

Wage As Economic Justice Of Industrial Adjudication

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ABSTRACT

Among all the conditions of work, the most important factor to the welfare of workers is wages. Broadly speaking wages have been classified into three categories viz., the minimum, fair and living wages. *The National Commission on Labour* (NCL) has also observed that the Industrial workers must get at least a minimum wage which should not only be a subsistence wage but “must provide for some measure of education, medical requirements and other similar amenities”.

The most important and probably the most complicated problem in the sphere of labour-management relations is that of wages. Before state regulation the wages were usually determined by the employers in the absence of collective bargaining and workers had to work on those wages.

However, the general problem of wages can be conveniently studies under two subheadings: (a) the amount or quantum of wages, and (b) the tender or payment of wages. Under the first sub-heading may be considered the topic of adequacy of wages and various concepts about the adequacy of wages such as minimum wage, fair wage and living wage. Under the second sub-heading may be considered topics like the mode of payment, the period of payment, the time of payment and deductions from payment of wages.

Keywords: *Collective Bargaining, Workers, Deductions, Wages.*

Work and wages is interdependent thing. Workers' work determines their wages. Wages, in turn, determine the work and welfare of workers, the welfare of their families and also the welfare of the whole society. Wages must guarantee, therefore a fair and just return for the worker's work.

It is not unlikely that in an economically under-developed country where unemployment looms very large, employees and industrial work may be found willing to take employment on terms which do not amount to a minimum basic wage. But industrial adjudication will not recognize the employer's right to employ labour on terms below the terms of minimum basic wage. This no doubt, is an interference with the employer's right to hire labour, but social justice requires that the right should be controlled.

The common law right to wages flew from a contract to pay the workers. The contract must be express or implied but in absence of contract no right existed. Under the modern industrial law wages are fixed statutorily and contract has yielded place to statute regulation, but in absence of latter,

contract still governs the right of the parties.

HISTORICAL SETTING

In ancient India wages were bargaining between employer and the employee. 'If wages were not so settled from before there were some standard methods of determining wages. Wages could be paid as per agreement at the outset, in the midst of the work or after the completion of the work.' Wages could be paid daily, fortnightly, monthly, quarterly, half yearly or on completion of the work. Wages could be fixed according to time and work or according to both as agreed upon. Thus, the concept of piece rated and time rated wages had been fully evolved.

Shukracharya placed workmen in three categories, namely, skilled or specialized, semi-skilled and unskilled and said that their wage-rates should differ according to their level of skill and qualification. This categorization of workmen with respect to the level of their skill and co-relation between the skill and wage had been thus satisfactorily established even at that distant time of the past in the century.

The wages were to be paid as per agreement. In case of difference between the employer and employee the question of rate or wage payment was to be determined with the aid of the witnesses. Further the principle of no work no pay 'wages was also evolved by *Kautilya*. Lastly, payment of wages could not be postponed. Wages were to be paid as soon as they were due. Wages could not be forfeited. Agreed wages were to be paid all at once and not in installments.

In modern India wage is the return in cash or kind or partly in cash and partly in kind for the work done by the employee. It is the return for the labour, correlated to hours of work. paid holidays and fringe benefits. It is the pay-packet of the employee under related circumstances. Again wage rate could be monthly, weakly or hourly. This is known as time rate. There could be piece-rated wages as well when the wages are related to the quantum of work done or the quantum of output by the man they are known as piece-rated.

WAGE CONCEPT AND SOCIAL JUSTICE

The social justice under current is nowhere more vibrant or pulsating in our Industrial jurisprudence than in the matter of wage determination or Industrial workers. Wage policy relating to workmen is considered to be a complex and sensitive area of public policy. The relative status of workmen in the society, their commitment to industry and their attitude toward the management, their motivations towards productivity and their standard and way of life, are all conditioned by wages. It is accordingly not a purely economic policy in which the employer and the employee alone are interested. Besides the worker and the management, the consumer and the society at large. The states are also vitally interested and hence according to industrial jurisprudence no wage policy can even be applied in a vacuum in disregard of realities of the social and economic conditions in our country.

It was also said in *Crown Aluminium Works v. Their Workmen*, AIR 1958 SC 30 that through social and economic justice is the ultimate ideal of industrial adjudication, its immediate object in a dispute involving wage structure is to settle it in a way that does justice to the interests of both labour and capital and establishes harmony between these and leads to their genuine and whole-hearted co-operation in the task of production. Thus change in wage structure detrimental to workers cannot be allowed except under compelling circumstances.

The wage structure is mainly based on ethical and social considerations. It was said in *Standard Vacuum Refining Co. v. Its Workmen* AIR 1961 SC 895 that while the financial position of the employer and the state of national economy have a say in this matter, the requirements of a workman living in a civilized and progressive society have also to be recognized. The socioeconomic aspect of the wage structure postulates that no employer can engage industrial labour unless he pays it. What

may he regarded as the minimum basic wage. If he cannot pay such a wage he has no right to engage labour, and no justification for carrying on his industry.

The economists and sociologists have attempted to discover an acceptable general theory of wages that would explain in all circumstances how levels of wages and changes in wages are determined.

MINIMUM WAGE, FAIR WAGE AND LIVING WAGE

The Committee on Fair Wages, in its report submitted to the Government of India in 1949, has attempted to bring out the difference between three levels of wages, viz., minimum wage, living wage and fair wage. But in reality the following terms have acquired importance in the matter of wage problems in the modern times, (a) Statutory Minimum Wage, (b) Bare or Basic Minimum Wage, (c) Minimum Wage, (d) Fair Wage, (e) Living Wage and (f) Need-based Minimum Wage.

Broadly speaking wages have been classified into three categories viz., the minimum, fair and living wages. *The National Commission on Labour* (NCL) has also observed that the Industrial workers must get at least a minimum wage which should not only be a subsistence wage but —must provide for some measure of education, medical requirements and other similar amenities.

MINIMUM WAGE SYSTEM IN INDIA

The Indian Minimum Wage System has been quite a debated and dynamic issue. India was one of the first developing countries to introduce minimum wages with the enactment of the Minimum Wages Act way back in 1948. The Act protects both regular and casual workers. Minimum wage rates are set both by the Central and the State governments for employees working in selected 'scheduled' employment. Minimum wages have been set for different categories of workers according to skill levels, location and occupations. The Act did not prescribe norms for fixing the level of the minimum wage. However, it provided for tripartite advisory boards consisting of employers, employees of scheduled employments, and independent persons to advise the Government in fixing minimum wages.

- The Indian Labour Conference (ILC) of 1957 recommended determining the minimum wage based on the principle of a household's needs.
- In 1988, the Labour Minister's Conference made recommendations for linking minimum wage with the cost of living index, which became mandatory in 1991.
- In 1992, the Supreme Court of India ruled that minimum wage should also be linked with aspects such as children's education, medical requirements etc.

In nut-shell it can be stated here that at the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need-based minimum in the sense of wage which is adequate to cover the normal needs of the average employee regarded as a human being in a civilized society. Above the fair wage is the 'living wage' a wage which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to quality to discharge his duties as a citizen.

The minimum wage is that lowest unquestionable limit of the basic wage which ought, in all events, be paid irrespective of the capacity of the industry to pay. If an industry cannot afford to pay the minimum, it deserves to be closed down. Even the availability of workmen at a lesser scale would not disturb the minimum. But in fixing a fair wage and a living wage, the capacity of the industry to bear the burden of the said wage scale is always relevant and worthy of consideration. It is also necessary to compare the establishment in question with other establishments engaged in the same

trade in the region. The criteria for comparison, as regards the establishments concerned, would be their standing; the extent of the labour force employed by them the extent of their respective customers and the study of balance of the profits and losses incurred by them in the past few years. The employer's future capacity to pay has also to be taken into consideration because additional liability imposed on the employer by the new wage structure in order to anticipate whether he would be able to meet it for a reasonably long period in future.

WAGE STRUCTURE IN INDIA

The problem of wage structure with which industrial adjudication is concerned in modern democratic state like India involves in the ultimate analysis, ethical and social considerations. The concept of welfare state is based on notions of progressive social philosophy under which the old doctrine of laissez faire, has now been rendered obsolete. with the result that the rule of supply and demand, on which the employer was at liberty to hire the labourer on his own terms, no longer holds good.

Workers are no longer regarded as factors of production the price which has to be determined by the forces of demand and supply. The contract of employment has lost much of its significance and participation of labour in, the management of the industry has elevated them to the position of a partner. The productivity of labour, the bargaining capacity of the workers, legislative interference of the Government, rate of economic development, national income, cost of living, capacity of the industry to pay, requirements of social justice. Employer's consumption and investment, his degree of monopoly, etc. now influence the wage policy in a welfare state and developing country like India.

WAGE POLICIES

The basic principles which are accepted as axiomatic in wage policies are the need for living a basic minimum wage. The statutorily fixed minimum wages are not questioned even by courts. No industry which cannot pay a living wage to its workers has a right to exist.

It is unfortunate that even the Minimum Wage Act. 1948 of India does not specify what the minimum wages are, or even the principles on which they should be based. Even the I.L.O. has not made any satisfactory attempt at a definition except saying that the need to maintain a suitable standard of living should be kept in mind.

WAGE DETERMINING PROCESS

The wages may be determined either by parties mutually or by the state if the former is not accomplished. The principal processes of wage determination are: (a) Individual bargaining. (b) Management Administered Wages Determination (c) Collective Bargaining (d) Union Administered Wage Determination, and (e) Governmental Determination or Adjudication.

These processes may be divided into two parts. Firstly, the process of A nongovernmental interference. and secondly, the process of governmental interference. The above mentioned process. i.e.. from 'a' to 'd' belong to the former category and 'e' belongs to the latter. The latter process indicates active role of state in wage fixation in a welfare state.

The wage fixation through governmental interference may be further sub-divided into, (a) judicatory process, and (b) non-adjudicatory process. The first process is adopted when a dispute has arisen or is apprehended and the state government makes reference to industrial court or tribunals to decide the dispute relating to wages. On the other hand, the second process is non-adjudicatory or statutory process may take one of the following terms: (i) Fixation of wages by legislation or notification as is done under the Minimum Wages Act, 1948, and (ii) Fixation of wages by Industrial Tribunals, Arbitration Board or Wage Board, as is done under the Industrial Disputes Act, 1947.

Generally the factors for the wage determining process are as follows: (a) The ability to pay,

(b) supply and demand of labour. (c) the prevailing market rate, (d) the cost of living. (e) living wage. (f) productivity, (g) a trade union's bargaining power, (h) job requirements, and (i) psychological and sociological factors.

The study group for wage policy of NCL observed about the fixation of minimum rates of wages that —In determining the minimum wage that a unit must pay, three factors need to be taken into account. They are: (a) the need of the workers and their families, (b) capacity of pay, and (c) standard of living.

The-capacity of the industry to pay can mean one of the three things viz., (a) the capacity of a particular unit (marginal representative and average) to pay, (b) the capacity of the particular industry as a whole to pay; or (c) the capacity of all industries in the country to pay.

In fixation of minimum wages the financial capacity of industry of the employer is irrelevant consideration. But in fixation of fair wage or a living wage the capacity of the industry becomes an essential factor.

Fixation of wage structure is a more difficult task in industrial adjudication because a balance has to be struck between the demand of social justice and depletion which every increase in wage makes in profit. The Principle of region-cum-industry and capacity of industry to pay are however, dominant factors which must weight in evolving a wage structure.

UNIFORMITY IN SCALES OF WAGES

The Estimate Committees constituted by Parliament have from time to time, made observations in regard to the subject of uniformity in scales of wages. In its 120th Report made during 1960-61, the committee suggested that the government might review the scales of pay obtaining in all its undertakings and revise them with the object of introducing uniformity wherever possible. In its 54th Report. The Committee had also suggested uniformity in the classification of the staff in all public undertakings. But the government did not find it possible to suggest concrete scale of pay to be applicable to all industries in the face of conditions differing from region to region and industry to industry.

Again, the government seemed to be committed to the region~ cum-industry formula. Simply stated, this formula means that since labour and economic conditions vary from region to region and from industry to industry, the scales of pay may vary to suit these varying conditions. Accordingly, the wages, dearness allowance and other perquisites have to be in tune with those prevalent in the industry or the region. Even in like industries, the nature and responsibilities of staffs differ from undertaking to undertaking, depending upon the size, line of production etc. and pay scales of posts have to vary from undertaking to undertaking. The government was. therefore, of the view that while uniformity might be desirable, a measure of flexibility and autonomy was to be allowed necessarily for varying nature and activities of the undertakings. Hence. uniform classification of staff Whose nature and responsibility varied from undertaking to undertaking was not possible. On the regioncum-industry principle the labour also will have no complaint if their wages are similar to those in comparable concerns in the region.

THE LAWS

In an economy where even minimum wages are not paid to the workers, the need to protect the wages earned by them has the greatest significance. The object of the Payment of Wages Act, 1936 is to regulate the payment of wages to certain classes of persons engaged in industry. The Act sought to remedy the unfair labour practices prevailing before the enactment of this Act. This Act also contains a social security measure. Though this Act was codified before the Constitution of India came into force, it has been amended from time to time in order to carry out the state policy contained in the directive principles of state policy. This Act has been enacted by the legislature for the purpose of

ensuring regular payment of wages to small salary-holders so that they may be able to make their both ends meet. It ensures that such employees are paid their wages in a specified or particular form at regular determined intervals without unauthorized deductions, it prohibits the employers to delay or withhold payment of the amount earned by workmen beyond the period specified in the Act. This statute, therefore, calls for a benevolent or beneficial construction, a construction which should advance the remedy and suppress the mischief. Lastly, it may be stated that the whole scheme of the Act is to eradicate unfair labour practices relating to mode of payment, time of payment of wages and unauthorised deductions. The Act is specifically made provisions to provide safeguards to the employed persons from these malpractices prevalent before the enactment of this Act. It also contains provisions relating to machinery for enforcement of the different provisions of the Act.

Secondly, the most important enactment providing for statutory fixation of wage is the Minimum Wages Act, 1948. This Act was passed on March 15, 1948, just seven months after independence. It forms an epoch in the history of social security in India. The object of the Act is to prevent exploitation of workers and for that purpose it aims at fixation of minimum wages which the employers must pay. The object of the Act is to prevent sweated labour and exploitation of labour. It has been observed by the Supreme Court of India that what the Act aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. Thus the object of the Act is to do social justice to the workmen employed in the scheduled employments in order to provide them minimum rate of wages. The basic purpose of the Act is also to provide an equitable wage structure. Its secondary objective is the establishment and maintenance of an equitable labour-cost structure i.e., an optimal balancing of conflicting personnel interests so that the satisfaction of employees and employers is maximized and conflicts minimized. This Act is in consonance with Article 43 of the Constitution of India providing for living wage, conditions of work, ensuring a decent standard of life, etc. The Act makes it imperative that minimum wages shall be paid to the workers in the scheduled employments on the prescribed rates which after every five years will be revised by the appropriate government. Although the ideal of living wage as embodied in the directive principles of state policy could not be achieved so far due to poor economy of our country but the efforts are continued in this respect. In this way the Act contains an important social security measure. The specific enactment to regulate wage in India is under this Act. The Act is limited in its operation to those industries in which labour is practically unorganized and working conditions are far enough material in hand, to publish its proposals for the fixation of wages more than in organized industry, under the Act, the appropriate Government has either to appoint a committee to hold enquiries and to advise it in regard to the fixation of minimum rates of wages or, if it thinks that it has enough material on hand, to publish its proposals in the official Gazette and to invite objections. The appropriate government finally fixes the minimum rates of wages on receipt of the recommendations of the committee or of objections from the public. There is no provision for any appeal. There is an Advisory Board in each state to co-ordinate the work of the various committees. There is also a Central Advisory Board to co-ordinate the work of the State Boards. Complaints of non-payment of the minimum rates of wages fixed by government may be taken to claims Authorities. Breaches of the Act are made punishable by Criminal Courts. The Ministry of Labour, Government of India is responsible for fixing or revising the minimum wages under this Act in respect of those employments for which Central Government is the appropriate authority. State governments and Union Territories are authorized to fix or revise minimum wages in respect of other scheduled and subsequently added employments. During the period July 1989 to July 1990, the minimum rates of Wages fixed earlier were revised in 207 employments and in 14 employments the minimum rates of wages were fixed for the first time.

The Code on Wages, 2019 has deleted the first requirement for fixing a minimum wage

notification of scheduled employments. Fortunately, despite this serious and unwarranted omission, minimum wage can still be notified, but possibly inviting dilatory litigation. A serious concern is the —abdication of legislative function— when the law leaves the criteria for quantification of minimum wage to the rule-making authority. While the draft wage rules recognize the principles laid down by the 15th ILC and the Supreme Court's Reptakos judgment, but again these rules arbitrarily fix a ceiling on factoring house rent on an irrelevant criterion. For the first time, a floor wage is also provided, but the proposed wage level announced arbitrarily (200 per day) is so low that the floor level itself will become a downward drag on wages as a whole.

Wage Code presented an important opportunity to reform wage legislations and address the challenges facing wage security in India. The Wage Code should have focused on legislative measures to set minimum wages at an adequate level as laid down by the ILC and the Supreme Court with the representation of workers and their organizations in the process.

References:

- A.P. Verma “*Women Labour in India- A Comprehensive Manual*” V.V. Giri, National Labour Institute, Noida; 1996, p. 97.
- Abhishek Waghmare, Gender wage gap highest in India, women are paid 34% less than men: ILO, *Business Standard*, November 28, 2018.
- Edwin R.A. Seligman, & Johnson, Alvin.; *Encyclopaedia of Social Sciences*, Vol, VIII, Macmillan and Company Limited.1932, p. 455.
- Giri V.V. “*Labour Problem in Indian Industry*” Asia Publishing House Pvt. Ltd., Bombay, 1965.
- H.L. Kumar “*Labour Problems & Remedies*” Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2007.
- Hema V. Menon, “*Unorganised Women Workers & Social Security*” Satyam International Law, New Delhi, 1st edition, 2012 p.84.
- “Indian Women Work 94 Minutes More Than Men Every Day” *Indian Labour Journal* Vol. 54 February 2013 No.2, P 142.
- Ifaft Philip. *Economics and Problems of Labour*, p.247., Quoted in Economic and Social Status of women workers in India, Labour Bureau, Ministry of Labour, Government of India, 2.3(1953).
- Mahesh Vyas, Surveying India's unemployment numbers: *The Hindu* February 09, 2019 p.7.
- Mukta Gupta “*Economic Participation of Women*” Sarup and Sons, New Delhi; 2000; p 32.
- Neera Desai & UshaThakkar “*Women in Indian Society*” National Book Trust, India 2001 p.50.
- Padmini Sengupta “*Women in the International Labour Organisation and the Labour Code*” Vista International Publishing House, Delhi, 2008 p.77-78.
- Peerzade, Sayed Afzal & Parnade, Prema “Economic Empowerment of Women: Theory and Practice” *Southern Economist*, (2005), March-1, p. 9-10.

‘Pension Scheme for SHG Women’; Article, *The Hindu*, February 2, 2009. P.4.

Rajeshwari M. Shettar “A Study on Issues and Challenges of Women Empowerment in India” *IOSR Journal of Business and Management*, Vol.17, Issue 4.Ver. I (Apr. 2015), P 15.

T.N. Dhar “Women’s Empowerment and Social Justice in India (With Special Reference to U.P.)” *Indian Journal of Public Administration* Vol. LX, No. 3, July-September 2014, p.637-648.

Tanu Allen, Monika Yadav, Roopal Dhar & Sohini Singh “Women and Environments A Perspective” *Women’s Link* Vol. 25 No.1 (Jan - Mar 2018) p. 15.