LABOUR LAW SEMINAR (PAPER-II)

TOPIC: - TYPES AND KIND OF WAGE: WAGE DETERMINATION

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(A) HISTORICAL BACKGROUND

Statutory minimum wage regulation was first introduced in New Zealand in 1894 and the Australian colony (soon to be a state) of Victoria in 1896. Some attempt to control wages had been present since 19th century, through collective agreement. However, this meant that a uniform minimum was not possible. It was not until the turn of the twentieth century that the first attempts to do this were seen. The movement for a minimum wage was initially targeted at stopping sweatshop labour.

At the international level the International Labour Organization established Minimum Wage-Fixing Machinery Convention in 1928. Having decided upon the adoption of certain proposals with regard to minimum wage-fixing machinery, the principles of the convention were modified and included in the Minimum Wage Fixing Machinery (Agriculture) Convention 1951 and Minimum Wage Fixing Convention 1970.¹

In India the question of fixation of minimum wages gained importance due to the cheap and unorganized labour. The labour as whole in the country was not able to put a face of collective bargaining and look after their interests.

The period of acute depression was set in all industries towards the end of 1922. The Ahmedabad Mill Owners Association thereupon, made the first organized post war move for wholesale reduction of wages and a cut of 20% in wages was announced with effect from 1st April 1923. The strike of Ahmedabad cotton mill workers, which followed the cut, involved nearly 50,000 workers. Similar situation prevailed in Bombay also. Not satisfied with one cut, some mills imposed another cut within the short period of few months.²

¹ www.wikipedia.org visited on 18/11/2013 at 9.35am
² Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 455
In 1925, however, the Government of India came to the rescue of the cotton textile workers. As a compromise formula, the wage cut proposal was dropped after the Government announced the suspension of the excise duty on the demand of mill owners.³

**Appointment of Royal Commission on Labour – 1929**

The year 1928 witnessed most disastrous strike of the period there was complete stoppage of work for over six months in Bombay. Some other such strikes were also witnessed in Jamshedpur and Sholapur. Continued labour unrest in the country prompted the Government of India in the middle of 1929, to appoint Royal Commission on Indian labour to enquire into and report on the existing conditions of labour including the health, efficiency and the standard of their living.

The Royal Commission on Labour considered the question of fixing the minimum wages for bidi making, wool cleaning, mica factories, shellac manufacturing and tanning. It recommended, “it would be necessary to create a machinery for fixing minimum rates of wages in those trades in which wages are lowest and where there is no question of collective bargaining.” It further recommended that of industries which came within its terms of reference, those dealing with unregulated factories be examined in the first instance with a view to the need and possibility of instituting minimum wage fixing machinery. The Commission also emphasized on the need of enacting necessary legislation on the subject. No steps, however, were taken for any legislative measure to implement the recommendations of the Commission.

The question of setting up of statutory wage fixing machinery was again discussed at the meetings of the Standing Labour Committee held in May 1943 and January 1944, respectively and also at the successive sessions of the Tripartite Labour Conference in September 1943, October 1944 and November 1945.

**Appointment of Rege Committee – 1944**

The appointment of Rege Committee in 1944 found after their survey that the basic wage level in most Indian industries was extremely low.

³ Ibid
Appointment of Central Pay Commission – 1946

Government of India in 1946, appointed the Central Pay Commission to enquire into and report on the conditions of service of central government employees. The Pay Commission recommended that the Government should take some steps forward in giving effect to the “living wage” principle dealing with the employees who are virtually on the “poverty line” and came to the conclusion that in no case a man’s wages should be less than a living wage.

Minimum Wages Bill, 1946

Simultaneously, with the appointment of the Central Pay Commission, the Government of India, on February 11, 1946, introduced in the Indian Legislative Assembly, the Minimum Wages Bill. The Bill was referred to the Select Committee in March 1947, which was reconstituted in November 1947. The Bill, as finally passed by the Dominion Legislature on February 9, 1948 received the assent of the Governor General on March 15, 1948 and it came to be known as the Minimum Wages Act, 1948.

Minimum Wages Act, 1948

The purpose of the Act is to ensure that the payment of wages at rates not less than the prescribed minimum to those employed in scheduled employment. The Act was enacted to give effect to the resolutions passed by the Minimum Wages Fixing Machinery Convention held at Geneva in 1928.4

Objectives of the Act

The objectives of the Minimum Wages Act, 1948 are as follows:

(a) To provide for fixation of minimum wages for the scheduled employments.
(b) To provide for periodical revision of minimum wage fixed.
(c) To provide for a summary procedure for recovery of the balance with penalty and subsequent prosecution of the offending party, in cases where an employer pays less than the minimum wages fixed by the government.

4 Ibid
(d) To provide for the appointment of Advisory Committees and Advisory Boards, having equal representatives of employers and workers.

*M. Unichoyi v. State of Kerala*⁵

The Court held that the Act purports to prevent exploitation of labour and for that purpose authorizes the appropriate government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour.

**(B) Meaning of “wage”**

The term wages means payment made for the services of labour.

Wage is the return in cash or kind or partly in cash and partly in kind for the work done by the employee.

Though Oxford Dictionary defines wage as ‘the amount paid periodically, especially by day or week or month, for the time during which workman or servant is at employer’s disposal. But in the context of Indian legal situation Industrial Disputes Act 1947, Payment of Wages Act and Minimum Wages Act 1948, have enlarged the conspectus of its meaning by defining it as---

All remuneration capable of being expressed in terms of money, which would, if the term of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment.”

⁵ Id at 505
Further these Acts clearly states about what is to be included and what is to be excluded from the definition of “wages” respectively.

(C) TYPES AND KIND OF WAGE

Since 1948, several terms have been used with reference to the wages, viz,

(a) Statutory minimum wage;
(b) The bare or basic minimum wage;
(c) The minimum wage;
(d) The fair wage;
(e) The living wage; and
(f) The need-based minimum wage.

The first term owes its origin to the provision of the Minimum Wages Act 1948, the second has generally been used in industrial awards and judicial dicta of the courts, the next three have been introduced in the report of the Committee on Fair Wages and the last one emerged in the resolution of the 15th Session of the Indian Labour Conference in July 1957.

In common parlance we mostly refer to the levels of wages defined by the Committee on Fair Wages, i.e. the living wage, fair wage and the minimum wage. In an expanding economy, the contents of these expressions also expand and vary. These levels naturally, do not represent a static, inflexible concept; they would vary and expand according to the economic development and compulsions of social justice. It is, therefore, very difficult to describe accurately, the content of the terms ‘living wage’, ‘fair wage’ or ‘minimum wage’.

These terms or their variants cannot and do not mean the same thing in all countries, or even in different industries in the same country. What may be a fair wage in a particular industry in one country may be a living wage in the same industry in another country. Similarly, what may be a fair wage in a given industry today may cease to be fair and border on the minimum wage, in the future. In other words these concepts would keep on changing with the circumstances, with the
growth, both of industries and of the economy, the living standards and circumstances of the industries and the people.⁶

**(i) MINIMUM WAGE**

(a) Minimum wage in general

The concept of minimum wage has recently undergone a progressive change. It is no longer based upon the subsistence theory, according to which minimum wage equals the cost of commodities necessary to feed and clothe a worker and his family.

*Hindustan Times Ltd. v. Their Workmen*⁷

In this case Das Gupta J said, ‘at the bottom of the ladder is the minimum basic wage, which the employer of any industrial labour must pay in order to be allowed to continue an industry’.

According to the Committee on Fair Wages, the minimum wage must provide not merely for the sustenance of life, but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also accommodate some measure of education, medical requirements and amenities.

The Committee had categorically stated that an industry which is incapable of paying this minimum wage, has no right to exist and in cases where the continued existence of such an industry is imperative, in the larger interest of the country, it was the responsibility of the state to take steps to enable that industry to pay at least the minimum wage. The Committee was of the definite view that for fixing the minimum wage, no regard should be paid to the capacity of the industry to pay and it should be based solely on the requirements of the worker and his family.⁸

In order to calculate the minimum wage, the Tripartite Committee of the Indian Labour Conference, held in New Delhi in 1957, accepted the following norms, and recommended that

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⁷ Id at 592
⁸ Id at 593
they should guide all wage fixing authorities, including Minimum Wage Committees, Wage Boards, Adjudicators, etc.:

(i) In calculating the minimum wage, the standard working class family should be taken to consist of three consumption units for one earner, the earnings of women; children and adolescents should be disregarded.

(ii) Minimum food requirements 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 requirement should be estimated as per consumption of 18 yards per annum which would give for the average worker’s family of four, a total of 72 yards.

(iv) In respect of housing, the norm should be minimum rent charged by Government in any area for houses provided under the subsidized Industrial Housing Scheme for low income groups.

(v) Fuel, lighting and other ‘miscellaneous’ items of expenditure should constitute 20 percent of the total minimum wage.

(vi) Children’s education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc. should further constitute 25 percent of the total minimum wage.9

Express Newspapers Pvt. Ltd. v. UOI10

The standards of minimum wage as laid down by the committees, were adopted by the Supreme Court also, in holding that the minimum wage must provide not merely for the bare subsistence of life, but also for the preservation of the efficiency of the worker and for this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities.

Workmen v. Reptakos Brett and Co. Ltd.11

The Supreme Court finally settled the judicial policy hitherto expressed in earlier decisions holding that the wage structure which approximately answers the above six components is

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9 Id at 594
10 Ibid
nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wages at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

(b) Statutory Minimum Wage

The Statutory Minimum Wage owes its origin to the Minimum Wages Act 1948, the historical background of which has been discussed earlier. The statutory minimum wage is the minimum wage which is prescribed by the relevant provisions of the Minimum Wages Act 1948. This applies to the employments that are included in Parts 1 and 2 of the Schedule to the Act.

The passing of Minimum Wages Act 1948 is a landmark in the history of labour legislation in the country, which recognizes that the wages cannot be left to be determined entirely by market forces. The main object of the Act is to prevent ‘sweated’ labour, as well as to prevent the exploitation of unorganized labour. It proceeds on the basis that it is the duty of the State that, at least minimum wages are paid to the employees, irrespective of the capacity of the industry or the unit, to pay the same. The mandate of Art.43 of the Constitution is that the State should endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work on living wage, under conditions of work which ensure a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This fixing of a minimum wage is just a first step in that direction. In the course of time, the State has to take many more steps to implement that mandate.

Bijay Cotton Mills Ltd v. State of Ajmer

In this case the Court dealing with a challenge to the constitutional validity of the provisions of the Minimum Wages Act, relating to fixation of minimum wages, on the grounds of repugnancy to Art19 (1) (g) observed that, individual employers might find it difficult to carry on their business on the basis of the minimum wage fixed under the Act, but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for striking down the law itself, as unreasonable.

12 Supra Section A
14 Id at 595
Hidayatullah J remarked in this case that . . . .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.

(c) Non Statutory Minimum Wage

The minimum wage policy, as it has emerged in this country, distinguishes between the organized industries and the sweated ones. The Minimum Wage Act 1948 is an instrument which seeks to protect the interest of the workers in the latter. In the organized sector, the concerned authorities fix the wages considering the report of the Committee on Fair Wages and the norms of the Tripartite Committee which is termed as non-statutory minimum wage.

Ahmedabad Mill Owner’s Association v. Textile Labour Association16

The Supreme Court held that a basic minimum wage can be fixed by an industrial tribunal when the statute has not fixed the minimum wage. Section 3(2A) of the Minimum Wage Act 1948 does contemplate fixation of minimum wage by industrial adjudication.

The basic concept on which the provisions of the Minimum Wages Act are founded, is to prevent the sweating and exploitation of labour, through payment of unduly low wages. It would, therefore, conceptually follow, that just as in the case of scheduled industries, the employer in any establishment not covered by the schedule, also pay to his employees, a minimum wage, because what applies to the establishments included in the schedule to the Minimum Wages Act, must, on principles of social justice, apply with equal force, to industrial establishments not covered in the schedule as well. In such cases, considerations of social justice play a major role in shaping the social, economic and industrial policies of a welfare state. This aspect has to be borne in mind by industrial adjudicators in fixing the level of wages.

15 Id at 596
16 Id at 602
Crown Aluminum Works v. Their Workmen

The Court held that in fixing the bare minimum wages and subsistence wages, industrial adjudicators will have to consider the position from the point of view of the worker, the capacity of the employer to pay such a wage would be irrelevant.

(ii) FAIR WAGE

It stands in between the minimum wage and living wage.

Fair wage is said to be step towards the progressive realization of a living wage.

A fair wage is settled above the minimum wage and goes through the process of approximating towards a living wage. It depends upon the present economic position as well as the future prospects of that industry.

In the words of Hidayatullah J, ‘a fair wage, lies between the minimum wage which must be paid in any event and the living wage, which is the goal’.

Bhagwati J described a ‘fair wage’ as a mean between the living wage and the minimum wage.

Marshall considers the rate of wages prevailing in an occupation as ‘fair’ if it is ‘about one level with the average payment for tasks in other trades, which are of equal difficulty and disagreeableness, which require equally rare natural abilities and an equally expensive training’.

Prof. Pigou apply two degrees of fairness, in judging a wage rate, viz, ‘fair in the narrower sense’, and ‘fair in the wider sense’. A wage rate is ‘fair in the narrower sense’, when it is equal to the rate current for similar workmen in the same trade and the neighbourhood, and ‘fair in the wider sense’, when it is equal to the predominant rate for similar work throughout the country and in the generality of trades.

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17 Id at 603  
19 ibid  
20 Ibid  
21 Ibid
The lower limit of the fair wage must obviously the minimum wage; the upper limit is set out by what may be called, the capacity of the industry to pay. This will depend not only on the present economic position of the industry but on its future prospects. Between these two limits the actual wage will be fixed on a consideration of the following factors:-

(a) The productivity of labour;
(b) The prevailing rates of wages in the same industry for similar occupations in the same neighbouring locality;
(c) The level of national income and its distribution; and
(d) The place of industry in the economy of the country.\(^{22}\)

*Novex Dry Cleaners v. Workmen*\(^{23}\)

The Court observed that it is now well settled principle that in fixing a minimum wage, the capacity of the industry to pay is not relevant, but in fixing a fair wage, the capacity of the industry to bear the burden of the said wage is very relevant and important factor. Where wage structure is being fixed with reference to those in other similar industries in the region, the standing of the industries, strength of labour employed, extent of customers, profits and loss must be taken into account. It is also necessary to assess whether the employer would be able to meet the additional liability.

*Express Newspaper (Pvt.) Ltd. and another v. Union of India and others*\(^{24}\)

The Court held that unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play major role in the calculations to the construction of wage structure.

Another aspect of the matter which cannot be ignored is that if a fair wage is construed by the industrial adjudication, and in course of time if 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 wages paid to the employees. The conflicting claims of the labour and capital must be harmonized on a reasonable basis.

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\(^{22}\) Id at 592

\(^{23}\) Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad9th Ed.2011) at 229

\(^{24}\) Id at 230
Gajendragadkar J said: It would not be correct to say that in no conceivable circumstances, can
the wage structure be revised to the prejudice of workmen. But he added further that,
‘theoretically, no wage structure can or should be revised to the prejudice of workmen, if the
structure in question falls in the category of the bare subsistence or the minimum wage’.

In connection with the wage structure of a higher category, the Court said that, ‘it would be open
to the employer to claim revision, even to the prejudice of the workmen, provided a case for such
revision is made out on merits, to the satisfaction of the tribunal’.

(iii) LIVING WAGE

The term living wage has not been defined under the provisions of the Minimum Wages Act.
However, an instance of statutory definition of living wage is provided in South Australian Act
of 1912 which states the “living wage” means a sum sufficient for the normal and reasonable
needs of the average employee living in a locality where the work under consideration is done or
is to be done.26

Justice Higgins, the Australian Commonwealth Court of Arbitration, while disposing *Harvester*
case visualized a living wage as a sum which is adequate to satisfy the normal needs of the
average employee regarded as human being in a civilized community.27

Another definition of living wage is found in the Queensland Industrial Conciliation and
Arbitration Act which states that a basic (i.e. living) wage paid to an adult male employee shall
not be less than what is sufficient to maintain a well conducted employee of average health,
strength and competence and his wife and a family of three children in a fair and average
standard of comfort, having regard to the conditions of living prevailing among employees in the
calling in respect of which such wage is fixed, and provided that in fixing such basic wage the
earnings of the children or wife of such employee shall not be taken into account. Living wage

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25 Ibid
26 Id at 226
27 Ibid
consists of amount of necessaries, comforts and luxuries, the quantum of goods and services which an individual considers necessary for decent existence.28

There are several definitions of ‘living wage’, attempted in the recent past. The quintessence of all these definitions is that a living wage should enable the male earner to provide for himself and his family, not merely the bare essentials of food, clothing and shelter, but also a measure of frugal comfort, including education for the children, protection against ill health, requirement of essential social needs and a measure of insurance against the more important misfortunes, including old age.

According to the Committee on Fair Wages, the living wage represents the higher level of wage and naturally, it would include all amenities which a citizen living in a modern civilized society is entitled to, when the economy of the country is sufficiently advanced and the employer is able to meet the expanding aspirations of his workers.29

All India Reserve Bank Employees Assn. v. RBI30

In this case Hidayatullah J stated that …our political aim is ‘living wage’, though in actual practice, living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best, reached the lower levels of fair wage, though some employers are paying much higher wages than the general average.

Workmen v. Management of Reptakos Brett & Co. Ltd.31

Kuldip Singh J stated that, a 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 ideal. The promises are piling up but the day of fulfillment is nowhere in sight. Industrial wage, looking as whole, has not yet risen higher than the level of minimum wage.

28 Ibid
30 Id at 589
31 Ibid
Living wage at present is only a Directive Principle enshrined in the Constitution which cannot be achieved at one stroke but only after a continuous and progressive economic development.

(D) WAGE DETERMINATION

(a) FIXING OF MINIMUM RATES OF WAGES (Section 3)

Under Section 3(1) of the Act, the appropriate Government has been empowered to:

(a) Fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the schedule.
(b) Review and revise at such intervals not exceeding 5 years.

Provided that the appropriate government may, in respect of employees employed in an employment specified in Part II, instead of fixing minimum rates for the whole State, fix such rates for a part of the State or for any specified class or classes.

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it, within any interval of 5 years, nothing contained in this clause shall prevent it from reviewing and revising the minimum rates after the expiry of the said period of 5 years. Until they are so revised, the minimum rates in force immediately before the expiry of the said period of 5 years shall continue in force.

The appropriate government may refrain from fixing minimum rates of wages in respect of scheduled employment in which there are in the whole State, less than thousand employees are engaged in such employment. If the appropriate government finds after inquiry that number of employees in any scheduled employment has risen to 1000 or more, it shall fix minimum rates of wages in such employment as soon as may be after such inquiry.
It has been provided under Section 3(2) of the Act that the appropriate government may fix:

(a) **Time Work Rate** – A minimum rate of wages for time work.
(b) **Piece Work Rate** – A minimum rate of wages for piece work.
(c) **Guaranteed Time Rate** – A minimum rate of remuneration for such employees who are employed on piece work but for the purpose of securing to such employees a minimum rate of wages on a time work basis.
(d) **Overtime Rate** – A minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be payable, in respect of overtime work done by employees.

Section 3(2A) of the Act puts a limitation on the powers of appropriate government to fix or revise minimum rates of wages under certain circumstances which are as follows:

Section 3(2A) provides that during the pendency of any proceeding before the Industrial Tribunal or National Tribunal or any other competent authority relating to rates of wages, no order can be issued to fix or revise the minimum rates of wages. It also provides that if an award is in operation no such order fixing the minimum rates or revising the minimum rates can be issued.

Section 3(3) of the Act further provides that in fixing or revising the minimum rates of wages under this section:

(a) Different minimum rates of wages may be fixed for:
   (i) Different scheduled employments;
   (ii) Different classes of work in the same scheduled employment;
   (iii) Adults, adolescents, children and apprentices;
   (iv) Different localities

(b) Minimum rates of wages may be fixed by:
   (i) The hour
   (ii) The day
   (iii) The month, or
   (iv) Such other longer wage period as may be prescribed.
Where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated.

Provided that where any wage periods have been fixed under section 4 of the Payment of Wagers Ac, 1936, minimum wages shall be fixed in accordance therewith.32

*M/s The Indure (P) Ltd. v. State of U.P. and others*33

The Court held that when wages of workers are more than the minimum rates of wages, as fixed and/or revised under the Minimum Wages Act, no separate VDA (Variable Dearness Allowance) as declared by the Authorities under Minimum Wages Act will be applicable since the total pay package is more than the pay package under the said government order.

*Jaydip Industries v. Workmen*34

The Court held that the Tribunal is not bound by the fixation of minimum wage rates by the government and can fix higher rates as minimum wages in its award. Tribunal can take into account rates of minimum wages fixed in other awards.

*Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore*35

The Supreme Court observed that fixing of different rates of minimum wages for different industries or in different localities by dividing State into zones is not opposed to Section 3(3) of the Act but the government is not allowed to fix or revise minimum rates of wages in an arbitrary manner.

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32 Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 515
33 Ibid
34 Id 516
(b) MINIMUM RATE OF WAGES (Section 4)

Section 4(1) of the Minimum Wages Act 1948 provides that any minimum rates of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 may consist of:

(a) A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such a manner as the appropriate government may direct, or

(b) A basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized, or

(c) An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

4(2) the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at intervals and in accordance with the directions issued by the appropriate government.

*Karnataka Film Chamber of Commerce v. State of Karnataka*36

The Court observed that Section 4 of the Act is a definite indication that basic wage is an integral part of the minimum wage. The Minimum Wages Act 1948 is a beneficial piece of social legislation which protects the day to day living condition of the workmen employed at the lowest level of wages in sweated labour. Though the minimum wages are fixed statutorily, it does not measure up either to the fair wage or either to the living wage. Therefore the Court cannot interfere with notifications issued under the Act unless the grounds are substantial.

*Jaswant Rai Beri and others v. State of Punjab*37

The Court held that the Act makes no specific mention of the term dearness allowance (DA) but it is well known that it refers to an allowance paid for rise of cost of living.

*M. C. Mehta v. State of Tamil Nadu*38

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36 Id at 241  
37 Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 517
The Court expressed that the children doing the work of “sorting out manufactured product and processing the same for packing” in a match factory, should be given at least 60 percent of the prescribed minimum wages for an adult, for the same job. But indicating the minimum wage does not stand in the way of prescription of a higher rate if the State is satisfied that a higher rate is viable.

(c) PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (Section 5)

Section 5(1) of the Act lays down procedure for fixing and revising the minimum rates of wages. It enunciates two methods for the purpose and the appropriate government can follow either of the two methods namely:

(a) It shall either appoint as many committees and sub-committees as it considers it necessary to hold inquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) It shall by notification in Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of Notification, on which the proposals will be taken into consideration.

Section 5(2) – After considering the advice of the committee or committees so appointed or after considering all representations received before the date specified in the Notification, the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment, and unless such Notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

However in case of revision of minimum rates of wages under clause 1(b) mentioned above the appropriate government shall consult the Advisory Board also.

_Chandra Bhawan Boarding and Lodging v. State of Mysore_39

The Advisory Board is constituted to co-ordinate the work of the committees and sub-committees and to advise the Government generally in the matter of fixing and revising the

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38 Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad9th Ed.2011) at 225
39 Id at 245
minimum rates. However, in the initial fixation of minimum wages, consultation with the Advisory Board is not compulsory.

_Jaswant Rai Beri v. State of Punjab_40

The committee appointed under section 5 is only an advisory body and the government is not bound to accept any of its recommendations.

(d) ADVISORY BOARD (Section 7)

The appropriate government shall appoint an Advisory Board for the purpose of coordinating the work of committees and sub-committees appointed under section 5 and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages.

(e) COMPOSITION OF COMMITTEES AND ADVISORY BOARDS (SECTION 9)

Each of the committees, sub-committees and Advisory Board shall consist of persons to be nominated by the appropriate governments representing employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding 1/3 of its total number of members, one of such independent persons shall be appointed as Chairman by the appropriate government.

_N. K. Jain v. Labour Commissioner Rajasthan_41

Compliance in procedure must be real and not for the name sake. The constitution of a committee by the State Government consisting of six of its officers, with no representation of either employers or of the employees in the scheduled employment and the notification issued for fixing minimum wages on the advice of the said committee, was held to be having no force and effect as in reality there was no committee

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40 Ibid
41 Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 520
(f) CENTRAL ADVISORY BOARD (Section 8)

The Central Advisory Board is constituted by the Central Government under section 8 of the Act for the following purposes:

(a) To advise the Central and State Governments in the matter of fixation and revision of minimum rates of wages;
(b) To advise on any matters within the scope of this Act and
(c) To co-ordinate the work of the Advisory Boards.

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding 1/3 of its total number of members, one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

*K. T. Appanah v. State of Mysore*\(^42\)

Section 9 does not require that there should be on those Boards, representatives of employers and employees in each of the many employments which were in the schedule or were subsequently added to it, to insist that it should be so, would be to make the Advisory Board unmanageable and unwieldy and to make its composition impracticable.

*Eastern Bihar Chamber of Commerce and Industries v. State of Bihar*\(^43\)

Nomination of representatives from each category of employers is not necessary.

*Ministry of Labour and Rehabilitation v. Tiffins Barytes Asbestos and Paints Ltd.*\(^44\)

‘Independent persons’ are persons who belong neither to the category of employers nor to that of employees.

\(^{42}\) Id at 522
\(^{43}\) Ibid
\(^{44}\) Ibid
CONCLUSION

Wage fixation is a social welfare programme. With the advent of the doctrine of a welfare state, which is based on notions of progressive social philosophy the theory of demand and supply which were allowed free scope under the doctrine of laissez faire, have become obsolete in construing the wage structure.

The conception of minimum wages is based on the principles of equity and social justice. Its underlying idea is that "he who works is entitled to a fair remuneration which may enable him to live a life consistent with human dignity".

Employers are, therefore, under an obligation, (economic or social), to provide their employees safe, healthy and comfortable living, employment and working conditions. It is only when they failed to honour this obligation that the Government stepped in to safeguard the interest of workmen by enacting suitable legislation. This has happened all over the world, and in India also the Government has recognized its duty to undertake legislation to protect workers from being exploited

The various advantages of the minimum wage fixation can be summarized as follows:

(a) It increases the standard of living for the poorest and most vulnerable class in society.
(b) Motivates and encourages employees to work harder.
(c) It stimulates consumption, by putting more money in the hands of low-income people, who spend their entire paychecks.
(d) It decreases the cost of government social welfare programs by increasing incomes for the lowest-paid.
(e) Encourages people to join the workforce rather than pursuing money through illegal means, e.g., selling drugs.

The minimum wage fixation has played a significant role in getting at least minimum wages to workers. Let us hope we will reach living wages in short time which has been guaranteed by Article 43 of the Constitution.
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