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## LAW TO FIX MINIMUM WAGE IN INDIA: CONTRIBUTION OF THE SUPREME COURT

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*The endeavor to ensure a decent standard of living, which is a constitutionally guaranteed right, has always been at the core of labour issues in the country. The Central Government in pursuance of the powers under Minimum Wages Act, 1948 has thrived to create a balance regarding pay parity in various industries. Until last year, the minimum wages was regulated under Minimum Wages Act, 1948, when the Parliament passed Code on Wages Act, 2019. Code on Wages Act, 2019 replaced four legislations Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976. The new Code prohibits employer from paying workers less than the stipulated minimum wage and also imposes a condition that minimum wage must be reviewed and revised by Central and State Government at an interval of not more than five years. Due to constitutional set up, both state and centre can legislate on matter related to labour welfare which leads to multifarious jurisdictional issues, however, even after months of being enacted the Code still remains to be implemented at the ground level. Inadequacy on the part of the Government provides a platform for the intervention of the Courts. The Courts have in innumerable cases frowned upon the inadequacy of the data or consideration of obsolete data in formulation of wage structure. The authors in this paper have analysed the approach of Supreme Court in India with respect to fixation of minimum wages in the country.*

**Keywords:** Minimum Wages, fair wages, labour rights, labour welfare, subsistence wage, social security, economic justice, pay parity

## I. INTRODUCTION

Article 43 of the Constitution of India stipulates

“The State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities”.<sup>1</sup>

In India, the policy on wage determination had been to fix minimum wages to promote fair wage agreements. Wages in the organised sector are determined through negotiations and settlements between employer and employees. On the other hand, in cases of unorganised sector, where labour is vulnerable to exploitation due to illiteracy and does not have effective bargaining power, the intervention of the government becomes necessary.

The objective of the Minimum Wage Act, 1948 has been to ensure minimum subsistence wage for workers. The fixation of minimum wages depends on many factors like socio, economic and local factors influencing wage rate. This leads to discrepancy in wage rates across the country. The criteria to stipulate Minimum Wage is itself not there in the Act, in absence of which there has been certain standards mentioned by the Indian Labour Conference of 1957.<sup>2</sup>

Certain other loopholes in the Act like lack of uniformity and certainty and lack of inclusion of many forms of employment in the schedule leads to non-implementation and non-enforcement of the Act.

There have been innumerable instances wherein the Supreme Court has tried to enter this field of wage fixation and has expressed its own view in this regard in the larger interest of justice and equity and also to ensure proper implementation and enforcement of the Act. The Supreme Court has once suggested that a minimum wage for 8 hours of work should be high enough to cover all the basic needs of the worker, his/her spouse and two children.<sup>3</sup> In *Titaghur Paper Mills Co. Ltd. v. Its Workmen*,<sup>4</sup> the Supreme Court held that the payment of production bonus is in the nature of an incentive and is in addition to the wages. It cannot be treated as part of the minimum wages fixed under the Act.

Starting from the “subsistence theory of wages,” which in its simplest form states that minimum wages should be enough only to provide the bare minimum required for physical subsistence, to the view put forward by the International Labour Organization of providing individuals with the means to live a dignified life. There is no one concept of minimum wage. Various terms have arisen during the course of the discussion of wage levels in the country<sup>5</sup>. As put forward by the Committee on Fair Wages (in 1958)<sup>6</sup> they are:

- Bare/basic Minimum wage: Used in awards or judicial pronouncements. In the *Express Newspapers Case*<sup>7</sup> the Supreme Court held that it is wage which would be sufficient to cover the bare minimum need of the worker and his family. There is a legal duty to pay at least a subsistence wage. The Supreme Court in 1958

<sup>1</sup> IND. CONST. Article 43.

<sup>2</sup>[http://labour.nic.in/upload/uploadfiles/files/latest\\_update/what\\_new/4fd5b204b2e8044thAGENDA.pdf](http://labour.nic.in/upload/uploadfiles/files/latest_update/what_new/4fd5b204b2e8044thAGENDA.pdf). Last accessed on 21.06.2020.

<sup>3</sup> See, [www.loonwijzer.nl/root.../Minimum%20Wages%20in%20India.doc](http://www.loonwijzer.nl/root.../Minimum%20Wages%20in%20India.doc). Last accessed on 23.06.2020.

<sup>4</sup> *Titaghur Paper Mills Co. Ltd. v. Its Workmen*, AIR 1959 SC 1095

<sup>5</sup> Available At: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Last accessed on 23.06.2020

<sup>6</sup> Available at: <http://labourbureau.nic.in/Mini%20Wages%202k5%20Intro.htm>. Last accessed on 22.06.2020

<sup>7</sup> *Express Newspapers (Private) Ltd. v. Union of India*, AIR 1958 SC 578.

has held that the former wage is a rate, which has got to be paid to the worker irrespective of the capacity of the industry to pay. It was observed that if the employer cannot pay this bare subsistence wage he / she would have no right to conduct his /her enterprise on such terms.

- **Statutory Minimum wage:** This refers to the minimum wages fixed by the government exercising the minimum wage fixation powers given to it by the Minimum wages Act, 1948. Once such a wage is fixed for a given employments the employers are bound under law to pay such a wage. There is some confusion on the contents of this wage and some believe it is a wage which may be higher than the bare minimum or subsistence wage providing for some measure of education, medical requirement and amenities. According to the Supreme court in *Unichoyi v. State of Kerala*<sup>8</sup> the statutory wage is such a wage that it must not only provide the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education , medical requirements and amenities for himself and his family. This has been followed by the Karnataka High Court in its judgement delivered in 2003 in the Mangalore Ganesh Beedi works case<sup>9</sup>, and so is the law applicable in Karnataka.
- **Need based minimum wage:** The 15th Indian Labour Conference adopted this concept in 1957. A resolution was adopted, the gist of which was that a minimum wage should be “need based” ensuring the minimum human needs of the industrial worker. Certain norms were laid down by the conference to determine what this minimum wage should be, which, they said should guide all wage fixing authorities in fixing the Minimum wage. Perhaps for the first time, in India, the needs which the minimum wage should satisfy, were laid down in precise quantitative terms. These norms have been accepted and also further expanded by the Indian Supreme Court. The resolution adopted in 1958, by the Conference while accepting these norms, stated that where difficulties were experienced in fixing the minimum wage it was the concerned wage fixing authorities’ responsibility on showing the circumstances, which prevented them from adhering to these norms. The capacity to pay of the employer was taken into account.
- **Living wage:** This according to the Committee On Fair Wages represented the highest level of the wage and it would include all the amenities which a citizen living in a modern civilized society was entitled to expect when the economy of the country was sufficiently advanced.
- **Fair wage:** The committee termed this as anything above the minimum wage (see (ii) above) and below the living wage. In a situation where an employment already has a notified minimum wage fixed and the workers feel that the employer has the resources to pay a better wage and succeed in their claim through adjudication/ collective bargaining, the higher wage procured is termed a “fair wage”.<sup>10</sup>

<sup>8</sup>*Unichoyi v. State of Kerala*, [1962] 1 S.C.R. 946

<sup>9</sup>*Mangalore Beedi Works & A. B.F.W.A v State of Karnataka and Others*, 2003(5) Kar. L.J. 26 (DB)

<sup>10</sup> Available at: [http://www.altlawforum.org/sites/default/files/MWA\\_A4\\_051006.pdf](http://www.altlawforum.org/sites/default/files/MWA_A4_051006.pdf). Last accessed on 23.06.2020

## II. FIXATION OF MINIMUM WAGES: AN ANALYSIS OF THE MINIMUM WAGES ACT, 1948

Under the Act, Central and State Governments are appropriate Governments to

- (a) notify scheduled employment
- (b) fix/revise minimum wages

The Act contains list of all these employments for which minimum wages are to be fixed by the appropriate Governments.

There are two parts of the Schedule. Part I has non-agricultural employments whereas Part-II relates to employment in agriculture.

### II.I. Criteria for Notification of Scheduled Employment

Under the provisions of the Minimum Wages Act, 1948, both Central and State Governments are appropriate Governments to fix, review and revise the minimum wages of the workers employed in the scheduled employments under their respective jurisdictions. The appropriate Governments have also been empowered to notify any employment in the schedule where the number of employees is 1000 or more and fix the rates of minimum wages in respect of the employees employed therein.

Minimum Wages Act does not provide for any discrimination between male and female workers or different minimum wages for them. All the provisions of the Act equally apply to both male and female workers.

### II.II. Norms for Fixation/Revision of Minimum Wages

The norms include those which were recommended by the Indian Labour Conference in its session held in 1957.

- (a) 3 consumption units for one earner.
- (b) Minimum food requirements of 2700 calories per average Indian adult.
- (c) Clothing requirements of 72 yards per annum per family.
- (d) Rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme.
- (e) Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total Minimum Wages.<sup>11</sup>

### OTHER PARAMETERS

(i) "Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage." This judgment was delivered by the Supreme Court of India in 1991 in the case of *Workmen Represented by Secretary v. Management of Reptakos Brett*<sup>12</sup>.

(ii) Local conditions and other factors influencing the wage rate.

<sup>11</sup> Available at: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Last accessed on 23.06.2020

<sup>12</sup> *Workmen Represented by Secretary v. Management of Reptakos Brett*, AIR 1992 SC 504

### II.III. Methods for Fixation/Revision of Minimum Wages Fixation

Section 3 empowers appropriate Government to fix the minimum rates of wages in the scheduled employments.

#### REVISION

Revise the Minimum rates at an appropriate interval not exceeding five years.

#### PROCEDURE FOR FIXATION/REVISION

In Section 5 of the Minimum Wages Act, 1948, two methods have been provided for fixation/revision of minimum wages. They are Committee method and Notification method. *Committee Method*

Under this method, committees and sub-committees are set up by the appropriate Governments to hold enquiries and make recommendations with regard to fixation and revision of minimum wages, as the case may be.

#### *Notification method*

In this method, Government proposals are published in the Official Gazette for information of the persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. After considering advice of the Committees/Sub-committees and all the representations received by the specified date in Notification method, the appropriate Government shall, by notification in the Official Gazette, fix/revise the minimum wage in respect of the concerned scheduled employment and it shall come into force on expiry of three months from the date of its issue.

#### *Variable Dearness Allowance (VDA)*

In order to protect the minimum wages against inflation, the Central Government has made provision of Variable Dearness Allowance (VDA) linked to Consumer Price Index Number for Industrial Workers (CPI – IW). As regards States Governments/Union Territory Administrations, 26 of them have made VDA as a component of minimum wages. Both Central and State Governments are revising the minimum wages in respect of these scheduled employments from

time to time with 100% neutralization. Accordingly, VDA is revised periodically twice a year effective from 1st April and 1st October in the Central Sphere.<sup>13</sup>

### III. LAW TO FIX MINIMUM WAGES: CONTRIBUTION OF THE SUPREME COURT

In *Bijay Cotton Mills Ltd. v. State of Ajmer*,<sup>14</sup> the Court dealing with the constitutionality of the Minimum Wages Act, 1948 held that

*“It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the*

<sup>13</sup> Available at: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Also see, [http://www.altlawforum.org/sites/default/files/MWA\\_A4\\_051006.pdf](http://www.altlawforum.org/sites/default/files/MWA_A4_051006.pdf). Last accessed on: 23.06.2020

<sup>14</sup> *Bijay Cotton Mills Ltd. v. State of Ajmer*, AIR 1955 SC 33

*resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions (vide S. I. Est., etc. v. The State of Madras<sup>15</sup>). If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages.”<sup>16</sup>*

The Court in *Kamani Metals & Alloys Ltd. v. Their Workmen*,<sup>17</sup> held that fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable.

The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed have been stated from time to time by the Court.

The Court in *Kamani Metals & Alloys Ltd. v. Their Workmen*<sup>18</sup> stated that broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs.

In *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*<sup>19</sup>, the Supreme Court held that the main object of Minimum Wages Act is to prevent sweated labour as well as exploitation of unorganised labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The fixing of minimum wages is just the first step in that direction.

<sup>15</sup> *S. I. Est., etc. v. The State of Madras*, (1954) 1 M.L.J. 518,521

<sup>16</sup> *Supra* n. 14

<sup>17</sup> *Kamani Metals & Alloys Ltd. v. Their Workmen*, (1967) II LLJ 55. Also see, *Novex Dry Cleaners v. Workmen*, [1962] 1 L.L.J. 271 (S.C)

<sup>18</sup> *Kamani Metals & Alloys Ltd. v. Their Workmen*, (1967) II LLJ 55.

<sup>19</sup> *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*, AIR 1970 SC 2042

Further, in *Unichoyi v. State of Kerala*,<sup>20</sup> the Court was of the view that minimum wage does not mean wage just sufficient for bare sustenance. At present the conception of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for bare sustenance and a fair wage. That concept includes not only the wage sufficient to meet the bare sustenance of an employee and his family. It also includes expenses necessary for his other primary needs such as medical expenses, expenses to meet some education for his children, and in some cases transport charges etc.

In *Karnataka Film Chamber v. State of Karnataka*,<sup>21</sup> the court held that the concept of minimum wage is likely to undergo a change with the growth of our economy and with the change in the change in the standard of living. It is not a static concept. Its concomitants must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry.

In *Hydro Engineer Pvt. Ltd. v. Workmen*,<sup>22</sup> the Supreme Court observed:

*"It is thus clear that the concept of minimum wages does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralizing the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage. Furthermore, in the light of spiralling of prices in recent years, if the wage scale are to be realistic, it may become necessary to fix them so as to neutralize at least partly the price rise in essential commodities."*<sup>23</sup>

In *Ford Motor Company of India v. Ford Motors Staff Union*<sup>24</sup> and *Lloyd Bank Ltd. v. Pannalal Gupta*,<sup>25</sup> the Court was of the view that minimum wages are the lowest wage in the scale below which the efficiency of the worker is likely to be impaired. It allows for living at a standard considered socially, medically, and ethically to be the acceptable minimum.<sup>26</sup>

In *M. C. Mehta v. State of Tamil Nadu*,<sup>27</sup> the Court held that the children employed in the match factories have to be paid 60% of the prescribed minimum wage for an adult employee in the factories doing the same job.

In *People's Union for Democratic Rights & Ors. v. Union of India*,<sup>28</sup> the Court stated that the minimum wage of Rs. 9.25 per day, fixed for workers employed on the construction of roads and in building operations would be directly paid to workers and not through contractors and the jamadars. The Court also held that it is the fundamental right enshrined in Article 23 which is violated by nonpayment of minimum wage to the workmen.

*"It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or*

<sup>20</sup> [1962] 1 S.C.R. 946

<sup>21</sup> *Karnataka Film Chamber v. State of Karnataka*, ILR 1986 KAR 2183

<sup>22</sup> *Hydro Engineer Pvt. Ltd. v. Workmen*, AIR 1969 SC 182

<sup>23</sup> AIR 1969 SC 182. Also see, *All India Reserve Bank Employee v. Reserve Bank of India*, AIR 1966 SC 305

<sup>24</sup> *Ford Motor Company of India v. Ford Motors Staff Union*, [1953] 2 L.L.J. 444

<sup>25</sup> *Lloyd Bank Ltd. v. Pannalal Gupta*, [1961] 1 L.L.J. 18

<sup>26</sup> Also see, *Standard Vaccum Refining Co. v. Its Workmen*, [1961] 1 L.L.J. 227; *Crown Aluminium Works v. Workmen*, AIR 1958 SC 30

<sup>27</sup> *M. C. Mehta v. State of Tamil Nadu*, AIR 1991 SC 417

<sup>28</sup> *People's Union for Democratic Rights & Ors. v. Union of India*, (1982) II LLJ 454 (S.C.)

*service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive.*"<sup>29</sup>

In *Titaghur Paper Mills Co. Ltd. v. Its Workmen*<sup>30</sup> which was subsequently followed in *Manganese Ore (India) Ltd v. Chandi Lal Saha*,<sup>31</sup> the Court was of the view that there is a basic difference between the incentive bonus and the minimum wage. Every workman is entitled to minimum wage from the very first day of his joining the employment whereas the bonus has to be earned and it becomes payable after the event. Therefore, in the instant case the attendance bonus (in question) which was in the nature of an incentive was not treated as part of minimum wages under the Act.

In *State of Karnataka v. Ameerbi*,<sup>32</sup> the Court said that the provisions of Minimum Wages Act would not apply to workers of ICDS programme as they are not industrial workmen.

In *Pali Devi v. Chairman, Managing Committee and Another*,<sup>33</sup> the Supreme Court held that even an ex-employee is employee is entitled to seek relief under Section 20(2) of the Act.

In *Mahatma Phula Agricultural University v. Nasik Zills Sheth Kamgar Union and Ors.*,<sup>34</sup> the Court held that even if the employee not be entitled to a status of permanent employee, they cannot be deprived of privileges and benefits of permanent employes as envisaged under the Act.

In *Ministry of Labour v. Tiffin's Barytes Asbestos*,<sup>35</sup> the Court emphasized that the legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities.

In *Municipal Council Hatta v. Bhagat Singh*,<sup>36</sup> the Court said that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory Rules.

In *Express Newspaper v. Union of India*,<sup>37</sup> the Court explained that it was essential that the Wage Board should take into consideration the capacity of the newspaper industry to pay before it could fix the rates of wages.

The Court went further and stated that the capacity of the industry to pay being thus one of the essential ingredients in the fixation of wages, it is relevant to consider the different methods of measuring such capacity.

*"The capacity of industry to pay can mean one of three things, viz:*

- (i) the capacity of a particular unit (marginal, representative or average) to pay,*
- (ii) the capacity of a particular industry as a whole to pay or*

<sup>29</sup>*Id.*

<sup>30</sup> *Titaghur Paper Mills Co. Ltd. v. Its Workmen*, A.I.R. 1959 SC 1095

<sup>31</sup> *Manganese Ore (India) Ltd v. Chandi Lal Saha*, AIR 1991 SC 520

<sup>32</sup> *State of Karnataka v. Ameerbi*, (2008) 1 SCC (L&S) 975

<sup>33</sup> *Pali Devi v. Chairman, Managing Committee and Another*, AIR 1996 SC 1589

<sup>34</sup> *Mahatma Phula Agricultural University v. Nasik Zills Sheth Kamgar Union and Ors*, AIR 2001 SC 3228.

<sup>35</sup> *Ministry of Labour v. Tiffin's Barytes Asbestos*, 1985 SCC (L&S) 902

<sup>36</sup> *Municipal Council Hatta v. Bhagat Singh*, 1998 SCC (L&S) 581

<sup>37</sup> *Express Newspaper v. Union of India*, AIR 1958 SC 578



(iii) *the capacity of all industries in the country to pay.*"<sup>38</sup>

In *Edward Mills, Beawar v. State of Ajmer*,<sup>39</sup> the Court opined that the legislative policy is apparent on the face of the enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. Further, that it is with an eye to these facts that the list of trades has been drawn up in the schedule attached to the Act but the list is not an exhaustive one and it is the policy of the Legislature not to lay down at once and for all time to which industries the Act should be applied. Also, the conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State.<sup>40</sup>

In *Haryana Unrecognized Schools v. State of Haryana*,<sup>41</sup> the Court used the Statement of Object and Reasons of the Act to reach a conclusion that teacher of an educational institution cannot be brought within the purview of the Act. The Statements of Objects and Reasons of the Act justifying the statutory fixation of minimum wage states thus:

*"The justification for statutory fixation of minimum wages is obvious. Such provisions which exist in more advanced countries are even more necessary in India, where workers organization are yet poorly developed and the workers' bargaining power is consequently poor."*<sup>42</sup>

It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves on the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a welfare State is based on notions of progressive social philosophy which have rendered the old doctrine of laissez-faire obsolete.<sup>43</sup> In the nineteenth century the relation between employers and employees were usually governed by the economic principle of supply and demand, and the employers thought that they were entitled to hire labour on their terms and to dismiss the same at their choice subject to the specific terms of contract between them, if any. The theory of "hire and fire" as well as the theory of "supply and demand" which were allowed free scope under the doctrine of laissez-faire no longer hold the field. In constructing a wage structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and

<sup>38</sup> AIR 1958 SC 578

<sup>39</sup> *Edward Mills, Beawar v. State of Ajmer*, A.I.R. 1955 SC 25

<sup>40</sup> A.I.R. 1955 SC 25. Also see, *M/S Bhikusa Yamasa Kshatriya and Another v. Sangamner Akola Taluka Bidi Kamgar Union and others*, 1963 (2) SCC 242.

<sup>41</sup> *Haryana Unrecognized Schools v. State of Haryana*, 1996 SCC (L&S) 923

<sup>42</sup> [http://www.google.co.in/url?sa=t&rct=j&q=statement%20of%20object%20and%20reason%20of%20minimum%20wages%20act'&source=web&cd=2&cad=rja&ved=0CDQQFjAB&url=http%3A%2F%2Fsunshineconsultants.co.in%2Fyahoo\\_site\\_admin%2Fassets%2Fdocs%2FMinimum\\_Wages\\_Act\\_1948.55130408.doc&ei=0MJVUfjrIIPMrOedxoHADg&usq=AFQjCNGhX6eBLXqOHxr3ve5UnDCYafLnDA](http://www.google.co.in/url?sa=t&rct=j&q=statement%20of%20object%20and%20reason%20of%20minimum%20wages%20act'&source=web&cd=2&cad=rja&ved=0CDQQFjAB&url=http%3A%2F%2Fsunshineconsultants.co.in%2Fyahoo_site_admin%2Fassets%2Fdocs%2FMinimum_Wages_Act_1948.55130408.doc&ei=0MJVUfjrIIPMrOedxoHADg&usq=AFQjCNGhX6eBLXqOHxr3ve5UnDCYafLnDA), last accessed on 23.06.2020.

<sup>43</sup> *Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur*, [1955] 1 S.C.R. 991

as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage structure.<sup>44</sup>

Relying on the above propositions the Court in *Standard Vacuum Refining Co. v. Its Workmen*<sup>45</sup> held that it is because of this socioeconomic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be 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; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even underdeveloped countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage.

In dealing with wage structure it is usual to divide wages into three broad categories: the basic minimum wage is the bare subsistence wage; above it is the fair wage, and beyond the fair wage is the living wage. It would be obvious that the concepts of these three wages cannot be described in definite words because their contents are elastic and they are bound to vary from time to time and from country to country. Sometimes the said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult and also inexpedient to attempt the task of giving an adequate precision to these concepts.

The Fair Wages Committee which made its Report in 1949 emphasised that “the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities.”<sup>46</sup>

A resolution was passed in the 15th Session of the Indian Labour Conference held in New Delhi on July 11 and 12, 1957 which made a declaration about the wage policy which should be followed during the Second Five Year Plan. The Tripartite Committee which passed the resolution considered the relevant notes placed before it, and held that they would be useful as background material for wage fixation. With regard to the minimum wage fixation it was agreed that the minimum wage was need based to ensure the minimum human needs of the industrial worker irrespective of any other considerations.<sup>47</sup> To calculate the minimum wage the Committee accepted the following

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<sup>44</sup> *Shri Meenakshi Mills Ltd. v. Their Workmen*, [1958] 1 S.C.R. 878

<sup>45</sup> *Standard Vacuum Refining Co. v. Its Workmen*, AIR 1961 SC 895

<sup>46</sup> Available at: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Also see, [http://www.altlawforum.org/sites/default/files/MWA\\_A4\\_051006.pdf](http://www.altlawforum.org/sites/default/files/MWA_A4_051006.pdf). Last accessed on: 23.06.2020. Also see, *Standard Vacuum Refining Co. v. Its Workmen*, [1961] 1 L.L.J 227

<sup>47</sup> Available at: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Also see, *Standard Vacuum Refining Co. v. Its Workmen*, [1961] 1 L.L.J 227; *Workmen Represented by Secretary v. Management of Reptakos Brett*, AIR 1992 SC 504

norms and recommended that they should guide all wage fixing authorities including Minimum Wage Committees, Wage Boards, adjudicators, etc. The five norms accepted by the Committee were stated by it in these terms:

- “(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
- (ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
- (iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers family of four, a total of 72 yards.
- (iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.
- (v) Fuel, lighting and other miscellaneous items of expenditure should constitute 20% of the total minimum wage.”<sup>48</sup>

The above recommendations have been cited with approval in *Express Newspaper v. Union of India*,<sup>49</sup> *Standard Vacuum Refining Co. v. Its Workmen*<sup>50</sup> and *Workmen Represented by Secretary v. Management of Reptakos Brett*.<sup>51</sup> Further in *Workmen Represented by Secretary v. Management of Reptakos Brett*,<sup>52</sup> the Court stated that the Fair Wages Committee understood the term minimum wage is the lowest wage in the scale below which the efficiency of the worker was likely to be impaired. It was described as the "wage door" allowing living at a standard considered socially, medically and ethically to be the acceptable minimum. Fair wages by comparison were more generous and represented a wage which lay between the minimum wage and the living wage.

The Court in *Workmen Represented by Secretary v. Management of Reptakos Brett*,<sup>53</sup> added that a worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today.

The Court further, keeping in view the socio-economic aspect of the wage structure added the following additional component as a guide for fixing the minimum wage in the industry:

*children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage.*<sup>54</sup>

The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances.

<sup>48</sup> Available at: [http://labour.nic.in/upload/uploadfiles/files/Divisions/wage\\_cell/4fd9bebab42a0mwact.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf). Also see, [http://www.altlawforum.org/sites/default/files/MWA\\_A4\\_051006.pdf](http://www.altlawforum.org/sites/default/files/MWA_A4_051006.pdf). Also see, *Standard Vacuum Refining Co. v. Its Workmen*, [1961] 1 L.L.J 227; *Workmen Represented by Secretary v. Management of Reptakos Brett*, AIR 1992 SC 504

<sup>49</sup> AIR 1958 SC 578  
<sup>50</sup> [1961] 1 L.L.J 227

<sup>51</sup> Supra n. 12

<sup>52</sup> Supra n. 12

<sup>53</sup> Supra n. 12

<sup>54</sup> Supra n. 12

The Court emphasized further that living wage has been promised to the workers under the constitution. A 'socialist' framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling-up but the day of fulfilment is nowhere in sight. Industrial wage looking as a whole--has not yet risen higher than the level of minimum wage.<sup>55</sup>

The Court in *Ahmedabad Mills Owners, Association etc. v. The Textiles Labour Association*,<sup>56</sup> through Gajendragadkar, CJ, laid down as under:

*“The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should revise the wage structure, though such revision may result in the reduction of the wages paid to the employees..... This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If, what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity.”<sup>57</sup>*

#### IV. CONCLUSION

India has vast number of labourers working in the unorganized sector and inspite of their contribution to the Indian economy, they still go on to constitute poorest section of the society. In this light, therefore, it becomes all the more imperative that the wage structure be adequately looked into and accordingly changes are made to suit the requirement of the country. Infrequent revisions and inadequate cost of living adjustments have been a marked feature of minimum wages in India. The rates of minimum wages so fixed in few states, is not enough even for two times meal in a day, leave aside the needs of health, education and shelter. The main objective to be considered while fixing or revising the minimum wage rate should be two fold –

- 1) Social objective: that is, by providing sufficient purchasing power to the worker, enable him/her to have a basic standard of living. In long run such a step would help in abolishing labour exploitation and poverty.
- 2) Economic objective: The rate of minimum wage should be fixed at such a level which would motivate workers and enable them to enjoy the benefits of economic growth, and thereby contribute to the economy.

Inadequacy on the part of the Government provides a platform for the intervention of the Courts. The Courts have in innumerable cases frowned upon the inadequacy of the data or consideration of obsolete data in formulation of wage structure. The preamble to the Constitution of India provides for justice; social, economic and political. The workers who are disproportionately paid and hence forced to work without proper incentive being provided to them is a grave violation of their rights guaranteed by the Constitution. The Courts have tried to create a balance between the

<sup>55</sup> Supra n. 12

<sup>56</sup> *Ahmedabad Mills Owners, Association etc. v. The Textiles Labour Association*, [1961] 1 SCR 382

<sup>57</sup> *Id.*

competing scenarios and hence, have laid down certain minimum standards which have to be followed while determining the wage structure.

Under the Code on Wages Act, 2019, workers from all industries are entitled to receive minimum wages fixed by their respective state governments. Matters concerning labour and its welfare is categorized as both a state and central subject under constitutional law, thereby resulting in multijurisdictional regulation.

However, even after passing the wage code, there has been no new development on implementing a national minimum wage for Indian workers.

