

The Minimum Wages Act : A Feminist Critique

PRABHA KOTISWARAN*

In a patriarchal society of which law is a sub-system it is not surprising to note that the legal system inevitably maintains the status quo in society. A legislation may blatantly discriminate between men and women either as favourable to men or by providing so called 'beneficial provisions' for women or may completely exclude the issue of gender itself. A critique of the law as on paper would not suffice unless the politics behind the same is uncovered. One has to expose the patriarchal assumptions, the gender stereotypes and biases that inform the law (however unconsciously) so that in the garb of neutrality and objectivity, as something that ensures justice and fairness the power and authority that the law possesses is used to perpetuate already existing inequalities. In effect when the Minimum Wages Act, 1948 declares as its intention the prevention of exploitation of sweated labour¹, it is pertinent to question as to who is sought to be protected from exploitation, what kind of labour are we talking about.

The Minimum Wages Act, 1948 is applicable to a large section of the Indian population who in a market economy are subject to the supreme law of demand and supply so that there is ample opportunity for their labour to be exploited so the issue is with respect to poor men and poor women. Both, on account of their class occupy to say the least, privileged positions in society. But there is a difference. Women do belong to a historically oppressed group, oppressed because of their sex. So a poor man is relatively speaking operating in a more privileged position than a woman. Both suffer due to their class, a woman suffers double oppression due to her class. So a recurring theme is that when a poor man suffers a disadvantage his female counterpart suffers in double measure.

Going on to more specific instances, let us consider the committee on Fair Wages which as referred to earlier speaks about the needs of a male worker and his family². On the face of it one does not find this oppressive. However, philosophically speaking, the law incorporates and legitimizes what the norm is in society. So when we envisage the family as consisting of a man, a woman and their children, we believe it is a

* II Year B.A. LL.B. (Hons.) NLSIU.

1. The statutory objectives of minimum wage law are: (1) to eliminate the sweating of labour through very low wages and bad conditions of employment generally. (2) Not so much to bring unduly low wages up towards the general level as to exert upward pressure on the general level (3) A desire to eliminate 'unfair' competition.
2. Government of India, Ministry of Labour, Report of the Committee on Fair Wages (1949) p. 7 which evolved 3 wage concepts namely wage, minimum wage and fair wage. Minimum wage is not living merely for sustenance of life but for the preservation of the efficiency of the worker, it is to include education, health and other amenities. Living wage was to enable the male worker to provide for himself and his family not the bare essentials of life but a measure of frugal comfort too.

norm. However, there are competing claims that question such experience, there are people who want an alternative to this norm but their experience is excluded from what the law recognises and protects. This may sound preposterous that one can think of an alternative to the family off hand but one must wonder if people who feel they want an alternative (though they may constitute a minority) can voice their feelings without being considered as 'exceptions' and 'deviants'. The law thus excludes an alternate world view and confirms the norm.

When considering the family as it is now to be a unit of society, one wonders why its members are divided as the male head and his family. Does it give one the inkling that the male head has a proprietary control over the other members of the family, that the other members of the family namely, women, children, adolescents are different, perhaps more powerless and dependent on the male head. One must remember that this policy of the committee on Fair Wages is carried on or followed by other committees and such tendencies are added on to by the biases of persons constituting these committees as well who are men and women in power.

One sees a repetition of the above tendency in the standards set by the Indian Labour conference in 1957 where in determining the minimum needs the wages of the male alone were considered. Those of women, children and adolescents were to be disregarded³. So one labours under the myth of a wife's earnings being merely supplemental to that of the husband's, whereas in many cases, it is women who run a household who earn more than their husbands. This may not always be the cause but one sees the gender bias and reinforcement of gender stereotypes in the formulation of minimum needs of a family which has been quoted to be influential in determination of minimum wages by many authorities later on⁴. The ramifications and resultant impact of such a bias is debilitating.

A common feature of wage law as well as the minimum wage law is that they effectively maintain a divide between the domain of the private and the public. By gender stereotyping handed over to us over the centuries, it doesn't take long to realise that women's work is at home and men's outside the home. Women work outside the home too. Labour outside the homes is recognised and quantified in terms of money (which is itself is an extremely difficult task). Labour in the private domain remains unrecognised. Women are involved in reproduction, child bearing, child rearing, maintaining a home, domestic labour and several activities which ensure that when a man goes out of the home he leaves behind a domain to be managed by the woman. Poor women work outside the home too but have no alternative but to manage the home. But she is paid only for one form of labour. Even while computing

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3. Government of India, Ministry of Labour, Report of the National Commission on Labour (1969) p. 236. One of the norms evolved by the Indian Labour Conference was, 'In calculating the minimum wage, the standard working class family would be taken to consist of 3 consumption units for the earner', the earnings of women, children and adolescents must be disregarded.
 4. Dayan Krishnan, 'Need based minimum wages- the need of the hour' with special reference to a case study on minimum wage fixation in the plantation sector in Kerala made by the United Planters Association of South India, Mimeographed, 1991 at p. 30.

such labour outside the home her needs in terms of her child-bearing and domestic activities may not be taken into consideration, thus though she may work more than her male counterpart, she received less and her nutrition levels are low which only worsen her oppression in terms of health. The failure of the law to recognise such labour within the home subjects women to a work load which they are being paid for partly. One must explore the possibility of commodification of women's labour and its impact. However the law cannot continue to recognise a particular aspect of labour alone. Difficulty in valuation of such unrecognised labour is common even in the case of labour outside the home where in spite of various efforts one is at a loss to determine the value of human labour.

As regards women who undertake home based occupations, they do not come within the purview of the Act. Women also undertake piece rated jobs because of which, even at the end of days of work, she does not get more than what a time-rated worker gets after 8 hours of work. Some of the factors identified for the failure of the Minimum Wages Act, 1948 were lack of literacy, lack of organisation and awareness of rights. These factors are heightened with respect to women as traditionally they have less access to information and technical knowledge than men and it is a luxury for many women to even have access to other women in the same field and think of organisation to demand that minimum wages be paid. Men have poor bargaining power but in occupations that employ women, one cannot ignore the vulnerability that a woman faces on account of her sex. Sexual vulnerability, one would opine, reduces one's bargaining power to a great extent and it is not often that one sees women being able to take the initiative and overcome this formidable problem for which rightly speaking someone else (man) is the cause.

Conclusion :

Thus, one sees how under the Minimum Wage Act, 1948 as it is, the exclusion of the experiences of women and their specific needs leads to the reinforcement of existing biases, it is in a sense legitimised and institutionalised. The public-private divide effectively deprives millions of women of what they actually deserve. One also sees how the law has space but for one norm which is the norm of the ones in power namely the men. If one is to have a law which is more realistic, it has to acknowledge the realities of women's and men's lives and accept alternate world views and if it is *billy* to act as an instrument of change, the politics of law-making have to be gone into to see whose rights it in effect protects and establishes firmly.