earn very less than half of what the government has stipulated to be the rural minimum wage. This happens mostly in hampered sectors such as remote areas where it is neither recognised nor unionised, which as a result never kept in accordance with the rising cost and economic standard.

### **4.3 Need for National Minimum Wage**

The present Acts which are there in legislation in India, Minimum Wages Act and Payment of Wages Act do not cover many sectors such as unorganised sectors or substantial number of workers it is restricted to schedule employments.(Chief Labour Commissioner (Central), 2017) The Code of Wages Bill, 2017 which was placed in front of Lok Sabha will ensure a minimum wage once and for all and timely wages which is the objective of Minimum wages Act possible to all sectors irrespective of sector of employment without any wage ceiling.

This policy of minimum wage universally could ensure a floor on which the labourers could stand with a security that whatever might happen assurance of this much is guaranteed. The life of the labourers and their wage could be predictable in any circumstances and they can live a life with that minimum standard put forth by the legislators nationally. States have a role to play in this on socio economic basis, the state can go higher than the minimum standard set forth however, they can't go below the national minimum wage at any circumstances unless otherwise it is an emergency and is declared by the centre.(Tom Batchelor, 2018)

This could be easy for both the employers and employees that they don't have to reduce or increase higher. The wage shall be set throughout, so regardless of their branches in many places they can pay their labourers without any prejudice and complexity in calculation of wages throughout including the bonus if available. The employees can gain a guaranteed security through enforcement of the Act. Migrant workers need not worry about any transfer from a state to another. They will have a standard backup regardless of a socio-economic circumstance of a state.

## **5. Policy Recommendations, Feasibility & Implementation Solutions: “Action Plan”**

### **5.1 Recommendations and Administrative Legal Guidelines**

- Implementation of National Minimum Wage Policy or adopt the Code of Wages Bill 2017 and implement it instead of the statutes in force bringing all the issues within one umbrella and form a uniform code throughout. The codification process will remove multiplicity of definitions and confusions to be caused around for the judges and give a clear cut ways to interpret. There won't be any compromise as to wage security and social security of the workers.
- Labour Reforms can be made by rationalisation by the government in making 4 universal codes covering the 38 labour enactments such as: Code of Wages, Code of occupational safety, health and working conditions, code of industrial relations and finally code on social security.
- Applicability of the Act should be there. On basis of age, whether they are apprentice, if so how the applicability of National Minimum Wage is done. Geographical area concept of National Minimum Wage to be introduced. It will ensure that no particular state fixes below than what is determined by central government and notified.

Minimum Wage can be applicable to:



- Part time workers
- Temporary Workers
- Disabled Workers
- Agricultural workers
- Workers from overseas
- Apprentices (receiving separate apprentice rate)
- Casual Labourers
- Trainees and workers on probation
- Foreign workers
- Agency workers

However, certain type of employees can be excluded such as self-employed, company directors, NGO workers or voluntary workers, members of armed forces or employees on those work environment/placements., Minors, prisoners, religious community people who live and work there..(Govt of UK,2017)

- Definitions clause to be made and given clear by the policy makes for interpreters to fix with one form.
- The Code of wages/National Minimum Wage Policy shall provide for basic minimum wages to all the workers doing same or similar work which can determined through different rules for separate categories such as Organised and Unorganised workers and it can be updated through notifications and circulars.(Minimum-Wage.org,2019)  
The State government can be given the authority to raise the minimum wage but not go below the standard put forth by the central government. A section of authority should be put forth in the statute along with circumstances of authority change via rules by the executive.

Different types of workers could get their minimum wage and its checking can be done by:

- Paid by the hour ('time work')
- Paid by Annual salary, under a contract on basic number of hours a year ('Salaried hours')
- Paid by piece-number of tasks completed ("output work")
- Unmeasured work or paid in other ways.

## **5.2 Administrative Guidelines**

- The code of wages should also identify various unorganised sectors by setting up a committee for the same and another committee for analysing the socio-economic

conditions in different state and coming up with equitable amount agreeable and reasonable for all.

- The Universal Code should also fix the norms of minimum wages fixation like per day per hour per month basis, which industry should get fixed remuneration, a section regarding the authority for inspection of the same along with identification of district authority especially for solving labour disputes regarding wages, infringement forum to be clearly mentioned, the definition clause to specify in clear what a particular term means in clarity in order to avoid confusion, to include various provisions of minimum liability, Penalties and fixation of damages,.(Press Information Bureau, 2017)
- Procedures for appointment of committee, inspectors, administrators, infringement and claim forum.
- Review of the plan every 2 years should be implemented strictly and if possible reduce it to a year as the government implements new economic scheme every year and the globalization is in rapid form. The review committee should be fixed and the appointment can include Labour Judges, Ministry of labour's executors, National Trade Union, in behalf of both employers and employees and 1 representation from all the states and UT.
- Central Advisory Board on Minimum Wages only on its advice the fixation of the National Minimum Wage shall be determined along with review committee every year.
- The payment of wages can be made in cash/cheque or even in electronic mode which shall promote the digitalization. Judicial and appellate forum on claims shall also be specified which will lead to speedy, cheaper and efficient redressal of grievance and settlement of claims.
- To set up Legal Awareness campaign for illiterate workers benefits in realising their labour rights.

### **5.3 UK and Australia**

In comparison to UK National Minimum Wage the per hour wage is determined by age where School leaving age is the minimum age for the National Minimum Wage to be applicable and as far as apprentice is concerned:

Apprentice: they are entitle to get their apprentice rate if,

1. They are aged under 19
2. Aged 19 or over and in their 1<sup>st</sup> year of apprenticeship.(Govt of UK, 2017)

There is digital mechanism to calculate whether the National Minimum Wage will be applicable to the citizens which includes accommodation fee, per hour and pay without tax, extra hr calculation, how many days a week worked and age, based on this the National Minimum Wage applicability is calculated. The inflation and other countries minimum wage is also compared with.

### 5.3.1 Australian National Minimum Solutions

The order includes the following of the fair work commission: (Fair Work Commission, 2018 order)

- **National Minimum Wage** – of \$694.90 per week, calculated on the basis of a week of 38 ordinary hours, or \$18.29 per hour.
- **Casual Loading** – of 25 per cent.
- **Special national minimum wage 1 – for employees with disability which does not affect their productivity:** of \$694.90 per week, calculated on the basis of a week of 38 ordinary hours, or \$18.29 per hour in the case of an adult, (and who is not a junior employee, or an apprentice, or an employee to whom a training arrangement applies).
- **Special national minimum wage 2 – for employees with disability who are unable to perform the range of duties** to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of disability on their productive capacity, and who meet the impairment criteria for receipt of a Disability Support Pension (and who is not a junior employee, or an apprentice, or an employee to whom a training arrangement applies): a base rate of pay set in accordance with Schedule A to the National Minimum Wage Order.
- **Special national minimum wage 3 – for junior employees:** to be based on a percentage of the national minimum wage.
- **Special national minimum wage 4 – for apprentices:** to be based on the provisions in the [Miscellaneous Award 2010](#) (clause 14) for apprentices (some transitional provisions apply see National Minimum Wage Order).(Fair Work Commission,2015)
- **Special national minimum wage 5 – for trainees:** to be based on the provisions set out in the [Miscellaneous Award 2010](#) (Schedule E) for employees to whom training arrangements apply.

## **6. Conclusion**

The National wage policy could be implemented on the above grounds. Code of Wages Bill can also be taken into consideration on advice of Central Advisory Board, The Code of wages/National Minimum Wage Policy shall provide for basic minimum wages to all the workers doing same or similar work which can be determined through different rules for separate categories such as Organised and Unorganised workers and it can be updated through notifications and circulars. Minimum wage universally could ensure a floor on which the labourers could stand with a security that whatever might happen assurance of this much is guaranteed. States have a role to play in this on socio economic basis, the state can go higher than the minimum standard set forth however, they can't go below the national minimum wage at any circumstances unless otherwise it is an emergency and is declared by the centre.

### **6.1 Discussion**

The life of the labourers and their wage could be predictable in any circumstances and they can live a life with that minimum standard put forth by the legislators nationally. The wages to bring a balanced check throughout the 29 states, an national minimum wage has to be given, there are many unorganized sector who doesn't have an employer to give a minimum wage, rather get a minimum wage even. The unorganized sector should be identified and be included in the schedule for National minimum wage policy and be given a minimum wage regardless of an employer being found or not.

Scope of future research:

There is more scope for research work in this field study of minimum wage since the labourers are unorganized with no unions to represent them and as well as there is an arising problem of even minimum wage for the migrators as well. This could be looked into as a separate research problem.

## **7. Research Limitation**

The objective and the scope of the study is mainly looked into with the aspect National Minimum Wage to the unorganized sectors. The migration and the migrators field could not be researched deeply due to insufficient materials and evidence. The politics and the political scenario for the upbringing of National Minimum Wage is feather touched since not every source can be discussed and relied upon except in cases of primary research by the author herself.

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