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# An Analysis of Concept of Wages and Employer's Capacity to Pay under 21st Century Labour Law

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NAMRTA<sup>1</sup>

## ABSTRACT

*The Code on Wages 2019 consolidates four existing laws: the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976, into a single statute. The Codification of the Labour Laws removed the multiplicity of definitions and authorities leading to ease of compliance without compromising wage security and social security to the workers. Wages are important factor in any employment and is covered under the new as well as the old legislation but the capacity of employer to pay was not considered as a factor while deciding minimum wages.*

*This paper tries to analyse the law on wages and the reports of various committees where employer's capacity to pay was discussed.*

## I. INTRODUCTION

Wages are among the most important conditions of work. The ILO is committed to promote policies on wages and incomes that ensure a just share of the fruits of progress to all and a minimum living wage for all employed in need of such protection.<sup>2</sup>

**Section 2(h) of Minimum wages Act** defined wages as-

*"Wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include—*

- i. the value of-*
  - a. any house-accommodation, supply of light, water, medical attendance, or*
  - b. any other amenity or any service excluded by general or special order of the*

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<sup>1</sup> Author is an Assistant Professor at Acropolis Institute of Law, Indore, India.

<sup>2</sup> *Wages (wages)* (no date) *Wages (Wages)*. Available at: <https://www.ilo.org/global/topics/wages/lang-en/index.htm> (Accessed: 12 March 2024).

*appropriate Government;*

- ii. any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;*
- iii. any travelling allowance or the value of any travelling concession;*
- iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or*
- v. any gratuity payable on discharge”.*

**Section 2(i) of the Minimum Wages Act** define **Employee** as follows:

- i. Any person who is employed for hire or reward to do any work
- ii. Work could be skilled or unskilled, manual or clerical
- iii. in a scheduled employment in respect of which minimum rates of wages have been fixed; and
- iv. includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processes for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out- worker or in some other premises not being premises under the control and management of that other person, and
- v. also includes an employee declared to be an employee by the appropriate Government; but
- vi. does not include any member of the Armed Forces of the Union.<sup>3</sup>

The word 'employee', defined in Section 2(i) of the Act did not include an ex-employee. A person who is not in the actual employment of the employer at the time of making an

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<sup>3</sup> 2(i) "Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processes for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out- worker or in some other premises not being premises under the control and management of that other person, and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.”

application under section 20(2)<sup>4</sup> of the Act, was not entitled to seek relief.<sup>5</sup>

Sections 20(2) and 2(i) had to be read along with the Rules and Form VI to lean in favour of the view that both past and present employees were entitled to move in the matter. The language-employed therein, even though executive voiced, is more often than not, demonstrative of the legislative purpose. So viewed, the intendment of the statute is furthered if an ex-employee too is held entitled to seek relief under Section 20(2) of the Act.<sup>6</sup>

## II. CONCEPT OF MINIMUM WAGES AT INTERNATIONAL LEVEL

### (A) International Labour Organisation<sup>7</sup> on Wages

The ILO (founded in 1919), only tripartite U.N. agency, brings together governments, employers and workers representatives of 187 member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men. The ILO became the first specialized agency of the UN in 1946. The unique tripartite structure of the ILO gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.<sup>8</sup> The main aims of the ILO are –

- i. to promote rights at work
- ii. encourage decent employment opportunities
- iii. enhance social protection and
- iv. Strengthen dialogue on work-related issues.

The ILO's work is cooperation between governments and employers' and workers'

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<sup>4</sup> Section 20(2) MW Act: Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfied the Authority that he had sufficient cause for not making the application within such period.

<sup>5</sup> Municipal Vs. Sham Lal Kaura & Ors. (1965 P& H); Mahiya Vs. State of Haryana & Ors. [1982 (1) Service Law Reporter 26] P&H

<sup>6</sup> Pali Devi And Others vs Chairman Managing Committee & Anr 1996 AIR 1589, 1996 SCC (3) 296

**Facts:** The employees voiced grievance before the Authority under the Minimum Wages Act, 1948 that the Army School had not paid them the minimum wages fixed by the State Government from time to time, as per details given in the application and therefore they were entitled to reliefs enumerated under Section 20 (2) of the above said Act.

**The High Court of Punjab and Haryana** stated that the appellants seeking relief were the ex-employees and not existing ones, and hence disentitled to move a petition under Section 20(2) of the Act for appropriate relief.

<sup>7</sup> Hereinafter referred as ILO

<sup>8</sup> *Supra* note 2.

organizations in fostering social and economic progress. Following are initiatives of ILO for improvement in wages of labour:-

- i. The 1919 ILO Constitution called in its Preamble<sup>9</sup> for an urgent improvement of conditions of labour, including “the provision of an adequate living wage<sup>10</sup>”.
- ii. In 1944, the ILO Declaration of Philadelphia referred to the importance of “a minimum living wage to all employed and in need of such protection”. This was reiterated in the 2008 ILO Declaration on Social Justice for a Fair Globalization.

India is ILO member since 1919 and ratified the ILO conventions on conditions of employment in the form of various national legislations which are as follows<sup>11</sup>:-

1. *The Minimum Wages Act 1948 (No. 11 of 1948)*. - Adoption: 15 March **1948**
2. *Payment of Wages (Procedure) Rules, 1937*. - Adoption: 24 February **1937**
3. *The Payment of Wages Act 1936 (Act No. 4 of 1936)*. - Adoption: 23 April **1936**

The I.L.O. monograph on the Minimum Wage-Fixing Machinery contains the following passage on the subjects:-

The bases specified in various laws include the **living wage basis**, and that of fixing minimum wages in any trade is:-

- i. Wages paid to workers in the same trades in other districts or in relation to the wages paid to workers of similar grade in other trades.
- ii. The **capacity of the individual industry or of industry in general**, which, though sometimes not expressly mentioned in minimum wage laws, must always be taken into account in practice.

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<sup>9</sup> Whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures..... The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization

<sup>10</sup> *Ilo constitution* (no date) *Key document - ILO Constitution*. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000%3A62%3A0%3A%3ANO%3A62%3AP62\\_LIST\\_ENTRIE\\_ID%3A2453907%3ANO](http://www.ilo.org/dyn/normlex/en/f?p=1000%3A62%3A0%3A%3ANO%3A62%3AP62_LIST_ENTRIE_ID%3A2453907%3ANO) (Accessed: 12 March 2024).

<sup>11</sup>[http://www.ilo.org/dyn/natlex/natlex4.listResults?p\\_lang=en&p\\_country=IND&p\\_count=454&p\\_classification=12&p\\_classcount=21](http://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=IND&p_count=454&p_classification=12&p_classcount=21)

A close relation exists between them. As a basis for wage fixing, it would be valueless to make an estimate of a living wage beyond the capacity' of industry to pay. Here capacity of industry as a whole, and not of each separate industry or branch is to be understood.

From this analysis of the bases of fixing of the minimum wage, it will be seen that, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of the industry to pay.

### **(B) Minimum Wage Fixing Convention, 1970 (No. 131)**

In 1970, ILO adopted the Minimum Wage Fixing Convention, 1971<sup>12</sup>, which is considered to offer broader protection than that envisaged by ILO Convention No. 26(1928). By the end of 2015, Convention No. 131 had been ratified by 52 member States.<sup>13</sup>

Convention No. 131 does not solely refer to statutory minimum wages. Minimum wages may in fact be fixed by giving the force of law to provisions of collective agreements. This does not require collective agreements to be extended so that they apply to all workers and employers in a specific sector or to all branches of activity in a country.

The requirement is only for negotiated minimum wages to be legally binding on the parties. However, the provisions on the scope of application of minimum wage systems – which according to the Convention should cover “all groups of wage earners whose terms of employment are such that coverage would be appropriate” – should be taken into account.<sup>14</sup> Convention No. 131 encourages member States which ratify to establish a *system* of minimum wages<sup>15</sup> which:

- offers a broad scope of application and where exclusions made are kept to a minimum;
- establishes a machinery to fix and adjust minimum wages from time to time;
- is based on the principle of full consultation with social partners;
- involves social partners, on an equal footing, as well as independent experts in the design and operation of the system;

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<sup>12</sup> Minimum Wage Fixing Convention, 1971 (No. 131)

<sup>13</sup> ILO General Survey 2014 on minimum wage systems, para. 406

<sup>14</sup> *Collectively agreed minimum wages and Convention No. 131* (2016) *Minimum wages through collective bargaining: Collectively agreed minimum wages and Convention No. 131*. Available at: [http://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS\\_460933/lang--en/index.htm](http://www.ilo.org/global/topics/wages/minimum-wages/setting-machinery/WCMS_460933/lang--en/index.htm) (Accessed: 12 March 2024).

<sup>15</sup> *ILO Conclusions of the Committee for the Recurrent Discussion on Social Protection (Labour Protection)*, International Labour Conference, 104th Session, Geneva 2015

- sets minimum wage levels that take into account the needs of workers and their families, as well as economic factors;
- Includes appropriate measures to ensure the effective application of minimum wages.

The objective of a generally applicable lower limit (under which wages are not permitted to fall) reflects the view that all workers – as a matter of right – should receive protection against “unduly low wages”.

However, Convention No. 131<sup>16</sup> does not prescribe a **single national minimum wage (one rate applicable to all the workers of a country** irrespective of the sector of activity or the size of the enterprise in which they work– **is based on the idea that every worker has equal rights to the same wage protection), as it was considered that** Minimum wage systems range depending on the sector of activity, occupation, geographical region and/or enterprise size, among other alternatives.<sup>17</sup>

### **(C) Minimum Wage Fixing Recommendation, 1970 (No. 135)**

The Minimum Wage Fixing Recommendation, 1970<sup>18</sup> accompanies the Convention, makes clear that broad coverage can be achieved “either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers”. By not seeking to impose a single model on all ILO member States, Convention No. 131 allows for the existence of different national circumstances and different levels of economic and social development.<sup>19</sup>

## **III. EVOLVEMENT OF CONCEPT OF MINIMUM WAGES IN INDIA**

### **(A) Concept of wages under the Constitution of India**

Fair deal to labour is emphasized in the Directive Principles of State Policy of the Constitution. The Directive Principles in our Constitution are fore-runners of the U.N.O. Convention<sup>20</sup> of Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms would fully be realized.

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<sup>16</sup> Convention No. 131

<sup>17</sup> 2.1 the logic behind different minimum wage systems (2015) Chapter 2: How many different minimum wage rates should there be: 2.1 The logic behind different minimum wage systems. Available at: [http://www.ilo.org/global/topics/wages/minimum-wages/rates/WCMS\\_432669/lang--en/index.htm](http://www.ilo.org/global/topics/wages/minimum-wages/rates/WCMS_432669/lang--en/index.htm) (Accessed: 12 March 2024).

<sup>18</sup> Minimum Wage Fixing Recommendation, 1970 (No. 135)

<sup>19</sup> Report of the Committee on the Application of Standards, International Labour Conference, 103rd Session, Provisional record 13 part one, Geneva 2015

<sup>20</sup> Declaration on the Right to Development, 1986 available at [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm)

The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. Article 38(State to secure a social order for the promotion of welfare of the people), 39(Certain principles of policy to be followed by the State), 41(Right to work, to education and to public assistance in certain cases) and 43(Living wage, etc., for workers) of Constitution provides for economic and social reforms.

### **(B) Concept of wages by Committees in India**

- i. The Fair Wages Committee, 1948 and
- ii. Committee on Fair Wage 2005 Report on the Working of the Minimum Wages Act,1948

Above mentioned Committees defined three different levels of wages<sup>21</sup>:-

- i. Living wage
- ii. Fair wage
- iii. Minimum Wage

#### **Living wage:**

The living wage, according to the Committee, represented the highest level of the wage which should enable the worker to provide for himself and his family not merely the basic essentials of food, clothing and shelter but a measure of **frugal comfort** including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age.

But the Committee felt that when such a wage is to be determined, the considerations of national income and the capacity to pay of the industry concerned has to be taken into account and the Committee was of the opinion that living wage had to be the ultimate goal or the target.<sup>22</sup>

#### **Fair wage:**

The Fair Wages Committee, 1948 observed that the objective is not merely to determine wages which are fair in the abstract, but to see that employment at existing levels is maintained, and if possible, increased. The capacity of industry to pay should, therefore, be assessed by the Wage Boards (while deciding fair wages) in the light of this very important consideration.

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<sup>21</sup> <http://labourbureau.nic.in/Mini%20Wages%20k5%20Intro.htm>

<sup>22</sup> Ibid



The Committee further recommended that:-

- i. The fair wage should be related with the prevailing rates of the wages.
- ii. For the fixation of fair wages, Wage Boards must be set up. It recommended that there should be:-
  - a) State Board for each State, composed of independent members and representatives of employers and employees in equal numbers.
  - b) Regional Board for each of the industry taken up for wage regulation.
  - c) Central Appellate Board to which appeals may be preferred from the decision of the Wage Boards.

The Fair Wage Committee appointed by the Government of India, drew a distinction between a minimum and a living wage and observed that the minimum wage is less than the living wage. With regard to the fair wage, the Committee recommended that it should be above the minimum wage and below the living wage.<sup>23</sup>

#### **Minimum wage:**

The Committee was of the view that a 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.

On April 11, 1946, a Minimum Wages Bill was introduced in Parliament but the passage of the Bill was considerably delayed by the constitutional changes in India. It was, however, passed into an Act in March, 1948. The statutory Minimum Wage is the wage determined according to the procedure prescribed by the relevant provisions of the Minimum Wages Act, 1948.

The Act applies to the employments that are included in Parts I and II of the Schedule appended to the Act. The authority to include an employment in the schedule and to take steps for getting the minimum rates of wages fixed or revised vests with the sphere of the Government, Central or State, according to the nature of employment.

Once the minimum rates of wages are fixed according to the procedure prescribed by law, it is the obligation of the employer to pay the said wages irrespective of the capacity to pay.<sup>24</sup>

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<sup>23</sup> Ibid

<sup>24</sup> Ibid

**(C) Recommendations of the National Commission on labour on minimum wages (1969)**

- The Commission said that once, the minimum rates of wages were fixed according to the procedure prescribed under the Minimum Wages Act, it is the **obligation of employers to pay the said wages irrespective of the capacity to pay.**
- The appropriate Government should **revise the minimum wages fixed** under the Act **at least once in every three years** and as a price situation, if any adjustment is needed, it should be made.
- The **schedule annexed to the Act should also be periodically revised** so that deletion of employments where sweated labour ceases to exist and add where such labour is employed.
- As regards the need-based minimum wage, the commission said that the **need-based minimum wage and the wages at the higher levels of fair wage** may and could be introduced by convenient and just phasing, keeping in mind the extent of the capacity of the employer to pay the same.
- The Commission emphasized on the capacity to pay but said that the **onus of proving that the industry does not have the capacity to pay should lie on the employer.**
- Thus the Commission viewed that the **need-based minimum wage is in the range of the lower level of the fair wage** and attracts, in its determination, the employer's capacity to pay.

**(D) Chakrabarty Committee on wages (1973)**

The Committee recommended that the minimum wage should not fall below the poverty level, which at October 1972 prices would correspond to Rs.40 per month. Depending upon the variations in the cost of living in different centres and regions this could vary. It also recommended that such of the units/industries/centres/ regions, which were not in a position to pay the minimum wage immediately, may be initially exempted. But, in no case the period may be extended beyond 1978-79.

The Committee observed that the need-based minimum wage is a relative concept and beyond the level of bare subsistence and must be related to the development of the economy. The minimum wage could be raised periodically, say, at five-year or longer intervals, as the economy grows.

**(E) Concept of wages in Minimum wages Act<sup>25</sup>**

A minimum wage must provide not merely for 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.

Since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker.

The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

**Distinction between a bare subsistence or minimum wage and a statutory minimum wage-**  
Bhagwati, J.<sup>26</sup>

The statutory minimum wage is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage providing for some measure of education, medical requirements and amenities.

Act was intended to provide for fixing minimum rates of wages in certain employments and the appropriate Government was thereby empowered to fix different minimum rates of wages as contemplated by s. 3(3).

Whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay the minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported.

**(F) The Payment of Wages Act**

The Payment of Wages Act provides following features:-

- i. It regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated.
- ii. It guarantees payment of wages on time and without any deductions except those

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<sup>25</sup> Messrs. Crown Aluminium Works v. Their Workmen [1958] S.C.R. 651

<sup>26</sup> Express Newspapers (Private) Ltd. v. The Union of India AIR 1958 SC 578

authorised under the Act.

- iii. It provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims.

The Act does not apply to persons whose wage is Rs. 10,000 or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

#### **IV. CASE LAWS**

##### **(A) The Edward Mills Co. Ltd., Beawar & Ors. v. The State of Ajmer<sup>27</sup>**

The validity of s. 27 of the Minimum wages Act was challenged on the ground of excessive delegation. Court concluded that:

- Legislature undoubtedly intended to apply the Act to those industries only where by reason of unorganised 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.
- In enacting s. 27 it could not be said that the Legislature had in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act.

##### **(B) Bijay Cotton Mills Ltd vs The State of Ajmer<sup>28</sup>**

The validity of the ss. 3, 4 and 5 was challenged on the ground that the restrictions imposed by them upon the freedom of contract violated the fundamental right guaranteed under Art. 19(1)(g) of the Constitution. The learned Judge held that:

- i. The restrictions were imposed in the interest of the general public and with a view to carry out one of the directive principles of State policy as embodied in Art. 43 and so the impugned sections were protected by the terms of cl. (6) of Art. 19.

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<sup>27</sup> The Edward Mills Co. Ltd., Beawar & Ors. v. The State of Ajmer [1955] 1 S.C.R. 735

<sup>28</sup> Bijay Cotton Mills Ltd vs The State of Ajmer 1955 AIR 33, 1955 SCR (1) 752

- ii. 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, and that if individual employers might find it difficult to carry on business on the basis of minimum wages fixed under the Act that cannot be the reason for striking down the law itself as unreasonable.

**(C)U. Unichoyi and Others vs The State of Kerala** <sup>29</sup>

**Bench:** Gajendragadkar, P.B., Sarkar, A.K., Wanchoo, K.N., Gupta, K.C. Das, Ayyangar, N. Rajagopala

**Facts:** The Government of Kerala appointed a Committee in exercise of its powers conferred by cl. (a) of sub-s. (1) of s. 5 of the Minimum Wages Act, 1948 to hold enquiries and advise the Government in fixing minimum rates of wages in respect of employment in the tile industry and nominated eight persons to constitute the said Committee under s. 9 of the Act prescribing minimum rates of wages.

On that date the present petition was filed under Art. 32 by the nine petitioners who represent six tile factories in Feroke Kozhikode District, challenging the validity of the 'Act as well as the validity of the notification issued by the Government of Kerala. The State of Kerala is impleaded as respondent to the petition.

The petitioners allege that-

- The minimum wage rates fixed by the notification are very much above the level of what may be properly regarded as minimum wages and it was essential that before the impugned wage rates were prescribed the employers' capacity to pay should have been considered.
- According to them the burden imposed by the notification is beyond the financial capacity of the industry in general and of their individual capacity in particular, and this is illustrated by the fact that nearly 62 tile factories in Trichur closed soon after the notification was published. The petitioners seek to challenge the validity of the Act.
- It is urged that the Act does not define what the minimum wage is to comprise or to comprehend and as such confers arbitrary authority on the appropriate Governments to impose unreasonable restrictions on the employers. 'The law conferring such arbitrary power is violative of Art. 19(1)(g) of the Constitution.

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<sup>29</sup> 1962 AIR 12, 1962 SCR (1) 946

- Since the Act empowers the fixation of a wage which may disable or destroy the industry it cannot be said to be reasonable and as such is beyond the purview of Art. 19(1) and (6) of the Constitution.
- The Act does not lay down any reasonable procedure in the imposition of restrictions by fixation of minimum wage and so authorises any procedure to be adopted which may even violate the principles of natural justice.
- The notification has in effect fixed not minimum wages but fair wages and so it was essential that the capacity of the employers to bear the burden proposed to be imposed ought to have been considered.

The **respondent** has traversed all these allegations. It is urged that-

- The validity of the Act is no longer open to challenge since the question is concluded by the decisions of this Court;
- What the notification purports to do is to fix the minimum wage and no more and as such the capacity of the employer to pay such a minimum wage is irrelevant.
- It is further alleged that decisions of this Court have firmly established the principle that in the matter of fixing minimum wages the capacity of the employer to pay need not be considered and that if any employer is unable to pay what can be regarded as minimum wages to his employees he has no right to carry on his industry.
- The respondent also points out that the Committee appointed by it was a representative Committee, the impact of the minimum wage, rate suggested by it had been considered by the Committee and so the Committee made its recommendations area-wise.

Court referred to the **Committee's report** and nature of its recommendations-

The Committee consisted of eight members three of whom were the employers' representatives and three the employees' representatives while the Chairman Mr. V. R. Pillai and Mr. G. S. Pillai, the District Labour Officer, were nominated on the Committee as independent members.

The Committee issued a questionnaire to all the tile factories in the State and other persons interested, considered the replies received from them, personally visited certain factories, recorded evidence of various associations representing the tile factories as well as of individuals, and took into account various facts which the Committee thought were relevant.

The report of the Committee shows that, subject to minor differences disclosed in the minute

of dissent filed by Mr. K. Subramonia Iyer and the reply to it filed by Mr. A. Karunakaran, the recommendations of the Committee were unanimous and so prima facie we start with the fact that the recommendations of the Committee were approved not only by the two independent members but they secured the concurrence of the representatives of the employers as well as the employees.

In dealing with the problem of wage structure the Committee has observed that-

- the prevailing wage rates in the tile factories in the State show considerable difference from one centre to another, and that, according to the Committee, is partly due to historical factors and partly to the economic status of the workers in the areas concerned.
- there being very little scope for alternative employment except in low paid agricultural occupations the bargaining position of the workers has all along been very weak and wages too have tended to remain at a relatively low level. It is in the light of this background that the Committee naturally proceeded to consider the problem of the fixation of minimum wage rates.
- the minimum wage "must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the workers." Then it examined the food requirements of the employee on the basis of three consumption units recognized in Dr. Aykroyd's formula<sup>30</sup>.
- It is not appropriate that the respondent should be associated, though indirectly, with the settlement which is in breach of the provisions of the Act.

Court suggested that the respondent should seriously consider this aspect of the matter and should not hesitate to do what may appear to be just, reasonable and fair on an objective consideration of the whole problem. In the result, the petition failed and was dismissed.

#### **(D) 21<sup>st</sup> Century Legislation on Wages**

The new Wage Code seeks to set minimum wages for different states and geographical areas. The state governments will fix their minimum wages keeping in mind "the skill required, arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work," among other factors. This will ensure that no State Government fixes the minimum wage below the National Minimum Wages for that particular area as

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<sup>30</sup> Model Minimum Wage Calculation Using Dr. Aykroyd Formula and 15th ILO Norms for calculation of minimum wages, available at- <https://7thpaycommissionnews.in/model-minimum-wage-calculation-using-dr-aykroyd-formula-and-15th-ilo-norms-as-on-1-7-2015-karnataka-coc/>

notified by the Central Government.<sup>31</sup>

The provisions of the Minimum Wages Act and the Payment of Wages Act do not cover substantial number of workers, as the applicability of both these Acts is restricted to the Scheduled Employments/Establishments. However, the new Code on Wages ensure minimum wages to one and all and timely payment of wages to all employees irrespective of the sector of employment without any wage ceiling.

There is also a provision of an Appellate Authority that has been made between the Claim Authority and the Judicial Forum which will lead to speedy, cheaper and efficient redressal of grievances and settlement of claims.

Penalties for different types of violations under this Code have been rationalized with the amount of fines varying as per the gravity of violations and repeat of the offences. Provision of compounding of offences has been made for those which are not punishable by a penalty of imprisonment.

Minimum Wages for States Across India (per month) (in INR)			
State	Unskilled	Skilled	Highly skilled
<b>Andaman and Nicobar Islands</b> Effective date: July 1, 2023	13,988	17,680	19,188
<b>Andhra Pradesh</b> Effective date: April 1, 2023	12,344	13,844	14,844
<b>Arunachal Pradesh</b> Effective date: April 1, 2023	6,600	7,200	NA
<b>Assam</b> Effective date: December 1, 2021	9,246.10	13,430.85	17,265.55
<b>Bihar</b> Effective date: October 1, 2023	10,270	13,000	15,886
<b>Chandigarh</b> Effective date: October 1, 2022	12,623	13,298	13,698
<b>Chhattisgarh</b> Effective date: October 1, 2023	10,100 (Zone C) 10,360 (Zone B) 10,620 (Zone A)	11,530 (Zone C) 11,790 (Zone B) 12,050 (Zone A)	12,310 (Zone C) 12,570 (Zone B) 12,830 (Zone A)
<b>Dadra and Nagar Haveli</b> Effective date: October 1, 2022	9,237.80	9,653.80	NA
<b>Daman and Diu</b> Effective date: October 1, 2022	9,237.80	9,653.80	NA
<b>Delhi</b> Effective date: October 1, 2023	17,494.00	21,215.00	NA
<b>Goa</b> Effective date: April 1, 2023	10,790	13,728	NA
<b>Gujarat</b> Effective date: October 1, 2023	12,012-12,298	12,558-12,870	NA
<b>Haryana</b> Effective date: January 1, 2023	10,532.84	12,802.69	13,442.82

<sup>31</sup> <http://www.businesstoday.in/current/economy-politics/code-on-wages-bill-2017-minimum-wages-will-differ-for-states-and-geographical-areas/story/259744.html>



<b>Himachal Pradesh</b> Effective date: April 1, 2023	11,250	13,062	13,592
<b>Jammu and Kashmir</b> Effective date: October 17, 2022	8,086	12,558	14,352
<b>Jharkhand</b> Effective date: April 1, 2023	8,996.34	12,423.87	14,351.39
<b>Karnataka</b> Effective date: April 1, 2023	14424.63	16,858.07	18,260.20
<b>Madhya Pradesh</b> Effective date: October 1, 2023	9,825	12,060	13,360
<b>Maharashtra</b> Effective date: January 1, 2023	12,699	14,310	NA
<b>Nagaland</b> Effective date: June 14, 2019	5,280	7,050	NA
<b>Punjab</b> Effective date: March 1, 2023	10,353.77	12,030.77	13,062.77
<b>Rajasthan</b> Effective date: July 1, 2021	6,734	7,358	8,658
<b>Tripura</b> Effective date: April 1, 2023	7,277	8,928	NA
<b>Uttar Pradesh</b> Effective date: October 1, 2023	10,275	12,661	NA
<b>Uttarakhand</b> Effective date: October 1, 2023	9,913-10,031	11,070-11,218	NA
<b>West Bengal</b> Effective date: July 1, 2023	9,784	11,804	13,023

Source: Simpliance

## V. CONCLUSION

At the **15<sup>th</sup> Session of the Indian Labour Conference** held at New Delhi in July 1957, an important resolution was passed, which laid down that the minimum wage should be need-based and should ensure the minimum human needs of the industrial worker. The following norms were accepted as a guide for 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 comprise three consumption units for one earner, the earnings of women, children and adolescents being disregarded.
- ii. Minimum food requirements should be calculated on the basis of a net in take of 2700

calories, as recommended by Dr. Akroyd<sup>32</sup> for an average Indian adult of moderate activity.

- iii. In respect of housing, the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low income groups ; and
- iv. Fuel, lighting and other miscellaneous items of expenditure should constitute 20 per cent of the total minimum wage. The Resolution further laid down that wherever the minimum wage fixed was below the norms recommended above, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the aforesaid norms. The Resolution, thus, tried to give concreteness to the whole concept of minimum wage.

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<sup>32</sup> U. Unichoyi and Ors. V. The State of Kerala AIR 1962SC12.

**VI. REFERENCES**

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