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ARTICLES

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State of Minimum Wages in Bangladesh –Problems and Perspectives

বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ

নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন

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State of Minimum Wages in Bangladesh –Problems and Perspectives

Muhammad Shaheen Chowdhury*

Introduction

The determination of minimum wages is one of the major pre-requisites of sound industrial relations in a country. It is a worker's fundamental human right to get timely reasonable wages. Logically, an employer has the right to pay wages to the workers on the basis of their capacity. But he cannot pay a worker below the Minimum National Wage. Minimum National Wage is the nationally specified wage structure as determined by the Government and a worker cannot be paid below that structure. A worker gets wages for his service on the basis of his efficiency. Though the capability of workers differs from person to person, their basic needs are almost same. Thus, the main objective of fixing wage structure is to pay a worker minimum amount with which he can fulfill the needs of himself or his family.¹ In order to ensure social security of a worker following seven issues² should be given priority: 1. income security, 2. representation security, 3. labour market security, 4. employment security, 5. job security, 6. work security and 7. skill representation security. All these ensure 'primary base' for income security of unskilled workers, and income security of unskilled workers is related to minimum wages. Primary task to ensure income-security of unskilled workers can be accomplished by declaring 'national minimum wages' irrespective of all sectors and genders.³

* Assistant Professor, Department of Law, University of Chittagong, Chittagong-4331, Bangladesh

¹ Raheed Ejaz, 'Discrimination of wages: Perspective of Bangladesh', *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies; (pp.9-12)

² 'National Minimum Wages Suitable For Livelihood of Workers'-- keynote paper presented in a National Seminar on minimum wages for workers employed in private sectors, held at CIRDAP Auditorium in February 18, 2005; Organized by: Kormojibi Nari

³ Ibid

Fixation of minimum wages and its implementation in a particular country invariably involves socio-politico-economic factors prevalent in that country. The position of Bangladesh in this regard is diversified as well as intricate, because of its being a source of cheap labour and the prevalence of unemployment in a massive scale.⁴ There is no uniform minimum wages scale for workers of all sectors in Bangladesh. Even there is no homogeneity among the minimum wages fixed for different sectors and industries. Different wage structures prevail in different industries, relevant to job pattern of the workers. Several wage boards have been set up at different times with the aim to fix minimum wages for workers employed in various enterprises- public and private. This article highlights the state of minimum wages structure of major industries and sectors in Bangladesh, existing legal mechanisms, discriminatory practices in payment of wages and other relevant issues. A review of the existing literatures reveals that they have not covered the issue of 'minimum wages' in Bangladesh according to its merit and importance. This article humbly tries to fill the gap in appropriate cases.

Legal regime of 'wage' and 'minimum wage'

It is pertinent to point out legal regime of 'wages' and 'minimum wages' from national and international perspectives. Payment and protection of wages and other related matters had been regulated by the erstwhile Payment of Wages Act, 1936. Workers employed in factories, shops, industrial and commercial establishments like road transport services, railways, dock, jetty, inland steam vessel, mine, oil field, plantation or any other workshop had been brought within the purview of this legislation. This Act has now been merged with the newly introduced Labour Act, 2006 after few modifications. According to S. 2(45) of the Act of 2006,

'Wages' means all remuneration capable of being expressed in terms of money. It is payable to a worker if the terms of the contract of employment are fulfilled.

⁴ Advocate Fawzia Karim Firoze, 'National Minimum Wage: A Reality or a Myth!', *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies.

The term 'wages' includes any other additional remuneration of the nature aforesaid which would be so payable but does not include the followings:

- a) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government;
- b) any contribution paid by the employment to any pension fund or provident fund ;
- c) any traveling allowance or the value of any traveling concession;
- d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment.

However, according to section 120, the phrase 'wages' shall include the following, namely:

- a) any bonus or other additional remuneration payable as per the terms of employment;
- b) any remuneration payable for holiday, stoppage or overtime work;
- c) any remuneration payable for any order of the court or for any award or resolution between the parties;
- d) any money payable under any contract or the Labour Act for any removal from service- be it under retrenchment, discharge, removal, resignation, retirement, dismissal;
- e) money payable for lay-off or temporary dismissal.

Under the Constitutional framework⁵ to ensure employment for all citizens in return of reasonable wages has been termed as one of the fundamental duties of the State. Universal Declaration of Human Rights (UDHR), 1948⁶ and ILO Conventions⁷ have also given clear directions for payment of reasonable wages to the workers. As mentioned in ILO Convention 131, the right of minimum

⁵ Article 15 of the Constitution of the People's Republic of Bangladesh

⁶ Articles 23 and 25 of the Universal Declaration of Human Rights.

⁷ Vide ILO Conventions no- 26, 95, 99 and 131

wages must be ensured by law and it cannot be left in the hands of anybody's discretion. Actions have to be taken against those who fail to implement the law.⁸ It lays down procedure to determine minimum wages for the workers. According to the UDHR,...*everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection...*⁹. Again article 25 lays down that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Under the Labour Act of 2006, the minimum rates of wages fixed by the Government is final and cannot be questioned by any person in any manner in any court or authority. The rates declared by the Government on the recommendations of the Wages Board are minimum rates of wages and no

⁸ If any employer fails to ensure minimum wages for its workers there is ample opportunity to bring him/them to justice. If a worker remains unpaid of his/her due wages he/she can go to the labour court for proper remedy (vide, s. 132 of the Act of 2006). In addition to this, if an employer fails to implement the award of the labour court to pay the wages of any worker that employer may be punished with imprisonment or fine or with both under several sections of the Labour Act (vide, ss. 289, 307, 308, 309, 310). The irony is that if any worker(s) indulge in unfair labour practice, the punishment is very quick, but no employer is seen yet to face any punishment for not implementing minimum wages for its workers. This fact has to be considered from socio-politico-economic point of view. Employers always indulge in the plea of low-productivity in support of their failure to pay minimum wages. In most cases, employers use their political influence to escape government monitoring. BGMEA and the present interim government has declared drastic action programme against the defaulting employers failing to ensure minimum wages to the workers. But this remains a mere paper-tiger for no action is seen to be taken against any employer. This can be termed as a basic weakness of the Governments since earlier regimes towards establishing sound industrial relations in Bangladesh.

(Comments made by some Government high officials who preferred to anonymous in an interview given to the author, dated April 18, 2008)

⁹ Vide art 23(3) of UDHR

employer can pay wages lower than those fixed by the Government. However, the law does not preclude employers from paying more than what has been recommended.¹⁰

Other Legal Issues Relevant to Question of Minimum Wages

a. Working Hours

Working hours of a worker for payment of wages should be determined in the following manners:

- A worker has to work generally eight hours a day.¹¹
- In return for overtime allowance, a worker can work overtime 2 hours per day. A worker can be engaged for overtime duty only when he/she agrees thereto.¹²
- Including overtime, a worker's maximum working hour is 60 hours a week. But average annual working hours cannot exceed 56 hours a week. That is to say, a worker cannot be engaged for overtime duty in every working day of the year.¹³
- Every worker will get following leaves ¹⁴with full wages: i) one weekly holiday; ii) 10 days casual leave; iii) 14 days sick leave; iv) 11 days festival leave and v) one day earned leave for every 18 days of work in the previous 12 months.

b) Payment of Wages

- Wages and overtime allowance have to be paid within 7 days of wage-period.¹⁵
- Wage period shall be 30 days.¹⁶

¹⁰ Sections 148, 149, the Labour Act, 2006

¹¹ S.100, the Labour Act, 2006

¹² S. 108, the Labour Act, 2006

¹³ S.102, the Labour Act, 2006

¹⁴ Vide sections 103, 115-119 of the Labour Act, 2006

¹⁵ S.123 (1), the Labour Act, 2006

- All wages have to be paid in working days;¹⁷
- Wages have to be paid in the existing currency in cash taka or cheque.¹⁸

c) Some Important Aspects of Wages¹⁹

- Grades of wages have to be fixed on the basis of experience and efficiency.
- Wage slips have to be given after registering the grade wise wages.
- 'Contract workers' engaged by the contractors will also be regarded as 'workers' and the contractors as 'employers'. Under the Labour Act 2006 if the contractor does not pay wages employer will be responsible for payment of wages. The employer will later on adjust the same from the contractor.
- If wages paid already is in excess of the minimum wages declared, it cannot be curtailed.
- Employers may pay the workers wages and other allowances at the rates exceeding the minimum wages.
- In case of piece rated workers, wages should be fixed at such rates that it may not be less than the minimum wages declared. Under the existing labour law Minimum Wages Board can fix minimum wages for private sector industry workers on basis of time rate or piece rate or both.
- Besides minimum wages declared, all other benefits that would accrue to a worker under the Labour Act 2006 will form part of his/her wages.

¹⁶ S.122, the Labour Act, 2006

¹⁷ S.123 (3), the Labour Act, 2006

¹⁸ S.124, the Labour Act, 2006

¹⁹ Vide, S.R.O. no-301-Ain/2006/SROKOM/Sha-6/NiMoBoard-1/2006

Remedies for Non-payment of and Undue Deduction from Wages²⁰

- If minimum wages are not paid, the unpaid worker has to serve a written demand notice to the employer claiming his/her wages. If it does not work the worker may go to the labour court within six months of refusal to pay wages.
- In case of undue deduction from wages or less payment of wages or delay in payment of wages violating the provisions of the Labour Act 2006, the worker can go to the labour court seeking remedy by filing a complaint case. Before filing the case the worker has to claim wages from the employer by a written letter. The complaint has to be lodged within 12 months of the claim.
- An employer who pays wages to a worker which is below the minimum rate of wages shall be punishable with imprisonment up to one year or five up to taka five thousand or with both.
- If any employer who has been convicted of non-payment of minimum wages is again convicted for the same offence, he shall be punished with double penalty fixed for such contravention.

The practice is that workers should preserve a copy of the written demand for payment of wages or stoppage of undue deduction or timely payment of wages. A worker may apply in this regard to the Inspector for the respective industry. If no remedy is given by the Inspector, then the worker can go to the labour court within limitation period. A worker may also seek help from the respective trade union/federation.

Determination of Minimum Wages

Generally wages is specified in three ways: firstly, through the negotiation between the employers and the employees, secondly, under the law of government and thirdly, through the agreement between the trade unions and

²⁰ Both civil and criminal actions can be taken against the employer who fails to pay minimum wages and due wages to a worker. Vide, 132, 289, 307, 308, 309, 310 the Labour Act, 2006

the employers.²¹ In Bangladesh wages are determined by three separate bodies.²² Wages for government employees are fixed up by National Pay Commission (NPC) that declares new pay-scale after every 5/6 years. Whereas wages and related fringe benefits for workers in the public sector²³ enterprises are determined from time to time through the recommendation of the National Workers' Wages and Productivity Commission (*Popularly known as Wages and Productivity Commission, WPC*) established under the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1985. These commissions are normally set up by the government on *ad-hoc* basis from time to time in order to rationalize the pay and wage structure with the changes of cost of living, indices and other related factors. Usually, Wages Commission recommends new pay structure by following the pay scale declared by the Pay Commission.²⁴ On the other hand, wages of private sector workers are determined by the Minimum Wages Board formed under the legal framework.²⁵ So far, the Board has fixed up minimum wages for 38 private sectors.²⁶ Rates of minimum wages for private sector workers are fixed by the Government on the recommendation of the Minimum Wages Board. The Board undertakes the task after every five years either by the direct

²¹ A.K. Enamul Hoque, 'Minimum Wage System: An Evaluation' *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies; (pp 13-20)

²² 'Determination of National Minimum Wages,' Altaf Parvez, Kormojibi Nari, Dhaka, web: www.karmojibinari.org

²³ In Bangladesh economy the public sector plays a dominant role in respect of employment generation for a large segment of population. Government's intervention in wage regulation in this sector is, therefore, predominant

²⁴ There is an exception to this practice that took place following declaration of latest pay scale in 2005 by NPC. Wages Commission did not announce any wages structure until a new Commission was set up and submitted its report in 2006

²⁵ Legal provision regarding formation and fixation of minimum wages in private sectors can be found in the Labour Act, 2006(sections 138-149). Erstwhile law on this point is The Minimum Wages Ordinance, 1961

²⁶ However, some more private industrial sectors have been identified in addition to the existing sectors. Personal interview with Syed Sultan Ahmed, Assistant Executive Director, Bangladesh Institute of Labour Studies, dated November 21, 2007

requisition of the Government or if the workers or employer or both of a particulars industry so demands to the Government

Composition of Minimum Wages Board

Since the Minimum Wages Ordinance 1961, inter alia, has been consolidated with the Labour Act, the erstwhile Minimum Wages Board is now operative under the Act. Chapter 11 (sections 138-149) of the Act deals with Wages Board. The Government determines the role and functions of the Board. The Board consists²⁷ of the following members:

- a) the Chairman; b) one independent member; c) one member to represent the employers; d) one member to represent the workers;

When the Government decides to fix new rates of minimum wages for workers of one or more specific sectors, then the following two members shall also be included in the Board:

- a) one member to represent the employer connected with the industry concerned;
- b) one member to represent the workers engaged in such industry.

The Government appoints the Chairman and other members of the Board. They are appointed from among persons with adequate knowledge of industrial, labour and economic conditions of the country and who are not connected with any industry or associated with any employers' or workers' organization. The members of the Board representing the employers and workers respectively are the nominees of their respective representative organizations (i.e. trade unions). However, in the absence of any nomination by repeated trials, the Government may determine the workers' and employers' representatives in the Board.

Fixing Minimum Rates of Wages.

Legal provisions for fixation of minimum wages can be described as follows:

²⁷ S.138, the Labour Act. 2006

Where in respect of any private sector industry the Government is of the opinion²⁸ that having regard to existing rate of wages of the workers employed in the industry, it is expedient to fix the minimum rates of wages for all or any class of workers, it may direct the Board to recommend, after such inquiry as the Board thinks fit, the minimum rates of wages either for all such workers or for such class as are specified in the direction. Again on the application submitted by the employer or workers or both of any particular industry the Government may consider the matter of fixation of minimum rates of wages for the workers employed in such industry. The Board has to submit its recommendation to the Government within six months or within the time extended by the Government. In its recommendation the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the country or with such local variations for such locations as are specified therein. The Board may recommend minimum rates of wages for all classes of workers in any grade. In such recommendation it may specify-

- a) minimum rates of wages for time-work or piece-work;
- b) minimum time-rates of wages for workers employed on piece-work.

The time-rates recommended by the Board may be on hourly, daily, weekly or monthly basis. In its recommendation the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the country or with such local variations for such locations as are specified therein.

On receiving the recommendation of the Board, the Government will fix minimum rates of wages for workers of the enterprise(s) concerned.²⁹ If the Government considers that the recommendation is not, in any respect, equitable to the employers or the workers, it may refer the recommendation back to the Board for reconsideration. The Government has to do it within 30 days with its comments and information. The Board will reconsider the recommendation

²⁸ Section 139, the Labour Act, 2006

²⁹ S.140, the Labour Act, 2006

after taking into account the comments made and information given by the Government. In this respect the Board has the followings to do:

- i) it will hold further inquiry and submit to the Government a revised recommendation; or
- ii) if it considers that no revision or change in the recommendation is called for, make report to that effect stating reasons therefore.

On receiving the revised recommendation of the Board, the Government will declare, by Gazette notification, the minimum rates of wages for the workers concerned. Even then, if the rates so fixed seem to be inequitable to the employers or workers, the Government may again refer it back to the Board for reconsideration according to the procedure mentioned above. The minimum rate of wages declared by the Government is final and cannot be challenged by any person in any court or before any court.

If any of the factors mentioned above require necessary changes in the rates of wages, the Board will review³⁰ its recommendation. It then recommends the Government any amendment, modification or revision of the minimum rates of wages declared earlier. Provided that no recommendation will be reviewed earlier than one year from the date on which it was made (unless the special circumstances of a case so require), and later than three years from such date.

Evolution of Minimum Wages in Bangladesh

The setting up of appropriate wages machinery in Bangladesh can be traced back to the adoption of the International Standard concerning Minimum-wages fixing machinery (Convention 26, 1928) by the International Labour Conference. After the separation of sub-continent in 1947, the first attempt to set up wage-fixing machinery was made by the announcement of a long awaited Labour Policy by the Government of Pakistan in 1955. In terms of this policy, the Government constituted one Wages Board for Karachi in 1957. The government of the then East Pakistan (Now Bangladesh) stepped further ahead

³⁰ Section 142, the Labour Act, 2006

by enacting the Wages Act, 1957 to regulate wages of workers of some sectors. Minimum Wages Board 1958 was established in pursuance of this Act. The Minimum Wages Ordinance was enacted in 1961 by the then Pakistan Government to regulate the issues of minimum wages. In 1969, a commission headed by Air Vice Marshall Nur Khan (known as Nur Khan Commission)³¹ proposed 115 taka as Minimum National Wage. In pursuance of the Commission's recommendation the Minimum Wages Ordinance, 1969 was enacted. However, after the independence in 1971, the proposal of the Commission was not adopted in Bangladesh due to nationalization policy of the then government. Due to their distinctive features, evolutions of minimum wages for public and private sectors in Bangladesh need to be discussed under separate sub-headings.

a) Minimum Wages in Public Sectors

The first wages commission in Bangladesh was set up in 1973³² and according to their recommendations eight grades of wages were formulated for different categories of workers. The basic minimum grade was from taka 155 to 235 and the maximum grade from taka 250 to 435 *plus* other accompanied fringe benefits. The government did not immediately consider the issue of fixing Minimum National Wage until it adopted privatization policy. In 1977 another commission was set up to revise the wage structure. This time the numbers of grades were increased to sixteen for different categories of workers. The lowest grade of scale ranged from taka 270 to taka 380 and the highest grade from taka 570 to taka 1018. Again in the year 1985 the wage rates were further revised for the third time. The number of grades remained sixteen, the lowest grade begin from taka 560 to taka 860 and highest one from taka 1160 to taka 2060. The

³¹ Mesbahuddin Ahmed, 'Why National Minimum Wage?' *Labour*, Vol-10 July-Sep 2000, pp.1-3, Bangladesh Institute of Labour Studies.

³² A.Z.M. Tabarukullah, 'Minimum Wages: Proposal for Scale on Minimum Wages fixed by the Minimum Wages Board in 1994 for Ready Made Garments Industries.', p-12, Report prepared under the auspices of Bangladesh Garments Manufacturers and Exporters Association, 2003.

Government has also allowed 10% dearness allowance in 1991 to all grades of workers employed in public sector industries in order to give some relief against inflationary pressure.

After 7 years, the 4th Minimum Wage & Productivity Commission was formed in 1998. The Commission suggested the lowest and the highest wage scale as 1550 and 2775 taka respectively. A worker would get 5665 taka including other facilities in the scale of 2775 taka. The proposal of the Commission has been approved with some modifications by the Cabinet in October; same year. The wages structure declared by the government on the recommendation of the 4th Wages & Productivity Commission is as follows:

Grade	Wage Scale in 1991	wage scale in 1998
1	Tk. 950-30-1490	Tk 1550-50-2450
2	Tk 1000-35-1630	Tk 1600-55-2590
3	Tk 1050-40-1770	Tk 1675-65-2845
4	Tk 1050-45-1910	Tk 1750-70-3010
5	Tk 1175-50-2075	Tk 1875-75-3225
6	Tk 1225-55-2215	Tk 1950-85-3480
7	Tk 1275-60-2355	Tk 2025-90-3445
8	Tk 1325-65-2495	Tk 2100-100-3900
9	Tk 1375-70-2635	Tk 2150-105-4040
10	Tk 1425-75-2775	Tk 2225-115-4295
11	Tk 1500-80-2940	Tk 2325-125-4575
12	Tk 1550-85-3080	Tk 2400-130-4740
13	Tk 1600-90-3220	Tk 2475-135-4905
14	Tk 1650-95-3360	Tk 2550-145-5160
15	Tk 1700-100-3500	Tk 2625-150-5325
16	Tk 1800-105-3690	Tk 2775-160-5655

Source: *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies; (pp.9-12)

The 5th National Wages and Productivity Commission for workers of public sector enterprises (state owned industries) was formed in 2005.³³ It recommended taka 2,850 as minimum wages and taka 4250 as the highest wages to be paid in 16 scales. As per Commission's recommendations, the proposed wages at 1st scale out of 16 scales is taka 2850-120-5010 and at the 16th scale taka 4250-270-9110. It proposed house rent allowance to be added with all wages scale @ 40%-47% of the basic pay. Besides, the Commission has recommended fringe benefits like medical allowance, festival bonus, night shift allowance conveyance, house rent, washing allowance, tiffin and risk allowance, leave encashment, contributory provident fund, group insurance, gratuity, retirement benefit, profit bonus and other benefits and allowances. The government, with necessary modifications of the recommendations given by the Wages Commission, declared new pay scales with effect from 1st January 2006.³⁴ Government has fixed minimum monthly wages as 2450 taka and highest monthly wages 3980 taka. By 16 scale increments, the highest possible wages will be taka 9000. Some 58,000 workers are benefited by this decision.³⁵

Expert analysts and investigators of the Wages Commission have fixed taka 3,030 necessary to meet the minimum basic needs of a four member family of an unskilled worker. Some 1,842 taka is added with the proposed basic as benefits including house-rent, medical allowance, education of dependents, cloths, conveyance and social communications. Thus, monthly minimum needs of an unskilled worker's family is taka 4872. Whereas, minimum monthly basic needs of a skilled worker is 5526. Commission in its report stated that average

³³ A 13 member National Minimum Wages Commission was formed on April 06, 2005. Primarily the tenure of the Commission was fixed for three months, but later on the term was extended. Jurisdiction of the Commission was to submit recommendations regarding basic wages and other benefits for workers of state owned industries considering expenses of livelihood. On that basis the Commission submitted its recommendations. Earlier Commission was formed in 1997 and implementation of the Commission's suggestions started from 2001. Source: *Daily New Age*, April 29, 2006.

³⁴ *The daily Samakal*, 25 April, 2006 (At present public sector workers are paid at this wages structure)

³⁵ Ibid

inflation has been 34.28% during seven years period between 1998-99 to 2004-05 fiscal years. The Commission agreed that compared to inflation rate and price hike, the scales proposed by it were insignificant for workers.³⁶

The minimum salary scale of the National Pay Scale 2005 is taka 2400 which is less than Commission's suggested minimum wages scale by taka 450. The government decided to add 50 taka only with each scale. Commission proposed house rent as 60% of basic pay for Dhaka Metropolitan area and for all other areas 50% of the basic. Workers who are provided with housing will not get house rent allowance. In the table below there is a comparative picture of wages scale proposed by the 5th Wages Commission of 2005 and wages scale declared in 1998.

Items of Benefits	House rent	Medical	Convey -ance	Washing bill	Festival bonus	Night Shift pay	Profit Bonus	Group Insura -nce	Tiffin Allow -ance	Risk Benefit
Benefits Proposed by 5 th wages commis- sion	50% of basic pay	500 taka	100 taka	25 taka per set cloth	two yearly bonuses equal to one basic	200 taka maxim -um	10% of net profit	An amount Worth 36 months basic to legal heirs	100 taka	100 taka
Benefits offered by wages scales of 1998	35% of basic pay	400 taka	80 taka	No such payment (NSP)	Same	(NSP)	(NSP)	(NSP)	(NSP)	(NSP)

Note: all payments are monthly basis (in taka)

Source: Daily Jugantor, April 24, 2006

As regards the proposals of the 5th Wages Commission, the government (in particular, Ministry of Finance) was of opinion that while determining different fringe benefits for the workers it is not advisable to exceed the benefits and

³⁶ The Daily Jugantor, 24 April, 2006

allowances paid to the government employees. Otherwise there would be a risk of demand for increase in pay scale by the government employees. Ministry of Finance has admitted that the government could not fully implement the reports of National Pay Commission-2005 mainly due to lack of resources.³⁷ Besides, most of the state owned industrial enterprises are loosing concerns and, therefore, such a decision would increase the amount of loss.

Minimum Wages for Private Sector Industries

No government paid proper attention to private sectors for wage fixing. Specification of minimum national wage for private sector industries was mentioned when government signed an agreement with SKOP.³⁸ General Ershad was in power when SKOP signed the agreement with the government. But no government including the Ershad regime was successful to settle the issue of minimum national wage in private sectors until the recent move by the army backed caretaker government.³⁹ The minimum wages board prepared a draft wage-scale for 38 private sectors in 2001. It kept agricultural and

³⁷ Should the government have implemented recommendations of the Wages Commission, it would have to budget some 200 crores more taka. But it drastically curtailed Commission's proposed pay scales and that would require the government to arrange 80 crores more taka.

³⁸ The term SKOP stands for Sramik Kormochari Oikko Parishad which has been a grand alliance of trade unions in private sector industries in Bangladesh. There has been wage discrimination between the workers of state owned organizations (public sector) and private industrial enterprises. Trade union leaders have been raising their voices for a long time to eliminate such discrimination. They have demanded on several occasions to introduce a special law for the implementation of minimum wage in privately owned organizations. Accepting their proposal, Ershad government signed an agreement with SKOP leaders. But it is a matter of great regret that succeeding governments have for long not taken any initiative to implement the agreement. Eventually labourers of private industries have been deprived of getting very poor amount as minimum wages fixed in 1985 & 1991. (*Vide, supra note-... Advocate Fawzia Karim Firoze, 'National Minimum Wage: A Reality or a Myth!', Labour, Vol-10 July-Sep 2000, Bangladesh Institute of Labour Studies*)

³⁹ In a gazette published on the April 15, 2007 the Government declared minimum wages for unskilled and juvenile workers employed in all private industrial sectors in Bangladesh as taka 1500. This rate is applicable irrespective of any previous declaration as to minimum wages. *Vide, the Bangladesh Gezette (Extra Ordinary Issue) S.R.O. No 52-Ain/2006/SROKOM/Sha-6/NIMONI-28/2001.*

domestic workers outside the scheme of minimum wages.⁴⁰ Minimum wages was fixed in that declaration as taka 1200.⁴¹ This again has not seen light of the day as the associations of employers filed a writ petition against it before the High Court Division of the Supreme Court. The court declared the impugned government gazette fixing minimum wage rates as illegal and void but did not refrain the government from fixing new wages structure. Subsequently, another wages board was formed in January 08, 2004 and it submitted its recommendation of minimum wages for private sector workers in March 09, 2004.⁴² Accordingly, 'agriculture and domestic workers' have been left out of the recommendations. Thus, only 8.5 millions workers have been brought under this scheme whereas 50 millions of toiling workers are living without any legal protection regarding their wages. According to the class of industries the Board proposed the following minimum wages:

- For small industries employing less than 10 workers: 1200 taka per month
- For medium size industries employing 11-49 workers: 1250 taka per month
- For large industries employing 50 or more workers: 1350 taka per month

Minimum Wages for RMG Workers

On the initiatives of Bangladesh Institute of Labour Studies (BILS), representatives of all trade unions and federations met in the capital in April, 2006 and prepared a 10- point charter of demands. Demand for monthly minimum wages worth taka 3000 was one of them. With the continued labour movement, a tripartite agreement was signed in May, 2006 between government, BGMEA (Bangladesh Garments Manufacturers and Exporters Association) and RMG (Ready Made Garments) sector workers and Minimum

⁴⁰ In Bangladesh, total workforce is about 5 crore. Agricultural and domestic workers form 80% of total workforce. That is four-fifth of the total working class in Bangladesh has been kept out of the wages structure which is shame to our nation. See, BBS Labour Force Survey 1999-2000.

⁴¹ Vide, S.R.O. no 184-Ain/2001/SROKOM-10/Ni.MO.NI.-28/2001

⁴² Vide supra note 01. Also see, Gazette notification reference no-Ni.Mo.Bo/Ni.Mo.Ni./99/2004/67

Wages Board was set up in continuation of this movement. After prolonged deliberation a 7-grade minimum wage structure was declared for RMG sector workers in which minimum wage or wages of lowest grade (7th grade) was determined as 1662.50 taka per month. The declaration was made in November 19, 2006 with effect from October 22, 2006.⁴³ All apprentices or trainee workers will get 1200 taka per month as their training allowance. Apprenticeship will be for three months. After training, they will join as assistant sewing machine operator (helper) at 7th grade.

*** Wages structure declared for RMG sector workers (monthly basis/ in taka)**

Grades of workers	Grades and classification of workers	Basic Wages	House Rent (30% of basic pay)	Medical allowance	Total wages
1	Pattern master, chief quality controller	3800.00	1140.00	200.00	5140.00
2	Mechanic/electrician, cutting master	2800.00	840.00	200.00	3840.00
3	Sample machinist, mechanic, senior sewing machine operator and others	1730.00	519.00	200.00	2449.00
4	Sewing machine operator, quality inspector, cutter and others	1577.00	473.00	200.00	2250.00
5	Junior sewing machine operator, junior cutter, folder(finishing section) and others	1420.00	426.00	200.00	2046.00
6	General sewing machine/button	1270.00	381.00	200.00	1851.00

⁴³ See, Gazette notification ref:-S.R.O. no 301-Ain/2006/SROKOM/Sha-6/Ni.Mo.Board-1/2006. Also see, News flier of Bangladesh Institute of Labour Studies, web: www.bils-bd.org. Earlier wages board for RMG sector workers was formed in 1994 which recommended minimum wages for workers as taka 930 per month.

Grades of workers	Grades and classification of workers	Basic Wages	House Rent (30% of basic pay)	Medical allowance	Total wages
	machine operator and others				
7	Asstt sewing machine operator, asstt. dry washing man/woman, line iron men/woman and others.	1125.00	337.00	200.00	1662.50

Source: S.R.O. no 301-Ain/2006/SROKOM/Sh-6/Ni.Mo.Board-1/2006

Minimum Wages for Unskilled and Juvenile Workers in all Private Sector Industries

On April 15, 2007, the government announced minimum wages for unskilled and juvenile workers employed in all private sector industries in Bangladesh.⁴⁴ Here again, agricultural workers and workers in household affairs have been excluded. The government considered the recommendations of minimum wages board and fixed minimum wages as taka 1500 inclusive of basic, house rent and medical allowance. In addition to minimum wages, workers will be entitled to all other benefits allowed by the employer. It applies to all private industries. If the government declares separate minimum wages for workers of any private industrial enterprises this minimum wages shall not apply to them. But no minimum wages structure should be below the amount fixed above.

Problems in Wage Fixing

In both public and private sectors wages are determined under rules set forth by the Government. Certain matters should be taken into consideration before fixing minimum wages. Article 3 of the ILO Convention 131 (regarding Minimum Wages) states that the minimum wage fixing authorities should consider the living standard of workers and their family, their needs, social and

⁴⁴ The Government published a gazette notification in this regard in pursuance of section 140(1) of the Labour Act 2006. *Vide*, the Bangladesh Gezette (Extra Ordinary Issue) S.R.O. No 52-Ain/2006/SROKOM/Sh-6/NIMONI-28/2001.

other facilities and also the standard of living of their society. A worker and his/her family members' required calories intake, transport fair, education cost of his/her children- are considered before fixing his/her wage. Apart from these, wage is directly associated with productivity and the employer considers the workers' producing capability before fixing wages. However, there are two-fold problems in considering productivity as a yardstick to fix wages. Firstly, we do not have an ideal standard to evaluate the productivity of workers. Secondly, productivity does not only mean the physical and mental labour of workers rather the management of an organization, raw materials, energy (electricity, gas) and machineries are related with it. So, it is unwise to consider productivity.⁴⁵

According to section 141 of the Labour Act, 2006 while fixing minimum wages the Board will consider the followings:

i) cost of living; ii) standard of living; iii) production cost; iv) production capacity; v) price of produced goods; vi) inflation; vii) nature of work; viii) risk and standard; ix) business capacity; x) socio-economic conditions of the country and the respective area; and xi) any other related matters.

While fixing a minimum national wage it is also necessary to consider present and probably future price of essential goods. Besides this, wages should be increased in comparison to the increase in commodity prices (present price hike is 9.60%) and on the face of increase in inflation. Otherwise, real wages of the workers would be declined.⁴⁶ As wages are not timely specified in Bangladesh, the workers become agitated and raise their voice for their basic rights. When

⁴⁵ Supra Note-04

⁴⁶ The present caretaker government decided to reconsider the existing pay scales of the government employees, persons working in autonomous, semi-government bodies in November 2007. As part of this drive, dearness allowance equal to 10%-20% of the basic pay would be added to their salary from January 2008 which would later be merged with the pay scale when a new National Pay Commission will start working. In order to implement this, the government shall have to arrange for some more 2400 crore taka, Daily JAI JAI DIN, November 13, 2007. This decision was implemented from July, 2008 with dearness allowance equal to 20% of the basic pay.

government forms a pay commission or wages commission or wage board (as the case may be) after a long interval, pressure on money is mounted up. As a result, it puts impact on the market. If the government increases wages regularly maintaining the consistency of inflation the problem would not be created. In India, the government gives *Maggi Bhata* (dearness allowance) maintaining the consistency of inflation rate.⁴⁷

Whether we Need National Minimum Wage or Real Minimum Wage

The main purpose of adopting national minimum wages is to support the weak workers (mainly unskilled, female and child) who cannot raise their voice about their basic rights. Otherwise speaking, the movement of minimum wage is more for the rights of female and child workers.⁴⁸ Employers allege that production cost increases as the minimum wages are increased. To avoid loss the employers try to put excessive workloads on the labourers, recruit unskilled workers, trim workers, curtail the facilities of workers, increase the volume of production. They try to stop domination of wage over profit and trim unskilled workers, get the jobs done by part-time workers. As part time workers are deprived from different facilities, organizers can save a lot from wage.⁴⁹

National consensus is required to determine reasonable and just minimum wages suitable to meet the demands of the workers. Acceptable minimum wages is an inevitability of industrial relations. No macro-economic measure will be fruitful if the minimum wages scale of the workers is not adjusted with the price inflation. As part of poverty reduction goal, the World Bank has fixed 2 dollars as daily needs of a worker which is just above the poverty level. Therefore, average monthly minimum wages of a worker' family should be (2*30*4.8) or US\$ 288. According to UN millennium development goals,

⁴⁷ Supra Note-22

⁴⁸ Supra Note-01

⁴⁹ As uniform minimum wage policy has not been adopted in our industrial sectors, most of the labourers do not get permanent appointment in many cases. So female workers do not get maternal leave as per the labour law. The labourers accept this in fear of losing their jobs. Also see, supra note -01

minimum daily needs of a worker's family is 1 dollar (\$ 144 per month) in order to combat acute poverty.⁵⁰ But according to the existing wage scales in Bangladesh, this figure does not exceed \$ 36 per month which is much below the above threshold(s). Thus, one can easily realize the miserable conditions that workers experience in Bangladesh. On the basis of daily basic needs, if fiscal year 1973-74 is taken as standard, a worker's average need amounts to more than 3000 taka in 2006-07 fiscal year. Compared to 1973-74, a worker's living expense has increased 34 times this time.⁵¹

As per above analysis, how far minimum wages as declared by the Wages Commission and Wages Board is realistic is a big question. Along with this, if we consider provisions of ILO conventions (change in currency values, social security benefits, relative standards of lifestyle and economic factors), all rates of minimum wages seem to be totally devoid of reality. Lack of empowerment of the workers is identified as the root cause of deplorable conditions of the workers in Bangladesh. Questions may arise as to whether a national wage structure and enhanced minimum national wages can possibly be introduced under the prevailing circumstances of productivity and capacity of the industries in the country. The answer may be positive. For example our RMG (readymade garments) sector is no more a weak sector. Turnover increase in this sector has been 12.87% more in 2004-2005 fiscal year than in 2003-2004. This increase has been more than 10% in average since the last two decades. Therefore, workers in RMG sector deserve higher rates of wages considering their key role in flourishing this sector. Increase in the wages of workers will indirectly increase the national GDP.⁵²

Interestingly enough, even the lawfully guaranteed minimum wage can not ensure the bare minimum necessities of a worker. It is universally acknowledged that industrial harmony is essential for a smooth economic

⁵⁰ 'Safety of Wages and Minimum Wages of Workers in Bangladesh in the Age of Globalization', 2005, Unnoyan Onnesa- a national NGO, Dhaka.

⁵¹ Minimum wages campaign fact sheets prepared by BILS and Karmajobi Nari, Dhaka.

⁵² Supra Note- 22

growth and sustainable development. The Government can in no way deny its primary responsibility of formulating pragmatic laws and enforcing them strictly for protection of rights of the toiling millions. Ironically the Government of Bangladesh has failed to meet either of these obligations. Worse even, the supreme law of the land or the Constitution that lays down a bunch of provisions concerning rights including minimum wages has failed to set up a specific guideline and an effective enforcement mechanism to this end. Article 15 of the Constitution of the Peoples Republic of Bangladesh is pertinent to be mentioned in this regard, which is stated as follows:

It shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-

- a) the provisions of the basic necessities of life, including food, clothing, shelter, education and medical care;*
- b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;*
- c) The right to reasonable rest, recreation and leisure; and*
- d) The right to social security, that is to say, of public assistance in cases of unemployment, illness or disablement, or situations suffered by widows or orphans or in old age or in other such cases.*

That the welfare clauses of the Constitution are there, the need for a national minimum wage is felt even more. It is so, because the existing wage structure is by no means able to fulfill the basic needs of the workers. If we take the example of one single sector such as the Ready Made Garments (RMG), we find a paradoxical scenario. It can be mentioned here that this is the largest sector so far as export revenue is concerned (contributes above 76%) with a huge employment of over 15 million workers 90% of whom are women. A minimum wage exclusively for this sector was determined in 1994 as tk 930 per month (overtime excluded). Minimum wages in other sectors such as jute,

leather, agriculture etc. were all the same. Until 2006, this remained the minimum standard of wages for workers concerned.

Now the question arises that what should be the real minimum wage of workers. Generally female and child labourers are not the leading earning member of their family. Eventually it is easy for a producer to employ them for a poor salary. It brings disaster for those women who are the only earning member of their family. They have to work extra hours to meet their families' needs. Availability of labourers and their poor wage insist the producer to use the labour based production policy. So they force the labourers to involve in risky job, whereas it would be done without risk if they used machine based production policy. Minimum wages would not stop this inhuman use of labour. Enforcement of different regulatory mechanisms could probably restrict it.

On the other hand, we see that real wages of cheaper labourers are high because of labour movement. So private investors try to adopt capital based policy or change the pattern of their business. For example, tea garden workers of our country are well organized and, therefore, tea estate owners think that rubber production is much more profitable because it needs only a few workers. Eventually, the workers lose their jobs.⁵³ Since the statutes relating to minimum wages fail to stop discrimination between male and female workers, workers of western countries organize movement for *living wage*⁵⁴. They say that workers should be given the wage which is needed to maintain his/ her life. And it is decided through the coordination of three issues: production capability, living standard and inflation of money. Living wage is fixed in such a way by which a worker does not live below the poverty level. People, who support this process, admit that living wage would be higher than the minimum wages. However, the employer would be inspired to pay reasonable wages if the government declares tax relief for implementing minimum wages rules. At the initial stage, revenue of government would be lessened but later on, it will increase.

⁵³ Supra Note--21

⁵⁴ Ibid.

Excessive income heightens effective demand of workers who will also raise tax indirectly. It will insist the labourers to bear the expenses of education and health care which will also be helpful for the government. This system can be introduced into the industrial relation mechanism of Bangladesh.

Role of Trade Union in Wage Fixing Mechanisms

Since minimum wages is a very sensitive topic because of its social and political implications, the minimum wage fixing authorities have sometimes been reluctant to revise the very basis of their systems. As with any other policy instrument, periodic review and reforms are necessary in the case of minimum wages in order to remain in tune with the evolving socio-economic situation in a given national context. While many countries have adapted their minimum wage systems to the changing circumstances, there seems to be considerable room for adaptation in others. The best means of initiating this may be attained through consultations between government and representative employer's and worker's organizations in the country.

Since wages and related fringe benefits of the workers employed in public sector are determined by the Government through the recommendations of the wages and productivity commission, collective bargaining for wages are not generally permissible on the issues which are covered by the commission's recommendations. However, while the wages commission examines and formulates the wages structure it takes into consideration the views of the worker's and employer's representatives, the economic viability of the industries, the interest of the customers, the overall socio-economic conditions of the country, the consumer price index and such other relevant factors. However, Trade unions in private enterprises play or try to play important role in determining minimum wages by means of collective bargaining.

In the national level, SKOP played major role in realizing just wages for workers especially in 1980s and 1990s. On the face of persistent pressure of demands put by SKOP the then governments were compelled to sit in a bargaining table to deliberate on the matters of wages. In the industry and plant

levels, local trade unions or CBAs (Collective Bargaining Agent) through participation committee can take initiative for collective bargaining under the existing labour laws.⁵⁵ Besides, trade union representatives to the wages commission and wages board also play key role in wage fixing. They try to pursue wage fixation mechanism by submitting wage scales suitable to the workers' interests. For example, trade union representatives to the 4th wages and productivity commission gave their proposal about 16 wage scales the minimum scale being at taka 3000-150x5-5250.⁵⁶ Trade unions played remarkable role in fixing minimum wages for garments sector workers in 2006. On the face of their continuous demands, the present caretaker government declared in 2007 uniform minimum wages rate for all private sector industries in Bangladesh.

Discrimination of wages between formal and informal sector workers

The reality of wage structure for workers in public and private sectors is quite different from legal framework discussed earlier. Informal sector workers,⁵⁷ who form the largest sections of the total workforce in Bangladesh, have not been brought within the legal framework of minimum wages. Laws relating to wages do not have application in their case. In some sectors, workers are paid under the decades-old wages structure. For example, wages for agricultural workers have been determined in 1984 last and since then wages structure has not been reviewed and no new scale has been declared. According to the latest wages scale, minimum wages of a government employee including basic pay and other benefits has been fixed as taka 4500 per month. As per the present market condition, it is very difficult to lead an ordinary livelihood with *humane dignity* out of this 4500 taka. But sheer reality is that workers in privates sectors

⁵⁵ See sections 203, 205, 210 of the Labour Act 2006

⁵⁶ Supra Note-01

⁵⁷ Say, domestic workers, agricultural workers etc.

do not even get this amount as their wages. Those working in informal sectors experience more deplorable conditions.⁵⁸

Average minimum wages for 38 private sectors fixed by the minimum wages board in 2004 is 1200 taka-an incredibly small figure. For example, until April 15, 2007, minimum wages for garments sector was taka 930, ie. taka 31 per day and rice mill workers would get minimum taka 450, that is, taka 15 per day. The highest amount of minimum wages was fixed for launch workers @ taka 1500 per month. These amounts fixed as minimum wages were in no way compatible with the rapid price inflations in every year.⁵⁹ Through the wave of price inflation and untimely rescheduling of existing wages structures, the real income of the workers is decreased continuously. Therefore, up-to-date wage-scale is required to adjust with the increasing price hikes. From this picture of minimum wages in formal sectors one can easily perceive the deplorable conditions of the workers in informal sector. In these sectors wages are determined by the discretion of the employer which is clear violation of ILO conventions and other international and national legal norms.⁶⁰

Conclusion

In the light of the above discussions, we can conclude that it is the 'attitude' that is the most important thing to be changed at first. Only pro-active attitude of all stakeholders can ensure the proper implementation of labour law for the payment of just and reasonable wages to the workers. Government must keep it in mind that if she does not arrange for level playing field no institution would exist any more. Industrialization is directly connected with the country's macro economic development. In the absence of a culture of sound industrial relation economic progress would only exist as a myth. The negative attitude of paying less attention to the wellbeing of industrial workers has to be changed.

⁵⁸ Supra Note-22

⁵⁹ Inflation in 2005 is 8% and in 2007 is 9.5%. See, *Daily Jai Jai Din*. November 13, 2007. Also see, supra note-22

⁶⁰ Supra note -21

Although changes are being seen but that is merely a drop in the ocean. Side by side, industry owners must learn to leave up their bad habit of exqueezing workers for the sake of their self-aggrandizement. As profit-mongers they have been successful in their motive to deprive the poor workers of their minimum right to reasonable wages and other benefits including over-time dues and leaves. Employers, on the other hand, complain that workers tend to work slowly than their normal capacity and they often become violent and cause damage to the machineries and plantations. It is a very serious issue which cannot be ignored anyway. Above all, political stability is needed to achieve the goal of sound industrial relations in the country. The ILO is urged to take the matter very seriously so that pressures might be mounted on the government to pay adequate attention to the welfare of the workers and to alleviate the culture of sustainable development in the country.