



When even minimum is not enough

The recent direction of the Supreme Court asking employers to negotiate minimum wages during the lockdown period with employees must be viewed in the context of India's economic development, say ANOOP SATPATHY and BIKASH K. MALICK

Some general truths about the minimum wage policy of India must be spelt out to set the context. The context relates to the recent direction of the Hon'ble Supreme Court to employers to negotiate (minimum) wages during lockdown period or the general clamour for lowering of minimum wages to gain competitiveness, attract investment, reviving business and thereby repairing and rebooting the economy. Minimum wages are the bare minimum and not maximum wages or not even the prevailing average wage. The objective of minimum wage policy in India is to set a baseline wage to effectively protect the most vulnerable in the labour market. Hence, minimum wages are fixed by the States in such a way as to provide a monetary value equivalent to the minimum consumption needs of workers and their families. And this monetary value doesn't take into account age and years of experience of the workers and hence for all purposes minimum wages are both entry level as well as exit level wages.

In the absence of statutory social security for the informal economy workers, minimum wages are the only means of survival for wage earners and their families. For casual daily workers, with little job security, a minimum daily wage may represent subsistence for a day and no certainty for the days to

come. Therefore, any wage below the minimum wages will lead to starvation wages for millions of wage earners and should be viewed in that manner alone. As the purpose of minimum wage in general is to protect informal workers against unduly low pays, the ILO definition as contained in the Minimum Wage Fixing Convention, 1970 (No. 131) also prohibits reduction in minimum wages by collective agreement or by individual contract.

Notwithstanding the above statutory provisions and international norms, in practice minimum wages in India have been made as starvation wages in normal circumstances due to lack of workers' awareness, lack of compliance and enforcement. Instead of eight hours per day and twenty-six days in a month, in most labour-intensive industries and in large segments of the informal economy, workers are subjected to twelve hours of work per day and thirty days in a month normally to earn their minimum wages. The concept of overtime compensation hardly exists in the lexicon of employers. This *inter alia* means that workers have to put labour efforts equivalent to forty five days in a month to earn their monthly minimum wages. Further, most of the workers are not paid even their starvation wages at the end of their wage period but at delayed intervals. These workers have way to resist

this oppressive practice for fear of losing jobs as replacements are always available readily in a labour surplus country such as ours.

A common criticism of minimum wage adjustments is that they interfere with market forces in wage setting and raise labour costs, resulting in layoffs of workers – especially in small and medium sized enterprises (SMEs). This may be a valid consideration only if minimum wages were increased abruptly without appropriate measures for adjustment in labour-intensive sectors. However, fears that minimum wages per se lead to employment losses appears to lack of empirical verification. Instead, a growing number of studies nationally and internationally indicate that the relationship between the minimum wage and employment is not necessarily negative. Further as far as redistributive effect of minimum wage is concerned, the ILO-India Wage Report 2018 states that it is unconceivable to think that India's economic growth in the last decades has not reached the most vulnerable, with low pay remaining pervasive and wage inequality still very high. The same report states that although average labour productivity has increased, the labour share in GDP has declined further and the share of profit, rent and other income from capital has correspondingly increased at a faster pace.

Therefore, any debate relating to negotiating minimum wages or its downward revision to revive the business, competitiveness and attract investment is akin to compromising on the rate of reduction in poverty and inequality. Further, this argument is based on a wrong economic assumption. The argument considers labour as the only factor of production and wages, which are an outcome of employment, as the only input cost as if this cost alone is responsible for increasing overall cost of production and affecting competitiveness. Each time a crisis beckons in a country like India, demand for lowering wages and concessions on other labour standards grows louder as if this is the only potent tool available to address the negative fallout of an economic crisis.

The cost of other factors of production such as land and capital, which the labour put to work as a lubricant are equally important along with energy and logistic costs, tariff rates, exchange rates, prices of intermediate goods, economies of scale, level and quantity of skilled labour from the point of competitiveness and revival of the business cycle. The Government as a part of the stimulus package has already lowered the cost of capital to MSMEs, made access to capital easy through sovereign guarantees, lowered corporate tax rates and EPF rates,

deferred loan repayments and provided other benefits to industry. This stimulus package to industry may not fully neutralise the decline in output due to the pandemic but is large enough to revive and restart production.

This package also supplements reduction in the overall cost of production, enhances competitiveness and protects shareholders' interests. Therefore, industry and businesses instead of vying for wage settlement with workers with unequal bargaining power or demanding for lowering wages, must pay the non-negotiable minimum wages to workers.

Further, this strategy of race towards the bottom by induced lowering of purchasing power will lead to sub-optimal consumption, lower general welfare of the vast majority and strengthen the crisis further. As evidence shows minimum wages are largely starvation wages in most parts of India, any wage settlement negotiation or further reduction will increase vulnerability among the low paid workers who are already feeling alienated and marginalised in an unfriendly labour market. As the industry not only needs low production cost but also a market with strong purchasing power, businesses must treat minimum wages as a right of workers and also as a business imperative.

Similarly, the Government has the

mandate and opportunity to use minimum wage as the most important tool to revive consumption, stimulate aggregate demand and take the economy out of the crisis. The Economic Survey; 2018-19 establishes the presence of "lighthouse effect" of minimum wage in pulling up actual wages of the low-paid informal economy workers by enhancing their bargaining powers. However, for this to happen in the true sense, Government must set all statutory wages at an adequate level and must ensure their universal application through effective enforcement.

The expert committee on *Determining the Methodology for Fixing the National Minimum Wage* using an updated and transparent methodology had proposed to set the statutory national wage floor at Rs. 375 per day at 2018 prices for unskilled workers across sectors and geography in the context of the Code on Wages 2019. The Committee alternatively had also proposed five national regional floors ranging from lowest of Rs 341/day to highest of Rs 447/day for different regions. Going by the methodology, it will be easier to catch up with the Rs 18,000 per month wage demand for unskilled workers by labour unions progressively across sectors and regions.

After setting the national floor wage statutorily, the Government may shift from the MGNREGA wages and make the floor wage applicable to MGNREGA workers. This is all the more important as the setting of MGNREGA wages since 2010 (when it delinked wage fixation under the scheme from the Minimum Wages Act, 1948) are not clear and somehow the wage rate in this employment guarantee scheme has been kept low to check large outgo and extra burden on the exchequer.

Right to work with a minimum wage may be more appropriate for keeping in mind the dignity of labour as outlined in Directive Principles of State Policy of our Constitution. As a result of low income transfer under the scheme, despite of its operation for last more than one and half-decade various studies shows that MGNREGA has not been successful in terms of lifting people out of poverty or placing them in better productive jobs.

Moreover, once the national floor wage is set, all State Governments must revise their wages on the basis of expert committee methodology at a level equal to or above the floor wage. The Union and State Governments must also improve the governance of labour regulations and put more efforts to strengthen enforcement and compliance mechanism. As per the Economic Survey 2018-19, nearly 20 per cent of regular and 42 per cent of casual workers in 2011-12 received wages below the existing non-statutory floor wage of Rs. 176.

An effective minimum wage policy is an important tool to protect low paid workers, boost consumption and possibly put the economy back on track; therefore any demand for negotiating or lowering minimum wages must be avoided.

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A system crying out for change

The decision to commute the life sentence of the accused in the Jessica Lal case highlights the need for urgent reforms in the criminal justice system, says G L VERMA

Law should not remain dormant, while those who defy it go scot free and those who seek its protection lose hope. If such a situation develops, it is the Rule of Law which becomes the first casualty, people's faith in the system gets eroded and criminals have the last laugh. In our country, the criminal justice system suffers from such serious infirmities. With low rate of conviction of about 16 per cent, it opens hundreds of vistas for criminals to prolong and twist investigations, influence witnesses and even take repeated somersaults before trial courts. There have also been cases where under-trials have been incarcerated for periods longer than the punishment prescribed for their alleged offences due to quagmire of delays or faulty investigations.

As per National Crime Record Bureau, about 67.2 per cent of prisoners are under-trials. While a few enjoy premature release because of good conduct during incarceration, others languish behind bars. There is no safeguard against the misuse of such powers as it rests upon the sole discretion of jail authorities.

The recent premature release of Manu Sharma, awarded life imprisonment in the Jessica Lal murder case shows how the system works. The release has struck blows on the principle of equality before law in as much as no fair exercise was done by authorities to identify other similarly situated persons who should have been entitled to get similar release. It is already held by Supreme Court in *Maru Ram Vs. Union of India and Another 1981 (1) SCR 1996* that life sentence is nothing less than life-long imprisonment. It makes it clear in several decided cases that 'imprisonment for life lasts until the last breath.' However, in spite of such categorical propositions held by



Supreme court, there are loopholes created in such a manner that a prisoner, even though awarded life imprisonment, can get premature release and come out of jail after completing just 14 years of imprisonment. This provision has left scope for promoting favouritism and corruption without appropriate safeguards to prevent misuse of powers.

As per provisions contained in Section 433 of Code of Criminal Procedure 1973, a State Government may commute the sentence of imprisonment for life for a term not exceeding fourteen years or for fine. Section 433 A of the

same code lays down further that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment. In case of woman prisoner, this period is at least 10 years.

The procedure adopted for such premature release is that the Superintendent of Jail initiates the cases of prisoners

who are eligible for release on the ground of their good conduct during incarceration and forwards the names to Deputy Commissioner of Police of the area where the crime was committed. He then ensures the reference of all such cases through Director General of Prisons before the Sentence Review Board. There is no safeguard against use or misuse of such a power vested with Superintendent of Jail and other authorities. No judicial remedy can be invoked as it is the sole discretion of government. This procedure of grant of premature release is in addition to the provisions contained in Articles 72 and

161 of the Constitution wherein the President of India and the Governor of a State can grant pardon, reprieve or remission to the convict.

In *K.M. Nanavati Vs. State of Maharashtra*, such a power was exercised when the accused Nanavati was pardoned by the then Governor Smt. Vijay Lakshmi Pandit and released after barely three years of incarceration. This evoked sharp reactions from all quarters and even the Supreme Court remarked that Governor had overreached her powers. Nanavati left this country to settle down in Canada. Thereafter, numerous such instances kept on making a mockery of the criminal justice system.

Our criminal justice system suffers from growing pendency, marked by delayed and shoddy investigation. As per details laid on the table of Lok Sabha by the Law Minister, there are 59,867 cases pending with Supreme Court, 44.75 lac cases pending with High Courts and whopping 3.14 crore cases pending with District Courts all over the country as of November, 2019. The position of pendency in Tribunals is even more disturbing.

This growing pendency is not merely due to large number of vacancies remaining un-filled but also because of our judicial system where either replies or rejoinders are not filed in time or adjournments are sought on one pretext or the other. Some time ago, a proposal was mooted for recruitment of Judges through Indian Judicial Service on the pattern of IAS and IPS. But even this proposal could not be implemented because judges who recommend appointments of judges do not want to be deprived of their privileges.

Vacancies of judges across courts in India has affected their functioning. As of 2017, High Courts had 403 vacancies and subordinate courts had 5,676 vacancies. The vacancies for the post of public prosecutors are all the more alarming. The system is rotting also because Courts often pass acquittal orders with remarks that prosecution has failed to bring substantial evidence. They do not go to the extent of ordering re-investigations to see the truth coming forth which is their prime objective. Lack of protection of witnesses is

another major roadblock. Instances of intimidating witnesses and recording depositions under fear or allurement are common and widespread. There are instances where witnesses were even murdered inside court compounds. There is no law yet to protect the witness and to punish the person trying to influence witnesses despite repeated recommendations by Law Commission.

In U.K., intimidation of a witness is an offence punishable under law. On the basis of recommendations of Law Commission, a Witness Protection Bill, 2015 was introduced providing a comprehensive system for protecting witnesses. However, the Bill is yet to be passed. If witnesses are to depose under fear or intimidation or allurement, the foundations of justice are bound to be weakened. It is the need of the hour to ensure that the Witness Protection Bill, is enacted at the earliest. Criminalisation of politics and political patronage for criminals is another arena which has made the matters worse. Vohra Committee 1993 had suggested measures to curb criminalisation of politics. But its recommendations were not implemented. Jail reforms is another issue which forms part of the criminal justice system. Jails are no longer reformatories as instances of riots, crimes, entry of drugs, objectionable items, mobiles etc have increased. Irregularities in grant of parole, extra facilities during Open Jail periods against rules and immoral activities go unchecked.

A committee on reforms in the Criminal Justice system was constituted by the Government of India vide its order dated 24 November 2000 under chairmanship of Justice V.S. Malimath to suggest measures for revamping the system. After a prolonged exercise, committee submitted its 297-page report on 28 March 2003 and offered valuable suggestions. However, the report has not received due consideration. It appears that there is lack of will to bring sweeping reforms in the criminal justice system. If no prompt action is taken to set it right, it is bound to cast its shadow on law and order and maintenance of peace in the society.

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