



Law Relating to

Minimum Wages

Laws relating to minimum wages. 2004

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Anuja Mirchandaney
Alternative Law Forum

2004

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Preface

There are large groups of unorganized workers in small industry, agriculture, construction, domestic service, garment industry, many forms of self-employment, etc. Their condition resembles that of workers in large industry in the early years of union formation. Few laws apply to them; even the ones that are passed are not implemented. Many of these workers have no education, few skills and little ability to organise themselves.

The manual originated from a feeling shared by many, that a labour rights education manual is the need of the hour. It is meant for activists working with unorganised labour. An awareness of rights does not mean that they will be implemented easily, but it is certainly important for further action and future strategies - legal or otherwise to gain those entitlements.





The manual attempts to untangle the law from the web of legalese, and present workers rights under this enactment in a simple manner along with Bangalore specific procedures for enforcement, information about ground realities and issues, and possible legal avenues to acquire a minimum wage.

This booklet on minimum wages is the result of research, and consultations with various people. To the extent that it is 'grounded' and not just a theoretical work, credit goes to Muralidhara, labour advocate and State Secretary, AITUC, Karnataka; Assistant Labour Commissioner, G. Manjunatha; Labour officer, Shanmugappa; Chitra Balakrishnan; Roopa Madhav; and members of the Alternative Law Forum. Insights were also gained by presentations and interactions with activists working with unorganized labour. C. Gopinath and the members of Cividep, who have been working with garment workers, and Sister Celia, who was instrumental in forming the first trade union of domestic workers in the country. Useful suggestions on form etc. were given by Prof. Babu Mathew, Dr Sharath Babu, Mohan Mani, Centre for Workers Management, and Sudhir Krishnaswamy.

The deeper one digs the more one realises how little one knows. This manual will always be a work in progress. All suggestions for improvement are welcome, and may be sent via email to: **alforum@vsnl.net**

Anuja Mirchandaney
Alternative Law Forum

L E G E N D

	<i>Sections meant for intended for Workers and Activists</i>
	<i>Intended for Activists. And possibly for Workers. Up to the trainer's discretion.</i>
	<i>Refers specifically to context in Karnataka</i>
	<i>Frequently asked questions</i>

Additionally, all references to:

<i>Act</i>	<i>Refers to the Minimum Wages Act, 1948</i>
<i>Rules</i>	<i>Refers to The Karnataka Minimum Wages Rules</i>
<i>S. or Section</i>	<i>Refers to sections under the Minimum Wages Act, 1948</i>



Concept of Minimum Wage

Why have a minimum wage? Cannot an employer pay what ever is in his capacity or what ever he feels like? Or depending upon the bargaining power of the labour what they are in a position to demand? While this may be the reality in India, in wage theory, several cases are made out for the payment of at least a “minimum wage” and what this wage should be able to provide for the worker and his family.

Starting from the “subsistence theory of wages,” which in its simplest form states that minimum wages should be enough only to provide the bare minimum required for physical subsistence, to the view put forward by the International Labour Organization of providing individuals with the means to live a dignified life.

There is no one concept of minimum wage. Various terms have arisen during the course of the discussion of wage levels in the country. An understanding of these is necessary to understand the debate. As put forward by the Committee on Fair Wages¹ (in 1958) they are:

i. Bare/basic Minimum wage: Used in awards or judicial pronouncements. In the Express Newspapers Case² the Supreme Court held that it is wage which would be sufficient to cover the bare minimum need of the worker and his family.

There is a legal duty to pay at least a subsistence wage. The Supreme Court in 1958³ has held that the former wage is a rate, which has got to be paid to the worker irrespective of the capacity of the

¹ The Central Government, immediately after passing the act in 1948 in its Industrial policy resolution declared its intention to, amongst other things, promote fair wage agreements in organised industries. To facilitate this the government of India appointed the ‘Committee on fair Wages’ to determine the principles on which fair wages should be fixed and to suggest the lines on which these principles should be applied.

² Reported in AIR 1958 S. C. 578

³ In Crown *Aluminium Works v. Workmen* (1958) SCR 615.

industry to pay. *It was observed that if the employer cannot pay this bare subsistence wage he / she would have no right to conduct his /her enterprise on such terms.*

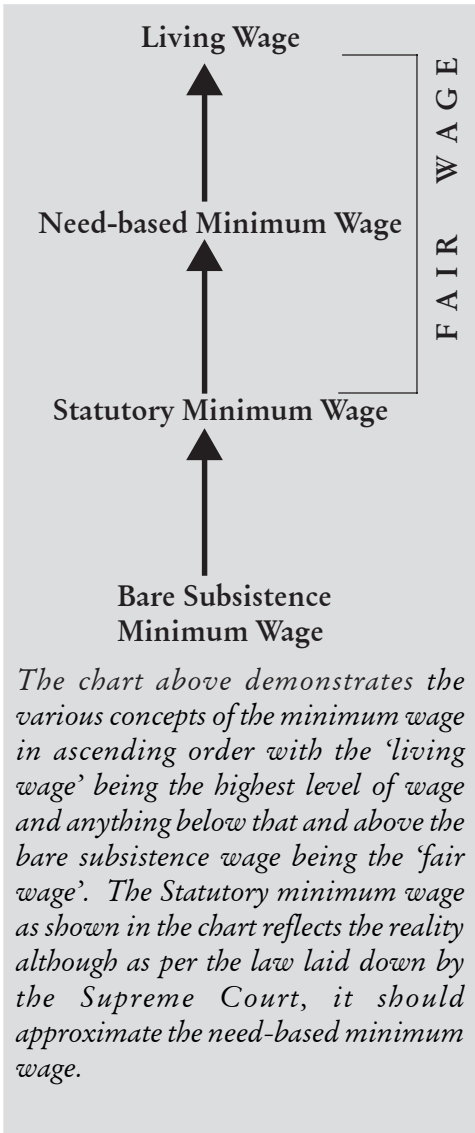
ii. Statutory Minimum wage: This refers to the minimum wages fixed by the government exercising the minimum wage fixation powers given to it by the Minimum wages Act, 1948. Once such a wage is fixed for a given employment the employers are bound under law to pay such a wage. There is some confusion on the contents of this wage and some believe it is a wage which *may be* higher than the bare minimum or subsistence wage providing for some measure of education, medical requirement and amenities. According to the Supreme court in *Unnichoyi v. State of Kerala*⁴. the statutory wage is such a wage. That is, a wage that must not only provide the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education , medical requirements and amenities for himself and his family. This has been followed by the Karnataka High Court in its judgement delivered in 2003 in the *Mangalore Ganesh Beedi works case*⁵, and so is the law applicable in Karnataka.

iii. Need based minimum wage. The 15th Indian Labour Conference⁶ adopted this concept in 1957. A resolution was adopted, the gist of which was that a minimum wage should be “need based” ensuring the minimum human needs of the industrial worker. Certain norms were laid down by the conference to determine what this minimum wage should be, which, they said should guide all wage fixing authorities in fixing the Minimum wage. Perhaps for the first time, in India, the needs, which the minimum wage should satisfy, were laid down in precise quantitative

⁴ Reported in 1961 SC I LLJ.

⁵ *Mangalore Beedi Works & A. B.F.W.A v State of Karnataka and Others* 2003(5) Kar. L.J. 26 (DB)

⁶ The Indian Labour Conference is a tripartite forum, consisting of representatives of employers, employees and the Government, organised by the Government of India - Ministry of Labour. The recommendations of the 15th ILC therefore have considerable standing because, all those vitally interested in the question of wage fixation had come together to lay down agreed norms for quantifying minimum wage.



terms. These norms⁷ have been accepted and also further expanded by the Indian Supreme Court.⁸

The resolution adopted in 1958, by the Conference while accepting these norms, stated that where difficulties were experienced in fixing the minimum wage it was the concerned wage fixing authorities' responsibility on showing the circumstances, which prevented them from adhering to these norms. The capacity to pay of the employer was taken into account.

v. Living wage: This according to the Committee On Fair Wages⁹ represented the highest level of the wage and it would include all the amenities which a citizen living in a modern civilized society was entitled to expect when the economy of the country was sufficiently advanced.

⁷ For norms recommended see page 9

⁸ In Reptakos Brett's case.

⁹ The committee was appointed by the Government in 1948. A tripartite body, composed of representatives of employers, employees and the Government.

vi. Fair wage: The committee termed this as any thing above the minimum wage (see (ii) above) and below the living wage. In a situation where an employment already has a notified minimum wage fixed and the workers feel that the employer has the resources to pay a better wage and succeed in their claim through adjudication/ collective bargaining, the higher wage procured is termed a “fair wage”

In the day to day practise of lawyers only the concepts of “Statutory Minimum wage”, “Basic Minimum wage”, and “Fair Wage” are in use.

Minimum Wages Act, 1948 (MWA)

A “minimum statutory wage” is that which the statute prescribes and it may be higher than the bare subsistence wage providing for some measure of education, medical requirements and amenities. The SC has held that statutory wage under the Act aims to ensure not only subsistence for the employee and his family but also preserve his efficiency as a worker.¹⁰

Enacted in 1948, the MWA is social welfare legislation undertaken to further the Directive Principles of State Policy- in Part IV of the Indian Constitution. (*Article 43- The Article states that “the state shall endeavour to secure by suitable legislation.... all workers agricultural, industrial or otherwise a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and cultural opportunities....”*). The Act’s main object is to prevent sweated labour. (i.e. exploitation of labour) as well as exploitation of unorganized labour. As recently as 1994¹¹ and 1996 the Bombay and Karnataka HC’s have held that non payment of minimum wages is violative of the fundamental Right in Article 23 of the Constitution (all Fundamental Rights are enforceable in a court of law).

BENEFITS UNDER THE ACT:

If an employment is notified under the Act apart from making payment of a minimum wage mandatory several other provisions beneficial to the workers apply:

- Maximum number of hours of work is fixed
- Extra payment over and above the fixed wage for Overtime.
- One day off for every seven days of work.

The Minimum Wages Act is not one self-contained code incorporating all the provisions relating to payment of minimum wages. There are other **enactments** dealing with payment of wages

¹⁰ Held by the Supreme Court in 1983 in *U. Unnichoyi v. State of Kerala*.

¹¹ *N. M. Wadia Charitable Hospital and ors. v. State of Maharashtra*

during holidays, periods of leave, and involuntary unemployment. The scheme of the MWA provides for a specific remedy for recovery of minimum wages.

Definition of Minimum Wage

A criticism against the Act has been that it does not define the term “Minimum wages”. Trade Unions have urged that to avoid differences in interpretation by wage fixing authorities “minimum wages” should be spelt out in precise terms. Should it be spelt out quantitatively, i.e. in terms of cash? Or should certain norms be put in place to guide authorities fixing the minimum wage? While fixing a rigid cash equivalent of the statutory minimum wage may not be a good idea (because of rise in prices due to inflation and differences in regional conditions)¹², some norms should be followed to guide the fixation. The Act itself does not contain any clue as to the principles, criteria or norms, to be followed while fixing a minimum wage for a given employment.

The **2nd National Labour Commission** which came out with its report in 2002 recommends that the Minimum wages should be such as to satisfy the needs of the worker and his family, arrived at on the need based formula of the 15th Indian Labour conference. This should be supplemented by the judgement of the Supreme Court in *Raptakos Brett & Co. case* they said. In spite of endorsing such a wage, the Commission went on to say “the Appropriate Government should keep in mind the capacity of the industry to pay as well as the basic needs of the worker¹³.”

¹² Here it should be mentioned that the 2nd National Commission on Labour has proposed a National Floor Level Minimum wage fixed by the Central Government, applicable to every employed worker, *through out the country*. This will not take away the power of the state governments which should notify a separate State Minimum wage which should not be less than the National level minimum wage (in Volume I, Part I at p.433, 434 of its Report).

¹³ ‘Report of the National Commission of Labour, Volume I, Part I’ at p. 366.

Norms to be followed by Wage Fixing Authorities

I. Recommendations of the 15th Indian Labour Conference

The “Needs Based Formula”

The committee of the 15th Indian Labour Conference recommended that these norms be followed by all wage fixing authorities, including minimum wage committees, wage boards, adjudicators etc.:

- (i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner and his family consisting of his wife and two children below the age of 14 years. The earnings of women, children and adolescents should be disregarded. (The latter part of the norm disregards the fact that in many cases women contribute significantly to the family income.)
- (ii) Minimum food requirements should be calculated on the basis of a net intake of 2,700 calories for an average Indian adult of moderate activity.
- (iii) Clothing requirements should be estimated as per the per capita consumption of 18 yards of cloth per annum which give for the average workers family of four 72 yards of cloth.
- (iv) In respect of housing, the norms should be the minimum rent charged by the government in any areas for houses provided under the Subsidised Industrial housing scheme for low-income groups.
- (v) Fuel lighting and other miscellaneous items of expenditure should constitute 20 % of the total minimum wage.

II. Norms laid down by the Supreme Court in Raptakos Brett's Case

(Should supplement the norms accepted by the 15th Indian Labour Conference, according to the 2nd National Labour Commission report of 2002)

In *Workmen vs. Management of Raptakos Brett & Co Ltd.* the Supreme Court held that the following additional components (i.e. in

addition to norms laid adopted by the 15th Labour Conference in 1957) should be added as a guide for fixing the minimum wage in the industry. These should amount to 25% of the total minimum wage.

- Children's education
- Medical requirement
- Minimum recreation including festivals/ceremonies
- Provisions for old age
- marriages

The Central Government did not at that time accept the norms laid down by the 15th Labour Conference. However subsequently they were upheld by the Supreme Court in the case of Unnichoyi v. State of Kerala, and hence may be considered the law of the land.¹⁴



Norms that should be followed by wage fixing authorities in Karnataka.

The norms laid, down by the Supreme Court in Raptacos Brett's case are to be followed by the wage fixing authorities in Karnataka. As also, the recommendations of the Shantappa Committee (will be uploaded on internet version of this manual on www.altlawforum.org). However on the ground, wages are actually fixed based on the minimum wage for an already notified e m p l o y m e n t . F o r example the wage for persons employed in the beedi industry will be fixed based on the wage for persons employed in the agarbathi industry due to the similar nature of employment.

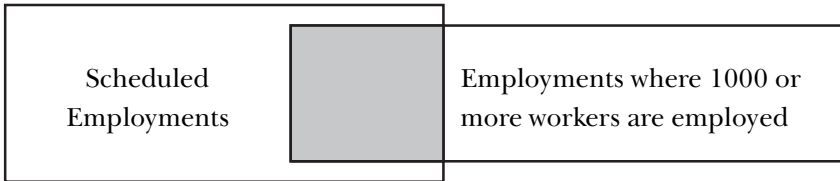
¹⁴ Judgments of the Supreme Court are deemed to be the law of the land under Article 141 of the Constitution.



To whom does the Act apply?

- The Act applies only to workers working in employments mentioned in a list (“Schedule”) attached to the Act (referred to as “**Scheduled Employments**”). It is in the government’s discretion whether or not to include a particular employment in the Schedule. *The work of garbage collection done by the BMP Contract labour is not a notified employment.*
- If the Scheduled Employment has 1000 or more workers then the Government is bound under law to fix a Minimum wage via notification
- The Government may if it thinks fit fix a minimum wage for a Scheduled Employment where there are less than 1000 workers employed.

Diagram of employments for which a Minimum Wage has to be notified



*The shaded portion indicates those employments, which are **both** scheduled ones and also employ more than 1000 workers. Here the government is obliged to notify a minimum wage and an application can be made to the High Court. For scheduled employments in Karnataka see Annexure 2. In practice, a minimum wage may not be notified for every scheduled employment. For example, in 1996 in Karnataka there were 61 employments in the schedule only 37 for which a minimum wage had been fixed. For the current status, see Annexure 2.*



Procedure for fixing or revising minimum wage

The Act speaks of **two** procedures by which a minimum wage can be fixed by the government for a given employment (in **Section 20**). It is in the government's discretion to choose either of these methods *or* a combination of both.

Method #1: The Committee method

The government adopts this method when it feels that it does not have sufficient knowledge or information about the scheduled employment. Under this method, the appropriate Government appoints Committees/ Subcommittees to hold enquiries and advise on the fixation or revision of minimum wage. If the government following this procedure revises the minimum wages then it will also have to consult the Advisory board.

The Committees/ Sub Committees are composed of representatives of employers and employees although there is no exact sectional representation of the Industry.

The Advisory Board is composed of persons nominated by the appropriate government representing the employers and employees. One-third of them should consist of independent persons to be nominated by the chairman of the board.

Neither the recommendation of the committee or the advisory board is binding on the government.

Method #2: The Notification Method

The Government adopts this method if it thinks that it has enough knowledge about the scheduled employment in question. It publishes by notification, proposals in the Official Gazette to inform persons likely to be affected so as to enable them to send in their representations. In the notification the government has to specify a date *not less than 2 months from the date of the notification* in which time they are to consider the representations received by it. All categories of labour that will be affected by the wage fixation should

be included in the proposal. After considering the advice or as the case may be -the representations received by it (in # 2 Method) the government should *before* the date specified in the notification, fix/ raise the minimum wage for the scheduled employment in question by notification in the Official Gazette. The notification has to come into affect within the expiry of three months unless stated other wise by the government in the notification.

There are therefore two levels in acquiring a statutory minimum wage:

- (1) Inclusion in the schedule; and
- (2) Notification after government consideration, in the Official Gazette.¹⁴



Q: *On what basis are some employments put in the schedule? What are the criteria considered and what is the procedure that the government follows? Is it a matter entirely of administrative discretion?*

A: The Act (**Section 27**) empowers the appropriate State government to add any employment to the Schedule, which in its opinion needs to have a minimum wage fixed. The procedure requires only a three-month prior notification by the state government in the official gazette followed by another notification adding to the schedule the said employment.¹⁵

However, in cases of employments, which are not in the schedule but in which it can be proved that more than 1000 workers are employed, and they are working in sweated/ exploited conditions of labour, a representation can be made to the Labour commissioner who will then recommend the fixing of a minimum wage to the Government (labour dept). This has been done in the case of domestic work.

¹⁴ The 2nd National Labour Commission which published its report in 2002, has recommended the abolition of the present system of notifying scheduled employment's and of fixing and revising minimum rates of wages periodically for each scheduled employment as it feels that all workers in all employments should have the benefit of a minimum wage.

¹⁵ The Government of Karnataka has issued a notification to include powrakarmikaras in the schedule, but this has been lying in the labour department of over two years now without having been passed.



Minimum Wage Fixation and Revision in Karnataka

In Karnataka, the committee method is followed in the fixation/ revision of minimum wage .

The Labour Commissioner on receiving a representation makes a recommendation to the Government. Once the employment is brought into the schedule, the Government tells its field functionaries to conduct a survey where they ask questions like, what are the hours of work, working conditions, wage levels, categories of workers, etc. in that employment. The information gathered is collated and analyzed by the Minimum Wages section, headed by the Joint Labour Commissioner, and a draft is prepared. In doing so they are guided by the price index and the existing wages in similar industries.

The Government publishes a draft notification of the proposed minimum wage in the State Gazette inviting responses from the affected parties. If the government receives any objections to the proposed wage, it will redraft and send to the Minimum Wage Advisory Board. The Board is composed of an equal number of employers' representatives, employees' representatives, and also some independent persons i.e., representatives from reputed institutions. Currently the independent persons are from ISEC and NLSIU respectively. Experience has shown that independent members have been quite proactive and do a lot of research before coming. Regular members tend to be quite indifferent.

Meetings will be held. First by Secretary of the Board, i.e. the Assistant Labour Commissioner, and finally a meeting will be chaired by the Labour Commissioner. It is at this point that pressure groups operate, and what is problematic is that people who are really concerned are not part of the deliberations. Possibly it is at this juncture that one can lobby with Board members. After discussions, the Board makes its recommendations to the Government.

The Government may either fix the Minimum Wage accepting the revised wage recommended by the board or it may fix the wage as per its original proposal. It is the government's discretion to either accept or reject the recommendation.

Exemptions from payment of a notified minimum wage.

- The Appropriate Government may notify that the Act shall not apply to any or all classes of employees in a scheduled employment.
- The Appropriate Government may exempt (under **Sec. 26 of the Act**) certain employments from the fixation of minimum wage.

Examples of exemptions given by different state governments:

- **Andhra Pradesh** has given exemption for employments in local authorities.
- **Gujarat** has granted exemption to employments in shops and establishments.
- **Maharashtra** has granted exemption to engineering industry falling within the jurisdiction of village panchayat in Pune district and employees employed under village panchayats, the annual income of which is less than 5000/-

The reasons for such exemptions have not been published. There are a section of people who feel that the grant of such exemptions goes against the very purpose of the Act, i.e. preventing of exploitation of labour. This is an instance where an executive order passed by the government under the Minimum Wages Act conflicts with the constitutional law of the land.



Revision of Wages

Revision of wages is necessary mainly for 2 reasons: 1) to provide for the erosion of the real value of money due to inflation and 2.) To allow for the workers to share in the fruits of development.

At present the Act requires that a wage once fixed should be revised periodically, with intervals not exceeding 5 years. The past experience has shown that minimum rate of wage once fixed remain in operation for more than five years in many employments.¹⁶ The First National Commission on Labour (1967) recommended that the Act should be amended to make it obligatory on the appropriate government to revise the minimum wage every three years. This is followed in Karnataka

There are two ways to protect against inflation: the first being to revise the wage at frequent intervals. This is not the practise in almost all the states.¹⁷ The second is to link the cost of living to the minimum wage. This is called the linking of dearness allowance (D.A) and is most commonly followed. In 1990 The Ministry of Labour, Government of India decided that D.A would be announced every 6 months for Industries for whom the Central government is the Appropriate Government.

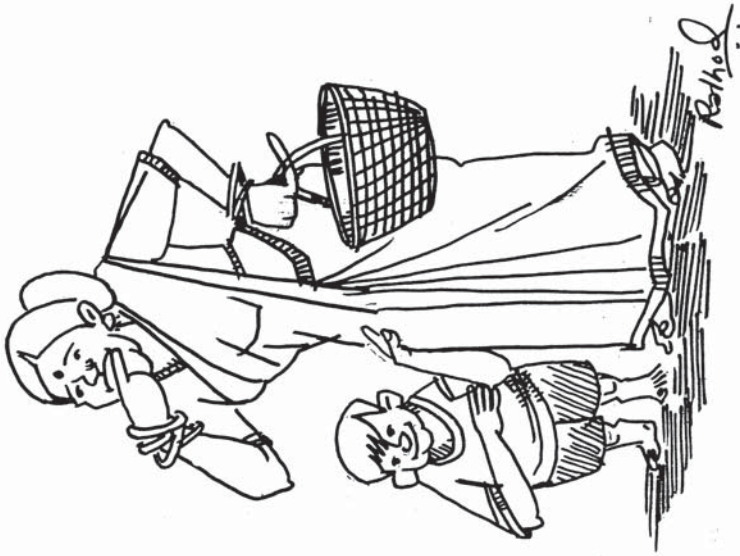
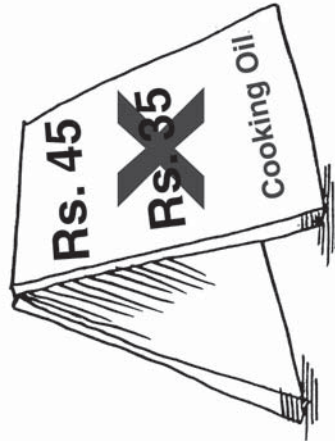


In Assam, Gujarat, **Karnataka** & Kerala, there is a dearness allowance with the minimum wage for non - agricultural employment. Enhancement of D.A is done once a year.

Points to Lobby for: The dearness allowance must be provided every six months and therefore the Act should be amended so that there is provision for enhancement automatically every six months on the basis of the Consumer Price index (See Annexure 3). At present in Karnataka, it is revised once a year.

¹⁶ Observed by the Ist National Commission on Labour, 1969.

¹⁷ As per Parduman Singh and R.K.A Subrahmanya in "A New Approach To Minimum Wages as an instrument of Social Protection" Published by Social Security Association of India & Friedrich Ebert Stiftung, 1999.



Dearness Allowance (DA) is necessary
to meet the rising cost of living

Is the Minimum wage fixed on the basis of time, i.e. hours worked, or on a piece rate basis? (S.(2)(c))

BOTH. The appropriate government has the option of fixing:

- i. A minimum rate of wages for time work, or;
- ii. A minimum rate for piece work¹⁸, or;
- iii. A minimum rate of remuneration for employees employed on a piece work , on a time rate basis(referred to as a “guaranteed time work”)¹⁹

What constitutes a “Normal working day”? (S. 13)

The Act fixes the number of hours that make “one normal working day”. This is necessary so that the wage corresponds to the number of hours worked- in the case of time rated work, and to provide for overtime in the absence of which a minimum wage could be paid but the workers required to work for longer periods.

- The Act provides that the number of hours of work per day shall not exceed 9 and together with hours of rest they should not exceed 12. ²⁰

¹⁸ The Mysore High Court (As it was then known) observed in 1971 that the fixing of a piece rate would inevitably lead to different workers in the same employment, being paid differently per day. And of any given worker getting less than what the government regards as minimum wage, and another getting much more. However the Court held that, when the government fixes the minimum rate of wage, attempt should be made in arriving at “a result which may really be reasonable and just ...and in the furtherance of the known objectives of the statute” held in **Mizar Govinda Annappa Pai and Sons Cashew Factory v. The State of Karnataka and Others. 1971 II LLJ 283 (Mys) (DB).**

The 2nd National Labour Commission also noted in its report (at p.368), speaking about piece rated workers, said that in case of wages fixed on piece rate “...the piece rate may be fixed so low that a diligent worker, even after eight hours of work maynot be able to earn what would amount to a time rated wage for a day. They recommended that in view of situations where the employer is unable to provide work for part of the day or the full day, where wages are fixed purely on piece rate basis the employer should pay at least 75% of the notified time rated wage.

¹⁹ This is when a minimum rate of wage is paid for the production of a specified amount of goods. In the case of garment work it could be production of X number of shirts in a normal working day

²⁰ Some minimum wage notifications have included working hours of a child in



Note: Under Rule 25 of the Karnataka Minimum Wages Rules, the normal working day of 9 hours is inclusive of breaks. No worker shall work for more than 5 hours without a break of at least half an hour.

Weekly day of Rest

In every period of seven days there should be one day of rest, which shall normally be Sunday, unless the employer fixes any other day in the week as a rest day for any employee/ or class of employees in the scheduled employment (according to S. 13 read with Rule 24 of the Karnataka Rules.)



Minimum wages for adolescents and children in Karnataka²¹

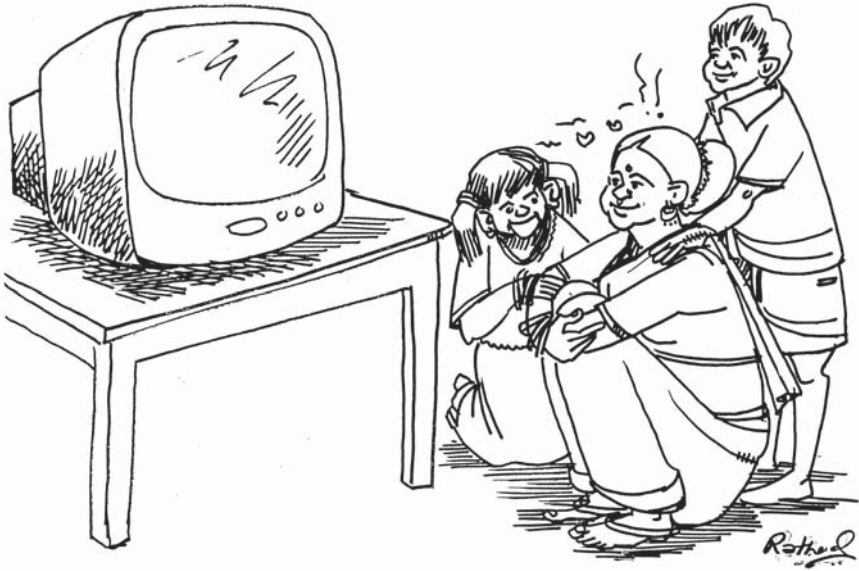
The Karnataka Government has provided in some of its notifications specifying a minimum wage for particular industries, that the minimum rate of wages of an adolescent shall be 80% of the wages fixed for that employment and that a child should be paid 60% of such wages²². However, this provision for adolescents and children is not included in either the Act or Rules. But, the Act provides that the Appropriate Government can fix the minimum rates of wages for adults, adolescents, children and apprentices under section 2A(3)(a)(iii)²³.

a normal working day which is 4 ½ hours (although with the current drive of the Karnataka government to abolish Child labour these may have been erased from the statute book).

²¹ For definition of ‘adolescents’ and ‘children’ in the Act see List of Terms (Annexure 1).

²² Examples are wages fixed by the Karnataka Government for the Agarbathi Industry and employees employed in the cardamom malais and cardamom gardens, both through separate notifications dated: 5-6-1984.

²³ In keeping with the recent drive of the State government to eradicate child labour, previous notifications that have fixed minimum wages for children have been removed from the statute book. E.g. notifications for the Agarbathi industry and cardamom gardens and cardamom malais industry, both dt: 5-6-1984).



Workers are entitled to a weekly day of rest

Wages for Overtime (S.14)

An Overtime rate is fixed for those employees whose wages are fixed under the Act. For any hours of work in excess of the number of hours constituting a normal working day the employer has to pay the concerned worker at the prescribed overtime rate for those excess hours worked. The rate may be fixed under the authority of this Act by the concerned government or under any other law – Whichever rate is higher will be applicable. The employer should maintain an overtime register (for form of register, see Annexure V).

Wages payable for works less than a normal working day. (S. 15)

If an employee works less than the normal working day, he is still entitled to receive the same wages fixed as if he had worked for the full day, UNLESS his not working was a result of unwillingness on his part and not because there was no work. If a worker voluntarily does not work, then the wage can be reduced



The Karnataka Government has fixed the following rates for overtime work (as up till 29-3-2000):

- (a) One and a half times the ordinary rate of wages for agricultural workers
- (b) Double the ordinary rate of wages in any other employment.
(Sections 13, 14, read with rules 27 and 28)

The Minimum wages for garment workers in Karnataka has been fixed on a piece work on a time rate basis. This means that they have to be paid a certain minimum wage for a normal working day on the completion of a specified amount of work. A practise adopted by garment manufacturers is to link payment of minimum wages to production targets, and they do not pay worker over time if the target – which could be unreasonably high – is not met in a given day.

Wages when employee does two different kinds of work (S. 16)

When an employee does two different kinds of work, the different wages fixed shall be applicable in the proportion to the hours spent on each.



According to the Karnataka Rules²⁴, permitted deductions can be for:

- absence from duty;
- for damage or loss of goods²⁵;
- for housing accommodation provided by the employer or state government;
- Other amenities and services that the employer supplies authorised by the government, etc.

²⁴ The State government has been empowered under section 30 of the Act, to frame rules to carry out the purpose of the Act. The Karnataka Minimum Wages Rules were first drafted in 1958 and has last been amended in 1979.

²⁵ The employer should maintain registers of deductions. For form of register see Annexure 4.



Implementation of payments of wages notified under the Act

Employers have a duty to (as stated in S.18):

- i) Maintain records of payments²⁶ and
- ii) Register of employees
- iii) Exhibit notices at the workplace at places selected by the inspector.

These have to be checked regularly by an Inspector appointed under the Act. In addition, the employer should issue wage slips to workers a day before payment (for form of wage slip see Annexure 6).

Notices exhibited by the employer should contain these details:

Notice #1

- Minimum rate of wages
- Extracts from the Acts and the Rules
- Name and address of the inspector

Notice #2

- Weekly holidays
- Working hours of employees
- Time for payment of wages

To carry out these and other functions, the Inspector has the powers to:

- Enter the premises at reasonable hours to examine any register, record or notices that employer should exhibit.
- Examine any employee or out-worker²⁷.
- Take copies of any register, record of wages or notice, that the employer should maintain.
- Exercise any other powers of inspection he thinks necessary for carrying out the purpose of the Act.

²⁶ For form of register of wages, see Annexure 5

²⁷ For definition of “out-worker” see List of Terms in Annexure 1



Notices prescribed under the Act should be exhibited at the work place



In Karnataka, the inspector could be:

1. Labour Commissioner
2. Addl. Labour Commissioner
3. Joint Labour Commissioner
4. Deputy Labour Commissioner
5. Assistant Labour Commissioner
6. Senior Labour Inspectors
7. Labour Inspectors.

Depending on the area, the inspector is different. For. e.g., in Ramangaram Taluk, the Inspector is the labour inspector, Ramanagaram circle, Ramanagaram.

What can be done in case a minimum wage is not paid?

The Act provides for enforcement machinery to deal with instances of a notified minimum wage not being paid or paid at less than the prescribed rate by the employer.²⁸

Claims can be made in respect of payment of wages for

- (i) Days of work;
- (ii) Days of rest and;
- (iii) Overtime.

Who should the claim be made to?

All claims in cases where less than the rate fixed under the Act is paid should be made to the “Authority” appointed by the government under **Section 20** of the **Minimum Wages Act**.

The “Authority” is a person appointed by the appropriate government. S/he could be:

- A Commissioner for Workmen’s Compensation
- Any officer exercising the powers of a Labour Commissioner.
- Any officer of the State government not below the rank of a Labour Commissioner.
- Any other officer with experience of a civil court Judge
- A Stipendiary Judicial Magistrate.



In Karnataka, the “authority” is the jurisdictional labour officer. The officer is appointed ‘designated commissioner for minimum wages’ by notification in the state official gazette.

Time period within which a claim should be made (S. 20(2))

All applications for recovery of minimum wages have to be made within **6 months** otherwise they are barred, i.e. not allowed. The

²⁸ The minimum wages act is meant for situations where less than the notified wage is being paid. In case of non-payment, applications should be made to the Labour Commissioner of Payment of Wages Act.

delay can be excused if the applicant is able to show that there was “sufficient cause” for the delay. *For e.g.* if the applicant can show that s/he was ignorant of the rights and remedies available under the Act- but they should be able to prove that such ignorance was genuine. In such a case of delay, an application should be made to the government who shall if it thinks that there exists or there is danger of an industrial dispute make a reference to an industrial tribunal. An application for non-payment can also be filed in the labour court. However, filing a claim before the Labour Officer is preferred because s/he can also impose penalties.

In many cases, non-payment of minimum wages is a continuing action –that is the complexity of work in the unorganised sector.

Who can make the claim?

The Claim Petition under the Act Can Be Made By:

- i) The affected employee(s);or
- ii) A Trade Union official (authorised in writing to act on behalf of the affected party). This has normally been the person who made the claim in Karnataka;
- iii) Any inspector- In some cases in Karnataka the inspector has also filed cases;
- iv) Legal practitioners; or
- v) Any person with the permission of the claim authority.

A single application can be made in respect of a number of employees (S. 21).

Procedure

- The Authority has to give both sides an opportunity of being heard, and after making any further enquiry if s/he thinks fit, pass an order and direct that:
- If the worker is being paid less than the minimum wage, s/he should be paid the difference and in addition to which
- A “compensation” which is up to authority’s discretion (but should be exercised reasonably), which can be up to ten times

of such difference, can be made to the worker²⁹. However, it has to be at least one times the difference.

- In case the application is made on behalf of a number of employees, then the compensation shall not be more than ten times of the aggregate of wages.

Recovery of Amount awarded

The amount awarded by the authority can be recovered as if it were a fine imposed by a Magistrate in cases where the employer fails to pay the amount ordered. This basically means that the amount can be recovered as in arrears of land revenue i.e. by attachment of property. For the purpose of recovery the worker should make an application to the Authority who will then make an application to the magistrate.



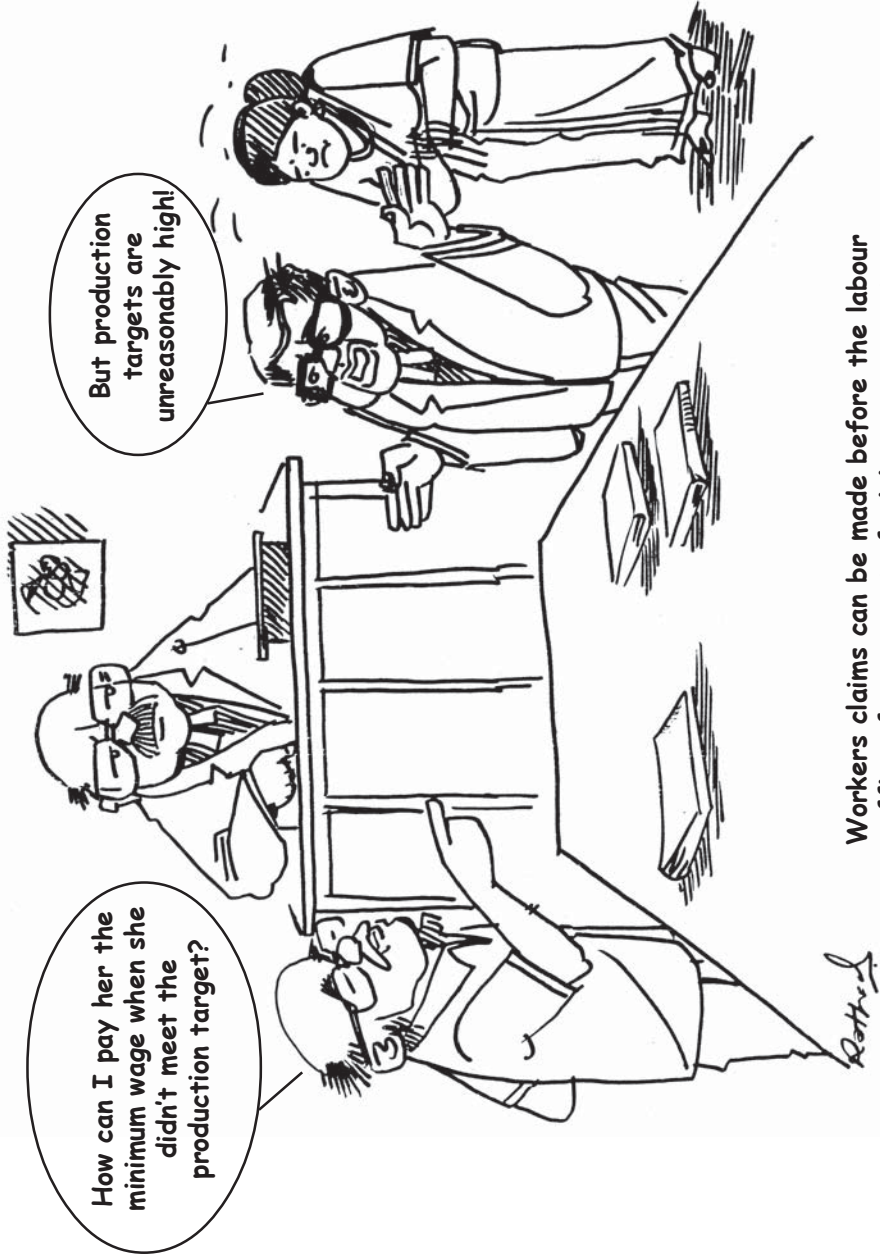
In **Karnataka**, for recovery the employee can make an application to the labour commissioner saying that the amount awarded has not been paid. In such a case, the Labour commissioner will inform the Deputy Revenue Commissioner who in turn will direct his subordinate- the tehsildar- to affect the recovery. Recovery can be made by attaching employer's moveable and immovable property. The concerned employee has to provide a list of the employer's property.

Punishment for Non- payment and other offenses

Section 22 provides that, for 'certain offenses' i.e. the non payment of minimum wages and non observance of rules relating to hours of work, penalties can be imposed, in addition to the civil action before the labour officer/court.

Only when the person claiming succeeds in winning his claim in the civil court for non-payment of the notified minimum wage,

²⁹ In the 50s and 60s some times compensation would be up to 6 - 7 times the difference. However, in practice nowadays compensation is not more than 1 or 2 times the difference. This is reflective of the present scenario of globalization where officers are well aware of industrialists cost cutting policies, which perhaps even results in pressure on the officers when they decide compensation.



Workers claims can be made before the labour officer for payment of minimum wages, etc.

can criminal action i.e. prosecution be undertaken against the employer.³⁰ However to prosecute the employer permission has to be taken from the Appropriate Government or an officer appointed by it. The time limit for criminal action is again 6 months unless the act of non - payment is a continuing one in which case every 6 months the prosecution period lapses.³¹

Even if no application is made to the labour inspector, s/he can suo moto initiate prosecution against an erring employer. There are two kinds of penalties. The first is for non-payment of minimum wages (here the penalty can be imposed *irrespective of any civil claim being filed*). The second kind is for any 'general violation' for which the inspector can either suo moto file a complaint or else sanction the filing of a complaint by the employee where any provision of the Act has been violated (under s. 22 B (b)). It could be for example, for not maintaining records of payments or, not exhibiting notices at the workplace as required by the Act.

If the criminal action against the employer is successful a 'penalty' is imposed. **Penalties** for payment of less than the minimum wage are imprisonment upto 6 months or a fine upto Rs. 500/- or both. If any other provision of the Act is contravened (such as for e.g. not granting the day of rest once in 7 days or not maintaining registers required to be maintained under the Act) a fine of Rs. 500/- is to be paid.

Comment: This power to impose penalty has been given because the Minimum Wages Act is a social welfare legislation, and as such non compliance with *any* responsibilities under the Act is considered an offense against the state. The weakest part in the whole enactment is that the inspector has to initiate prosecution, and this is not done often.

It is possible that in practice, most actions taken against the employer (penalties imposed) would be for general violations and secondly are not penal actions. That is, an order against the

³⁰ In Karnataka criminal prosecution is launched when the employer fails to comply with the commissioner's repeated order to pay the workers.

³¹ After 6 months, a fresh permission to prosecute needs to be applied for.

employer, which only imposes a fine and does not mean imprisonment. This considering the small amount of fine of Rs. 500/-required does not act as a deterrent.

Lacunae in the Minimum Wages Act

The Act is silent on penal liability for ‘continuing offenses’ and ‘repetition of offenses’. This first (‘continuing offense’) refers to a situation where, when even after the Magistrate has taken cognizance of the offense, the employer continues to pay less than the minimum wage. ‘Cognizance’ takes place when a Magistrate first applies his/her mind to the complaint, to see whether there is a basis for initiating judicial proceeding against the offender. The second (‘repetition of offense’) refers to cases where an order imposing a penalty has been passed by the Magistrate against the employer for non payment of minimum wages or any general violation, and s/he repeats the same offense.

Point to lobby for: The Minimum Wages Act should be amended to include an express provision where in case of continuing offenses or repetition of the same offense, the penalty should be only imprisonment with no question of the offender getting away with mere payment of a fine.



Can the same proceeding be initiated for a minimum wage that is notified not by the government under the Minimum Wages Act, but by the Labour Commissioner exercising his powers under the Karnataka Contract Labour Rules?

No, in such cases an application has to be made under the Payment of Wages Act.



Implementation and enforcement of the Act: Ground Realities

In most of the states there are no inspectors appointed exclusively for the enforcement of the Act and the same staff appointed for enforcement of other labour laws such as the Factories Act and the Shops and Establishments Act are entrusted with the enforcement of the Minimum Wages Act also. The states of M.P, Bengal and Maharashtra have appointed full time inspectors for the implementation of the Act. In some states officials from department like Revenue and Agriculture have also been declared as inspectors. For example in Andhra Pradesh Tehsildars, Motor Vehicle Inspectors, Excise inspectors, block development officers etc have been appointed as inspectors under the Minimum Wages Act.

Yet, the implementation of the Act is countrywide – admittedly - ineffective. The general criticisms have been³²:

- The enforcement machinery is inadequate.³³
- The provisions of law are not clear and precise enabling the employer to make it a battleground for legal interpretation
- Penalties are inadequate. The general pattern of labour inspection has been for the inspector to point out the lapses and the violations to the employer and advise him to set right the defect failing which the inspector launches prosecutions against the defaulting employer. Even the court, should it find the employer guilty, usually lets him off with a small fine. Even if the Magistrate takes a serious view of the case, he can sentence the employer to imprisonment for a certain period or fine or both. The deprived worker does not get any relief.

³² As per Parduman Singh and R.K.A Subrahmanya in “A New Approach To Minimum Wages as an instrument of Social Protection” Published by Social Security Association of India & Friedrich Ebert Stiftung, 1999

³³ Taking the example of Karnataka, there are a total of only 175 inspectors which is highly inadequate. There have been recent moves by the government to rope in inspectors for excise and other departments to take on the responsibility of enforcement of the Minimum Wages Act.

- Workers participation in enforcement of the law is completely absent. In this connection it has been suggested that one way in which workers and Trade Unionists could help in enforcement of minimum wages is to provide information to the inspector/ authority about any instance of non-compliance.
- The adjudication machinery and the officials are indifferent if not hostile to the aspirations of the workers.
- Further they are too far removed from the workers and their houses to enable them to approach the authorities without considerable loss of time and consequent loss of wages, even should they summon up the courage to make a complaint against their employer at the risk of losing their job.

Point for discussion: Are some of the criticisms raised above relevant to enforcement of the Act in the garment sector and could they be points to lobby for?

Impact of poverty on minimum wages implementation

In a situation of a surplus unskilled labour, the wage earner is tempted to accept an extremely low wage for his/her labour in order to subsist. This, although the Minimum Wages Act specifically provides (under S. 25) **that any contract where an employee relinquishes or reduces her/his right to a minimum wage is illegal.**

While low wages may be one of the causes of poverty, on the other hand, the prevalence of poverty also effects the implementation of the Act as labour has no holding or bargaining power and must offer his labour in the market for whatever wage s/he is offered. Therefore governmental programmes for poverty alleviation such as the IRDP, Jawahar Rojgar yojna etc can indirectly assist in the implementation of the minimum wage legislation.

In the context of agricultural labour it has been observed that the Minimum Wages Act is not merely a regulatory process but also part of the larger development efforts in rural areas. This being the case, it becomes necessary to look at the problems in a wider perspective for the effective implementation of the law, the brunt

of which should not rest on the Governmental administrative machinery alone. It has been suggested that:

- Rural poor should be enabled to organise themselves
- Agricultural labour should get employment for at least a minimum number of days in the year.
- Adequate funds must be provided for promotion of education and publicity amongst (agricultural) workers regarding the minimum wages and other provisions for developing skills of participation.

Point for discussion: Would these suggestions also have relevance to other sectors of unorganised labour such as the garment workers?

Tripartite bodies — the way forward?

A proposal to appoint a tripartite body consisting of employer, employees and independent persons at the district level has also been suggested.

The functions of the committees would be

- To survey whether there is any offence of which cognisance should be taken
- To keep a watch over the offences over which cognisance has been taken.
- To receive complaints of non payment of Minimum wages
- To advice the enforcement authorities as to action to be taken to ensure that the Act is properly implemented.

The tripartite committee will not replace the inspectors but will function as “watch dogs” to ensure that the inspectors perform their functions effectively.

Possible legal options to acquire a minimum wage for employments not in the schedule to the Minimum Wages Act

If an employment is not in the schedule, and the workers or their representative’s are able to prove, that there are more than 1000 workers in that employment in the industry as a whole and that

these workers are working in exploitative conditions, i.e. conditions of “sweated labour” then an application can be made to the Karnataka High Court asking the court to exercise their ‘extraordinary powers’ in directing the government to fix a minimum wage. However before doing this, an application should first be made to the labour commissioner.

Options to acquire a ‘non-statutory’ minimum wage

Several employments in the unorganised sector are not in the schedule to the Act such as the Powrakarmikaras who are employed by contractors for the garbage collection work of BMP. This being the case no statutory rate of wage is applicable to them.

It has been the experience that wages for non - scheduled employments have been fixed in a number of other ways. Wages may be determined either through:

- Collective bargaining or
- With the help of the **Industrial Relations Machinery**³⁴.

The latter has been done in the case of the powrakarmikaras. In their case, an application was made to the Labour Commissioner to exercise his powers under the Contract Labour (Regulation and Abolition) Act (under Rule 25(2)(v)(b)), and notify a certain minimum wage and working conditions. (The rates fixed by the Commissioner are mentioned in the booklet on the Contract Labour Act.) This has been signed by the Chief Minister and should have come into effect in July 2003.

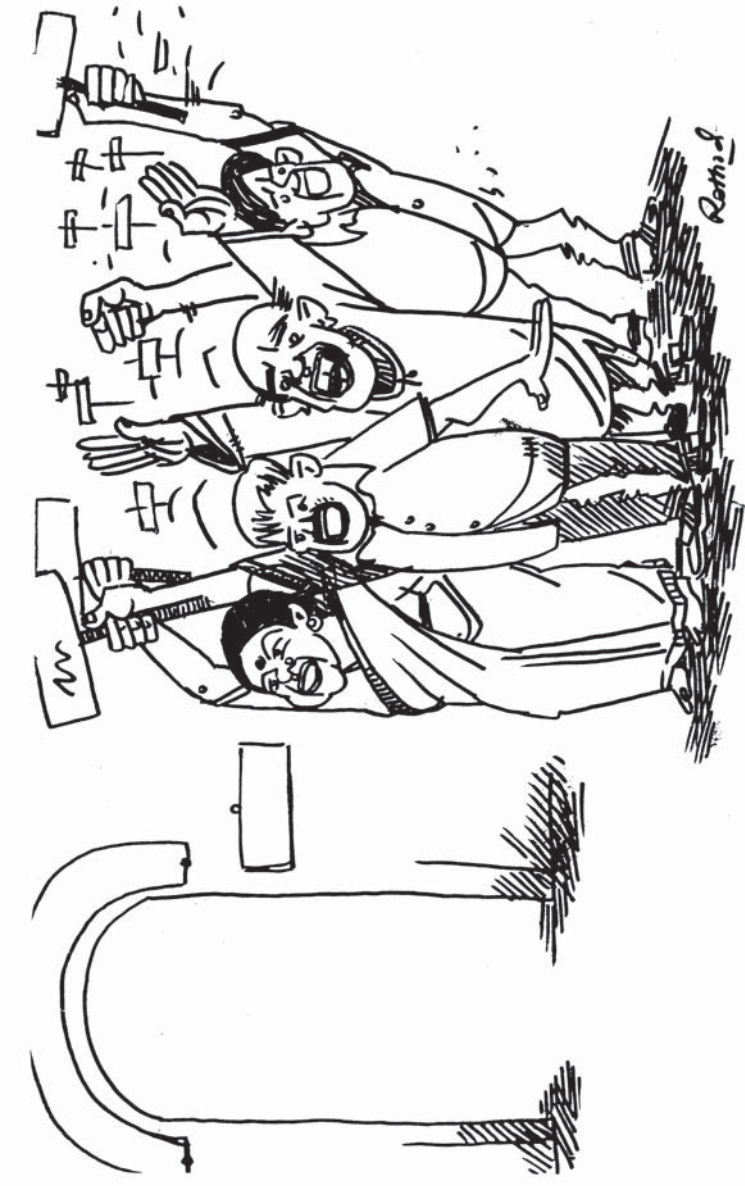
Rule 25(v) (a) states that the conditions of work, which includes the rate of wages for contract labour should be the same as that of regular employees if the work done by the contract labour is of a similar nature.

If the work is not of a similar nature then the Labour commissioner is authorized to specify a wage rate keeping in mind wage rates in similar employments.

In case of non-payment of such a wage an application under the Payment of Wages Act can be made.

Wage Settlements: A settlement³⁵ can be arrived at through bipartite negotiation or conciliation for a single establishment or for an

³⁴ & ³⁵ For the meaning of “Industrial Relations Machinery” and “settlement” see List of Terms in Annexure 1



Strike is an important tool for collective bargaining to achieve worker's demands

industry as a whole. Generally wage settlement proceeds on the basis of fixing the wage for the lowest category of workers in the industry or unit - differentials for skills being built up on the basis of this minimum.

In the case of an industry- wide settlement, the wage fixed is on the basis of the over all capacity of the industry to pay. In case of wages notified under the Act, or industry wide settlement, if an individual unit has no capacity to pay it either goes out of existence, or improves its working to build the necessary capacity. It does not have the option under law to pay less.



In the same employment, what applies — wages fixed by the appropriate government or awarded by a labour court?

The Act provides that it is open to an industrial tribunal deciding a dispute before it relating to wages payable in a scheduled employment to fix a higher rate of Minimum wages than what has been fixed by the government. **(Section 3 (2-A))**

In a case where an award / settlement is passed fixing a minimum rate of wage and subsequently the government fixes a lower rate of wage for the same employment, the employer can pay the lower rate fixed by the government by saying that he has financial problems. In which case it is open to the workers to raise an industrial dispute saying that the government had fixed the wage only to avoid exploitation, the employer has the financial capacity to pay a higher rate fixed under the award/ settlement.

Annexure 1: List of terms

Adolescent: An adolescent has been defined as a person who has completed his/her fourteenth year of age, but has not completed eighteen years of age.

Appropriate Government: The “Appropriate government “ means:

- In relation to any scheduled employment carried out under the authority of the central government or railways administration or in relation to a mine or oil field or any major corporation established under a central law
- the Central Government.
- In relation to any other scheduled employment, the State Government.

Child: A child has been defined under the Act as a person who has not completed his/her fourteenth year of age.

Industrial Relations Machinery: The Industrial Disputes Act, 1947 provides for 4 different procedures for preventing, investigating and settling disputes. These are referred to as the Industrial relations machinery. The Act, however, applies only to employees who are considered ‘workers’ as defined by it. As a result, contract workers etc are excluded from benefits such as raising an industrial dispute and would have to depend on permanent workers to ‘espouse their cause’.

The 4 procedures are: Works committee procedure; conciliation; adjudication, and; voluntary adjudication and voluntary arbitration

Industrial Tribunal: This is a tribunal set up by the government, either state or central for adjudicating industrial disputes relating to any matter listed in the second or third schedule to the Industrial disputes Act. The tribunal has the authority to deal with a wider range of matters than the Labour courts.

Notification: A written or printed matter that gives notice. Formal declaration, proclamation, and publication of an order either generally or in the prescribed manner.

Official Gazette: Means the Gazette of India or any official gazette of a state.

Out-worker: is a person to whom articles are given out by the principle employer to be cleaned, washed, altered, repaired, adapted or other wise processed for sale for the purposes of the principle employer's business.

Settlement: This has been defined by the Industrial Disputes Act in section 2(p). It is an agreement between the parties. It may be worked out by the parties themselves - where the parties to the agreement have signed the agreement - and filed with the conciliation officer. It may also be reached through conciliation i.e., a settlement which is rached with the assistance and concurrence of the conciliation officer. While the first type of agreement is binding only on the persons who have signed the agreement, the second type may include parties who were ordered to appear in the proceedings; future employers and employees of that establishment.

Annexure 2: Scheduled Employments under the Minimum Wages Act, 1948

Minimum rates of wages have been notified for all of the scheduled employments mentioned below. However, they are yet to be notified by the Government of Karnataka and the process is pending at various stages for scheduled employments mentioned at Sl. Nos. 63, 64, 66, 69 and 70.

<i>Sl. No.</i>	<i>Scheduled Employments</i>
<i>1 (a)</i>	<i>Employment in Agriculture: Agricultural works</i>
<i>1 (b)</i>	<i>Employment in Agriculture: Soil Conservation</i>
<i>2</i>	<i>Aerated Water Manufacturing Industry</i>
<i>3</i>	<i>Agarbathi Industry</i>
<i>4</i>	<i>Automobile Engineering (including servicing & repairing works)</i>
<i>5</i>	<i>Bakeries</i>
<i>6 (a)</i>	<i>Tobacco Industry: Beedi Making</i>
<i>6 (b)</i>	<i>Tobacco Industry: Tobacco Processing</i>
<i>7</i>	<i>Biscuit Manufacturing Industry</i>
<i>8</i>	<i>Brass Copper and Aluminium Utensils manufacturing industry</i>
<i>9</i>	<i>Bricks Industry</i>
<i>10 (a)</i>	<i>Wood Work including: Carpentry industry and Saw Mill industry</i>
<i>10 (b)</i>	<i>Wood Work including: Match Works (Match Box) Industry</i>
<i>10 (c)</i>	<i>Wood Work including: Plywood Industry</i>
<i>10 (d)</i>	<i>Wood Work including: Timber Depot</i>
<i>10 (e)</i>	<i>Wood Work including: Veneer Industry</i>
<i>11</i>	<i>Cardamom malais and cardamom Garden</i>
<i>12</i>	<i>Cashew Industry</i>

<i>Sl. No.</i>	<i>Scheduled Employments</i>
13	<i>Ceramics, Stoneware and Potters Works</i>
14 (a)	<i>Plantation Labour: Chincona, Rubber, Tea or coffee Plantations</i>
14 (b)	<i>Plantation Labour: Chincona, Rubber, Tea or Coffee Plantations (non-staff)</i>
15	<i>Chemical Industry</i>
16	<i>Clubs</i>
17	<i>Coffee Curing Works</i>
18	<i>Confectionery Industry</i>
19	<i>Cotton Ginning & Pressing Manufacturing</i>
20	<i>Construction or Maintenance of Roads or Building Operations</i>
21 (a)	<i>Electronics & Electroplating: Electronics</i>
21 (b)	<i>Electronics & Electroplating: Electroplating</i>
22	<i>Engineering Industry</i>
23	<i>Film Industry</i>
24	<i>Fishing, Fish curing, Fish peeling and frog legs exporting</i>
25	<i>Food processing, packing of food products (including coffee, tea and spices)</i>
26	<i>Forestry & Timbering industry</i>
27	<i>Foundry (with or without machine shafts)</i>
28	<i>Glass & Glassware Industry</i>
29	<i>Granite Stones and Marbles Industry</i>
30	<i>Handloom & Powerloom (Cotton) Industry</i>
31	<i>Hospitals and Nursing Homes</i>
32	<i>Hostels</i>
33	<i>Hotel Industry</i>

Sl. No.	Scheduled Employments
34	<i>Ice factory & Cold Storage</i>
35	<i>Khandasari Sugar Factory</i>
36	<i>Laundry Industry</i>
37	<i>Manufacture of Liquor (Breweries), Distilleries including Bottling of Liquors</i>
38	<i>Manufacture of Ayurvedic & Allopathy medicine</i>
39	<i>Metal Rolling and Re-rolling (Ferrous) Industry</i>
40	<i>Metal Rolling and Re-rolling (Non-Ferrous) Industry</i>
41	<i>Mini-cement plant industry</i>
42	<i>Mosaic Tiles, Flooring Tiles or Glazing Tiles Manufacturing Industry</i>
43	<i>Oil Mills</i>
44	<i>Petrol and Diesel Oil Pumps Industry</i>
45	<i>Plastic, Poly plastic, Rubber and PVC Pipes Manufacturing Industry</i>
46	<i>Printing Industry</i>
47	<i>Private Finance Corporations & Chit Funds</i>
48	<i>Procurement, Processing and Distribution of Milk</i>
49	<i>Public Motor Transport</i>
50	<i>Rice Flour or Dhal Mills</i>
51	<i>Rubber Products (including Foam and Coir Rubberised Products) Industry</i>
52 (a)	<i>Sericulture</i>
52 (b)	<i>Sericulture</i>
53	<i>Shops & Commercial Establishments</i>
54	<i>Spinning Mills Industry</i>
55	<i>Spun Pipes, Concrete Pipes, Sanitary Fittings, PCC, RCS Poles and RCC Pipes Manufacturing Industry</i>

<i>Sl. No.</i>	<i>Scheduled Employments</i>
56	<i>Steel Almirahs, Tables, Chairs and other Steel furniture Industry</i>
57	<i>Stone Breaking & Stone Curshing Industry</i>
58	<i>Tanneries and Leather Manufacturing</i>
59	<i>Tailoring Industry</i>
60	<i>Textile (Silk) Industry</i>
61	<i>Tile Industry</i>
62	<i>Toddy Tapping</i>
63	<i>Arecanut (Supari)</i>
64	<i>Co-operative Societies</i>
65	<i>Domestic Workers</i>
66	<i>Pulp papers, paper, card board, straw board including news print</i>
67	<i>Sales Representatives in Medicine Professionals Consumer Items and Service</i>
68	<i>“Security Agency” (industries where office staff appointed by such agency including security guards)</i>
69	<i>Employeers working in T-shirts, Sweaters, banians, socks and miscellaneous (Hosiery), knitting and linking</i>
70	<i>Safai Karmachari</i>

Annexure 3: Dearness Allowance

Note on Dearness Allowance linked to Consumer Price Index

Dearness Allowance or 'DA' is basically an additional sum of money to neutralise the effect of inflation. If the price of goods increase and workers wages remain the same then they cannot purchase all their basic requirements. The Consumer Price Index is a list (published by the statistical department of the government) which measures the rise in price in a fixed basket of commodities from a year called the 'Base year'. The consumer price index measures the rise in price of this fixed basket of goods in terms of points.

The DA is fixed by the government is 'x' paise, per point of the consumer price index.

Example: In 1997, beedi workers (piece rate workers), were getting a wage of Rs 40/- for 1000 beedis rolled. From the period, 1997 to 1998 the variable points of the consumer price index was 136 and the D.A fixed by the State Government was 2.5 paise.

The Variable D.A. is therefor Rs. 3.625 (2.5 paise multiplied by 136 points), which was added to the basic wage of Rs. 40/-.

Annexure 4: Register of Deductions

FORM I

{See Rule 22(4)}

Register of Fines

..... Employer

<i>Sl. No.</i>	<i>Name</i>	<i>Father's/ Husband's name</i>	<i>Sex</i>	<i>Department</i>	<i>Nature and date of the offence for which fine imposed</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

<i>Whether workman showed cause against fine or not, if so, enter date</i>	<i>Rate of wages</i>	<i>Date and amount of fine imposed</i>	<i>Date on which fine realised</i>	<i>Remarks</i>
<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>

Annexure 4: Register of Deductions (Ctd.)

FORM II

{See Rule 22(4)}

Register of deductions for absence from duty or for damage or loss caused to the employer, by the neglect or default of the employed persons

..... Employer

<i>Sl. No.</i>	<i>Name</i>	<i>Father's/ Husband's name</i>	<i>Sex</i>	<i>Department</i>	<i>Absence from duty with dates</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

<i>Damage or loss caused with date</i>	<i>Whether worker showed cause against deduction, if so, enter date</i>	<i>Date and amount of deduction imposed</i>	<i>Number of instalments, if any</i>	<i>Date on which total amount realised</i>	<i>Remarks</i>
<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>	<i>12</i>

Annexure 5: Register of Wages

FORM V

{See Rule 29(1)}

Register of Wages

Name of the Establishment

Place

<i>Name of the workers</i>	<i>Wage-period</i>	<i>Minimum rates of wages payable</i>	<i>Dates on which overtime worked</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>

<i>Gross wages payable</i>	<i>Deductions, if any, indicating the kind of deduction mentioned in Rule 2(2)</i>	<i>Actual wages paid</i>	<i>Signature or thumb-impression of the employee</i>
<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>

Annexure 6: Wage Slips

FORM VI

{See Rule 29(2)}

Wage Slips

Name of the Establishment

Place

<i>Name of the worker</i>	<i>Wage-period</i>	<i>Minimum rates of wages payable</i>	<i>Dates on which overtime worked</i>
1	2	3	4

<i>Gross wages payable</i>	<i>Deductions, if any</i>	<i>Actual wages paid</i>	<i>Signature of the employee</i>
5	6	7	8

Annexure 7: Overtime Register

FORM IV

{See Rule 28(2)}

Overtime Register for workers

Month Ending 19

<i>Sl. No.</i>	<i>Name</i>	<i>Father's/ Husband's name</i>	<i>Sex</i>	<i>Designation & Department</i>
1	2	3	4	5

<i>Dates on which overtime worked</i>	<i>Extent of overtime on each occasion</i>	<i>Total overtime worked or production in case of piece workers</i>	<i>Normal hours</i>	<i>Normal rate</i>
6	7	8	9	10

<i>Overtime rate</i>	<i>Normal earnings</i>	<i>Overtime earnings</i>	<i>Total earnings</i>	<i>Date on which overtime payment made</i>
11	12	13	14	15

Annexure 8: Format of Application

FORM VIII

{See Rule 32}

[Form of Application by an employee under Section 20(2)]

In the Court of the Authority appointed under the Minimum Wages Act, 1948 for Area

Application No. of 19.....

(1)

(2)

(3)

(through a Legal Practitioner)

..... Official of Union which is registered Trade Union

Address

Versus

(1)

(2)

(3)

Address.....

The applicant(s) above named beg(s) respectfully to submit as follows:-

(1) That

(2) That

The applicant(s) has (have) been paid wages at less than the minimum rate of wages.

The applicant(s) estimate(s) the value of the relief sought by him (them) at the sum of Rs.....

The applicant(s) pray(s) that a direction may be issued under sub-section (3) of Section 20 for:-

- (a) Payment of difference between the wages due according to the minimum rate of wages fixed by Government and the wages actually paid, and
- (b) Compensation amounting to Rs.....

The applicant(s) beg(s) leave to amend or add to or make alteration in the application, if any and when necessary.

*Signature or thumb-impression of the
employee(s) or legal practitioner or official
of a registered Trade Union duly

Date..... authorised.

The applicant(s) do(es) solemnly declare that what is stated above is true to the best of his (their) knowledge, belief and information.

This verification is signed at.....on.....day of.....19.....

*Signature or thumb-impression of the
employee(s) or legal practitioner or official
of a registered Association duly authorised.

*When the application is by a group of employees, the thumb impression or signatures of two of the applicants need be put to the application and a full list of applicants should be attached to the application.

Particulars to be included in a MWA Application:

1. State: “The address of Applicants and Respondents are as stated in the cause title for the purpose of correspondence.”
2. Who employs applicants and what are they employed as. If application is on behalf of a number of people, particulars of all can be stated in a tabular format, i.e., showing (a) Name; (b) Designation; and (c) Date of Joining.
3. What business is the employer engaged in? Short description of the business.
4. Statement that the employer has a legal obligation to pay the minimum wage for that particular employment as per notification dated: (to fill in) issued by the Karnataka Government. Secondly, that the employer has failed to meet his obligation to pay the minimum wage.
5. Particulars of the amount due. In case of many applicants, the particulars can be presented in a tabular format i.e., (i) Names of the applicants and (ii) Total amount due.
6. If the application is being made late, then the following statement can be added:

“The Applicants submit that they recently came to know about the notification and hence could not make the claim earlier, since they had no information about the notification and the rates fixed there under. The Respondents had not published it on the Notice Board as required by law.”
7. Annexures of the following may be attached to the claim: (i) Months worked, wages due and wages paid to employee / employees (in case of many applicants) (ii) Copy of the relevant minimum wage notification (this is not mandatory).

About Alternative Law Forum (ALF)

The Alternative Law Forum (ALF) was started in March, 2000, by a collective of lawyers with the belief that there was a need for an alternative practice of law which recognized that a practice of law was inherently political. We were committed to a practice of law which would respond to issues of social and economic justice. ALF believes that law is an important site for the negotiation of issues of marginalization and disempowerment faced by people on the basis of caste, class, religion, gender, sexuality, disability or any other status. We also believed in evolving a practice that would challenge the traditional lawyer-client relationship, which is itself embedded in a highly hierarchical and unequal exchange, and work towards democratizing the lawyer-client relationship to make law more accessible to lay people.

We believe that a socially relevant law practice has to be politically engaged as well. We have to locate our law practice in the political context shaped by globalization, the rise of Hindu fascism and the pervasive inequalities based on gender, class, caste and sexual orientation. In this sense we are actively involved in both practice and theories concerning these various challenges. 'Acceptable' or 'established' legal strategies mesh with other approaches such as street protests, media interventions, campaigns, fact-finding reports to participation in people's tribunals.

For more information:

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