SUPREME COURT'S RESPONSE TO MINIMUM WAGES ACT : A SOCIOLOGICAL ANALYSIS

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DINESH KHOSLA

CENTRE FOR THE STUDY OF SOCIAL SYSTEMS
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI

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JAWAHARLAL NEHRU UNIVERSITY
SCHOOL OF SOCIAL SCIENCES
Centre for the Study of Social System

Gram—JAYENU
Telephone :
New Mehrauli Road,
NEW DELHI-110057.

D_e_c_l_a_r_a_t_i_o_n

Certified that the material in this Dissertation has not been previously submitted for any other degree of this or any other University.

Professor Yogendra Singh
Chairman
Centre for the Study of Social Systems

Dr. K.L. Sharma
Supervisor
Centre for the Study of Social Systems

Dinesh Khosla
Student

New Delhi,
Dated, August 27, 1976.

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Dinesh Khosla

Dinesh Khosla

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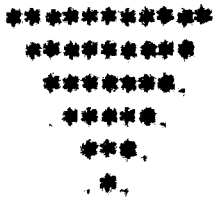

CHAPTER I

THE PROBLEM

The present study lies on the meeting-point between sociology of social change and sociology of law approaches in as much as it examines the contribution made by a legal institution--the Supreme Court of India, towards the process of social change in contemporary Indian society.

Sociology of Social Change Approach

We take the following definition of social change as operative and tenable in the case of our study:

> Social change is the significant alteration of social structures (that is, of patterns of social action and interaction), including consequences and manifestations of such structures embodied in norms (rules of conduct), values, and cultural products and symbols. 1

India entered upon a similar process of social change as reflected in the above definition, consequent upon attaining freedom and autonomy in 1947. It started altering variety of its social, political and economic structures with a view to bring them proximate to the felt

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1 Wilbert E. Moore, "Social Change", International Encyclopaedia of Social Sciences (USA), vol. 14, 1968, pp. 365-75 at p. 366.

needs of the people. As is well known the very definition and formulation of our constitution reflects these concerns. Two values came out prominently in this corpus of our self-defined political culture. These were equality before law and egalitarianism. The former meant removal of various status disparities between various sections of the people whereas the latter implied protection and promotion of economic interests of the economically underprivileged segment of our society.

It is ~~the~~ view of the above political-cultural values that the relevance of State's concern for giving at-least minimum wages to the work force can be appreciated. In other words, State's enactment on minimum wages can be seen as an operational manifestation of the said values. We shall view in this study the nature of judiciaries contribution in achieving the process of social change chalked out by Minimum Wages Act. In this connection it will be pertinent to consider whether judiciary in its adjudications on the issues and cases relating to minimum wages, remained confined to its traditionally defined and allocated function of acting as the bulwark of individual's interests against encroachment from the State, or it came to perceive its role in much broader and creative terms so as to make effective contribution in the direction of desired social change. Indirectly though, the study should also afford an operational varification of the classical

theory on distribution of powers between three organs of the state, i.e. the legislature, executive and judiciary. We shall also try to see as to what is the state of value convergence or divergence between the two sub-systems, viz. the legislature and the judiciary on the issue of wages. In concrete, we shall consider whether the values reflected by legislature during the course of its enactment on the issue of wages are upheld or not by Supreme Court during the course of its judgements on the wage cases.

Through the comprehensive range of evidence gleaned from a variety of cases on wages for industrial workers, we shall try to supply answers to some of these questions.

Sociology of Law Approach

We shall now consider the nature and approach of our study from the standpoint of sociology of law which aims at the extension of knowledge regarding the foundations of legal order, the patterns of legal change, and the contribution of law to the fulfilment of social needs and aspirations. Under this, one comes across a variety of approaches, of which the four given below are leading ones.

(i) Historicism

This approach emphasized that patterns of legal evolution are an unplanned outcome of the various socio-

historical forces. Further, there is something unilinear or non repetitive about the course of these evolutions, so that the legal institutions so evolved at the end of a particular historical period may not occur again.

(ii) Instrumentalism

This approach called for the assessment of law according to 'defined' social purpose. It focussed attention on the study of issues like what the law is and does in-fact and viewed law as a tool which helped define social aspirations. It means that the said approach saw the legal system as a potentially dynamic system which could aid the process of planned and pre-defined social change.

(iii) Antiformalism

This trend of thought in sociological juris-prudence vitalized it by attacking upon the unrealistic and abstract nature of legal rules and concepts. It focussed attention upon the considerable gap between a system of general rules and its implementation and the role played by human agencies having their own interests and problems in the whole process of law-making and law-enforcing. The outcome of antiformalistic approach was a clear-cut derogation of the importance and effectiveness of legal norms.

(iv) Pluralism

This approach viewed the law as located in society i.e. beyond the official agencies of the government. It found the law as endemic in custom and social organization denying any significant law-making function to the legislature. Pluralistic approach suggested that it is in the actual regularities of group life that we can locate the 'living' law of society. This approach like the anti-formalistic one, also downgraded formal legal system as a significant social reality.

The present study corresponds, in approach and methodology to the second of the four approaches outlined above. In that we shall consider here the kind of role which the operative extension of judiciary i.e. the Supreme Court plays in a certain specified sphere which means here, the issue of wages for the industrial worker. We shall thus consider the instrumentality of legal institution in facilitating the process of social change, that is, in the formulation of certain new laws in response to some of the basic ideological components of our constitutional structure.

Sources of Data and Method of Study

Based upon a broad content-analysis of the secondary data, our work throws light on the conditions and processes that support or undermine the process of

social change and the attainment of legal ideals as enshrined in the Constitution of India. This data shall throw light on the role and relevance of the institution of Supreme Court in solving the contemporary social problems and in aiding the process of social change.

The relevant data and material which throws light on these aspects used by us is of the following variety.

(a) Reports of various expert committees on the issue of wage. These reports, drawing inspiration from the global trend of discarding the policy of laissez faire, provide us with the ideological base for State intervention in the sphere of employer-employee relationship. In other words we may say that they create for us a social milieu in which the State intervention in the sphere of employer-employee relationship is thought to be desirable. It is in this milieu that our institution of judiciary functions.

(b) The normative input by the legislature on the basis of minimum wages i.e. the Minimum Wages Act, 1948. Along with this we shall analyse the debate in the legislature, that preceded the enactment of this law. Such an analysis would provide us to comparatively evaluate the attitude of the legislature and the judiciary on the issue and help us identify as to which institution of the State system is better equipped to initiate the process of change.

(c) The cases arising in the context of a particular dispute situation in the industry on the issue of wages. These could be further classified into two categories;

(i) those which challanged the very constitutionality of the minimum wage legislation. These will throw light on whether or not the court accorded legitimacy to the concept of State intervention in the sphere of employer-employee relations;

(ii) those in which guiding norms were laid down for the functioning of the courts and various wage fixing authorities in the context of fixing wages over and above the minimum. These will throw light on the creative or non-creative role of the court and suggest whether the court is a mere dispute settling agency or a policy-forming agency.

We have in all analysed over 60 cases in which the focus was on the issue of industrial wage. These cases spread-out over a span of 25 odd years (1950-75) have been picked up from amongst a very large number of cases on the basis of their importance in contributing to the evolution of a wage policy through the efforts and mechanisms of Supreme Court. Their content analysis provides us with an insight into the question of the role of Supreme Court in the process of planned and directed social change. We believe law cases as probably the best tool to capture or grasp the contribution

of Supreme Court to a particular issue.

The analysis of the above data would help us locate the position of judiciary in the overall social structure in functional terms. That is, it would aid us to find whether the legal system of which judiciary is an important constituent, is autonomous, partially independent, subordinate or undifferentiated i.e. having no differentiated structural home in our social structure. Its location in our social structure would help us judge its relative importance in solving our contemporary problems and in contributing to the process of social change.

The material in our study has been organized as follows:

We start our dissertation with a discussion of the nature of our problem and also the techniques adopted in executing the study. Further, we try to spell out in broad theoretical terms the nature of our problem and locate it on the interjection between sociology of law and sociology of social change.

In the second chapter we go into a detailed discussion of various theoretical trends on the nature and character of judicial functioning. We classify these as those denying discretion and autonomy to the courts and those which affirm the existence of such autonomy. Subsequent to this, in chapter three we discuss the evolution of the concept of minimum wage both at the global plane as

as well as at the level of Indian society. We consider this in the context of the policy of laissez faire versus welfare state. This chapter comprises the historical dimension of the problem under study. We have also attempted in this chapter a sociological explanation of the nature and character of the response of the legislature to the issue of wages for the industrial worker.

In chapter four we have considered and analysed the crucial dimension of our study i.e. the perception which Supreme Court has of states' intervention on the issue of minimum wages and also its response to the constitutionality of minimum wage enactment. All this has been attempted on the strength of actual cases relating to the issue of industrial wage, which came up before the Supreme Court.

Finally, in chapter five, we examine the role played by Supreme Court in setting norms for adjudication on wages, both for itself as well as for the lower courts and tribunals etc. We have emphasized strongly that such a role on the part of the Supreme Court is outside the purview of formal structure of laws on minimum wages as passed by the legislature. In other words, we maintain in this chapter, that, Supreme Court engages itself in highly creative function of extending the limits of

formal law along socially desirable dimensions.

We end our presentation with conclusions and interpretations.

CHAPTER II

THEORIES OF JUDICIAL FUNCTIONING

As a sub-system of society, the legal system performs a myriad of manifest and latent functions which have a pervasive influence on the life of the community. Coded law--one of the constituents of the contemporary legal systems, is a technique of social ordering, deriving its essential characteristics from State's absolute monopoly over the use of physical force. More often than not, the said monopoly continues to lodge with the state only as a potentiality unless an occasion arises calling for the invocation of law to meet the "situation", otherwise it, at the best, remains something which is of "educative" value for the people.

To translate, interpret, and apply (in the process of dispute settlement) the norms created by the legislative wing of the State and 'norms' accepted by the people (customs, usages, religious practices etc.), every ongoing society has a variety of legal and non-legal institutional settings such as the courts, administrative agencies, arbitration tribunals, family, religious and social bodies etc. The legal institutions of dispute-settlement are distinguishable from the non-legal ones in that they draw their strength from the use and potential use of coercion or the application

of physical force. From this element, besides others,[1] they draw their strength and social acceptance. The element of coercion comes from the fact of their being an essential part of the politically organized state structure. This ipso facto supplies the theorist with a "sovereign" of Austinian type and the "enforcement" predicted by Holmes and others.[2]

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1 Murphy in a brilliant analysis based on the Weberian model argues that like any other agency of the government the court draws its legitimacy from all the three types of authorities, i.e. legal, traditional and charismatic. His thesis is that by virtue of their being established by the order of the constitution, the courts rule on the fundamental legal charter of the nation. In addition, the justices have historical claims, not only as inheritors of the traditional authority of common law courts but also as successors to the prescriptive rights built up through judicial practices over long period. The "cult of robe", the concept of the judge as a high priest of justice (emphasis mine) with special talents for elucidation of "the law", that sacred and mysterious text which is inscrutable even to the educated layman, forms a sort of institutional charisma which is bestowed on judges. The three components which give legitimacy to the system of court keep on blending in different proportions depending upon the pulls and pressures of the societal environment. Which of these has a larger share would depend in turn on the role expectations by the people of the judges. See Walter F. Murphy, Elements of Judicial Strategy (Chicago University Press, 1964), pp. 12-13.

2 Paul Bohannan, "Law and Legal Institutions", International Encyclopaedia of Social Sciences, vol. 9, 1968, pp. 73-77, at p. 74.

On the Nature of Functional Allocation Between Judiciary and Other Organs of the State

The legal institutions settle the disputes through what is known as the judicial process. Judicial process is a set of interrelated procedures and roles for deciding disputes by an authoritative person or persons whose decisions are regularly obeyed.[3] The interference to resolve a dispute situation is done in a 'irregularized' way i.e. disputes are decided according to the already existing set of procedures (called "adjectival law" by Austin) and in conformity with the prescribed rules (called "substantive law"). The interference, it may be noted at the outset, is confined only to those disputes which fall within the already prescribed categories of "substantive law" or which can by logical extension be brought within the broad limits of the "grundnorm". As an incident, or consequence of their dispute-deciding function, the judicial officers (judges) also make authoritative statements prescribing how the rules have to be applied. These statements have a generalized impact on the behaviour of many others who "regulate" their conduct as per the dictates of the judiciary. We can thus infer that judicial process is not only a means of resolving disputes between identifiable and specified individuals or

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3 J.W. Peltason, "Judicial Process", International Encyclopaedia of Social Sciences, vol. 8, 1968, pp. 283-91 at p. 283.

collectivities, but it is also a setter of precedents which guide settlement of subsequent disputes of the same nature. All this may even have an important bearing on the formulation of public policies.

Even though dispute settlement machinery of one form or the other has always been present from time immemorial, the systematic study of judicial process and judicial behaviour acquired importance in the wake of the classic doctrine of separation of powers propounded by Montesquieu which divided the world of political activity into the three familiar divisions (legislative, executive, judiciary) based on what was thought to be the behaviour of political actors and on what was thought to be the requirements for the maintenance of 'liberty'.

The notion as to what function is expected of these institutional structures, i.e. legislature, executive and judiciary has been undergoing a change with the advance of the society. In the initial stages, judiciary was exclusively attributed the function of applying the law that the constitution maker and legislators had created. The political analyst of modern era, however, abandoned the idea of exclusiveness of functions performed by these institutional structures in favour of continuum. They granted that these functional categories were only analytical and that during the course of actual administration in any

society, the aforesaid structures were interdependent and performed a host of functions jointly.[4]

Various streams of jurisprudential and social sciences theories, in the context of the judiciary and its working can be categorized in two sets. The first, projecting that the State and its various constituents function within a value-neutral framework as well as afford the same to the parties in dispute. The second, stressing that the value-neutral of State and its various constituents is only a myth.[5] In fact, both these are strongly influenced by various value-predilictions emanating from the nature of social reality. Below, we shall briefly review both these set of ideas.

(a) Theories Denying Value-Choice to the Courts in Their Function of Dispute Settlements

(i) Some Historical Concomitants of these Theories

Before we go on to the theories, let us take note of the most predominant currents against which the theories in question were formulated.

The philosophical writings to be briefly discussed under this section which picturize the "ivory tower" concept

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4 Ibid., p. 283.

5 William J. Chambliss and Robert B. Seidman, Law, Order and Power (USA, 1971). See chapter III for an exhaustive analysis of the nature and character of the state system.

of judicial decisions historically coincided with the advent of modern democratic societies. Prior to this the courts frequently, frankly and plainly made laws when cases arose. They did it under the guise of announcing rules of natural justice (Grand Style theory). They decided on broad and vague grounds of natural justice (morals, ethics and religion) and on the basis of what was 'just' and 'fair' from a layman's point of view.

With the three-fold classification of the constituents of the State system, the legislature was bestowed with the function of creating norms. In the wake of this development, the jurisprudential and social science theories denied that courts created norms. It often happened that the legislator did not foresee all the possible situations which could arise. If a situation did not fall strictly within the rules available the courts decided the cases deriving the rationale from what they called as "filling the gaps" in the substantive law. This in turn meant a denial that courts ever made a value-choice while writing their opinions. They were to justify their decisions not by invoking the "desirable" from the point of view of the values--both social and personal, but by fitting them into the institutionalized form of pre-existing norms, developed in the course of the imperceptible, glacial movement of societies and expressed by the specialized agency of the state, i.e. the legislature. The shift from the 'grand'

style to the 'formal' style in opinion writing according to Chamblis and Seidman[6] is "a shift in Weberian terms from substantively rational law-making to logically, formally rational law making".

(ii) The Natural and Historical Law School

The natural law school also arrived at the same conclusions though in a different manner. Its theories were based on the assumption that law ordained from a divine power which prescribed a set of authoritative values to determine what the law 'ought' to be. There is thus according to the natural law framework no question of making any value choice by the dispute settling agencies outside the prescribed set of values.

The historical school of jurisprudence, even though standing in stark opposition to the natural law school, advanced the same argument. It argued that judge was to mechanically enforce the customs (reinstitutionalized

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6 Ibid., p. 129. See also Rosco Pound, The Science of Legal Method (New York Bar Association Report) (New York, 1915), pp. 205-6. Pound called the 'formal' style of justice as "slot' machine justice. According to this theory it is assumed that provisions have been made in advance for legal principles, so that it is merely necessary to put the facts into the machine and draw therefrom an appropriate decision. "This theory is also known as the 'mechanical', 'photographic', 'conceptual', or 'orthodox' theory of judicial process." See Peltason, n. 3, p. 283.

as law) which arose from the common consciousness and common set of value-orientations of the community. Savegny and Paul Bohannan[7] presumed that for each society there is one, and only one legal culture which is subscribed (knowingly or without knowing, agreeing with it or without agreeing) by the people. The implication of this view is that the judgements and decisions given by court are not a reflection of the personal values of the judges. Rather, they are only "an expression of the common values of all of us".[8] Both these views shared the common flaw of not attaching any significance to value-antagonism between different interest groups. It was on account of this lack of realism that both these views died out eventually.

One of the contemporary theoreticians, Lon Fuller who made an effort to revive the above discussed views diverted a bit from the ideas contained in these theories. He viewed law as the purposive enterprise of subjecting human conduct to the governance of rules and identified eight ways in which purported system of law may fail to achieve legality endangering its legitimacy. One of such ways he said was "a failure of congruence between the rules as announced and their actual administration",[9]

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7 Paul Bohannan, "The Differing Realms of Law", American Anthropologist, vol. 67, no. 6, 1965, pp. 33-42.

8 Chambliss and Seidman, n. 5, p. 43.

9 Lon Fuller, The Morality of Law (Yale University Press, 1964), p. 39.

and that "the inner morality of law is neutral towards substantive claims".[10] He invoked, like the natural lawyer, an authoritative standard to determine whether or not that purports "to be the law" is "in fact the law". In his scheme, the entire system of law was based on the assumption that the central demand is for certainity and predictability, thus making them the highest values to be obtained from the legal system. His scheme, therefore, was basically one which along with suggesting predictability and certainity as the highest values, asserted that the legal system was a value-neutral framework viz-a-viz the substantive claims of competing individuals.

(iii) Other Theories

Grotius viewed that natural law emanated from the nature of man and his instinctual need to live in a society and not from the judge.[11] Hobbs postulated the sovereign as the only source of law.[12] Bentham, the great champion of freedom of action, advocated conscious law-making by the State and emphasized the necessity of legal change through legislative effort rather than through interstitial and frequently unco-ordinated judicial law making.[13]

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10 Ibid., p. 153.

11 Chambliss and Seidman, n. 5, p. 46.

12 Ibid., p. 47.

13 Ibid., p. 48.

According to John Austin, the role of lawyer (and by logical extension of this, that of the judge) was to determine what rules have in fact been laid down by the political superior and not to speculate on what the law 'ought to be'. Hens Kelson and Hart, the modern positivists conceived law as having the quality of "law", not because it fits some abstract standard relating to values but because of its formal utterance by the legislative organ of the State.[14] These streams of thought made the judicial process of decision-making as a highly conceptual process of determining the exegesis and harmonization of the texts of the precedent cases and statutes. This resulted in an explicit denial of policy making function on the part of the courts.

Drawing upon the central ideas of various representative streams of jurisprudential theories under this section we can sum up as under:

(a) The 'ought' defined by the law is taken to be an existential value beyond any dispute of opinions;

(b) Interpretation of law is fundamentally a theoretical-empirical task. It is done by men, who are trained technicians and who stand above and apart from the society comprising a neutral framework within which, social struggle and conflict take place;

(c) Value consensus in society does not permit the judge to evaluate or determine his attitude towards any possibility of different interpretation. The authoritative standard provides him with an appropriate

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14 Ibid., pp. 48-49.

specific value to which he has to adhere to, i.e. he carries out the dictates of the legislator. The courts, therefore, are portrayed as though they are institutions consisting only of judges who have merely to interpret the law as laid down by the legislators. No function besides this is imputed to the judges. Judges are described exclusively on the basis of legal parameters defining only one aspect of their roles; 15

(d) If the judge comes across a novel situation for which there is no agreed upon rule, by a process of analogy and logic, he discovers what rule should be applied. To this extent and to this extent only he may be said to be creating rules;

(e) Judicial process is a self-contained world with its own dynamics and is totally divorced from the political system. Even if there can be established some linkages between the two, the judges, and the law they apply, are neutral among the competing interests within the community. Judge at the most is a spokesman of collective values as incorporated in various laws laid down by the legislature;

(f) The courts do not venture openly into a field troubled by economic or political debate even though an individual litigant maybe suffering blatant injustice and hardship. Only when the demand is so urgent that the pressure of 'we the people' cannot be withstood, the courts take note of the urgency--and that also in the context of a particular case that has come before it, leaving it to the legislature to solve the problem. 16

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15 Gledon Schubert, ed., Judicial Behaviour : A Reader in Theory and Research (USA, 1964), p. 1.

16 Carl A. Auerbach, Willard Hurst, Samuel Mermin, Lloyd K. Garrison, The Legal Process (USA, 1961), p. 66.

The consequence of the legalistic reasoning to which the courts take recourse to, in deciding a particular case which touches upon sensitive issues of public policy is, that the choice of values is hidden in the 'desired objective of logical necessity', and by not touching upon reasons leading to a particular public demand, the court eschews all judgements on the 'proper' and 'improper'. Thus the only public comment which is often possible and given on a court judgement is whether or not, it is logical and consistent.[17]

(b) Theories Asserting Value Choice on the Part of Courts and Constraints on Judicial Discretion

(i) Judicial Discretion as a Shield in making Value-Choice

This set of theories assert that the judge, like the legislature, is placed in such a position that he not only makes the law but also provides a distinct input into the formulation of policy, 'through the mechanism of interpretation of law'.

According to these theories the judge during the course of his functioning, does not lack discretion and

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17 Chambliss and Seidman, n. 5, p. 134.

has the potentiality of making law. According to Kelsen,[18] discretion in varying degrees is undeniable in the functioning of the legal system. But the discretion is of a peculiar type, i.e. one bounded by norms which explicate its limits. All discretion exercised must be within the four-walls of some original source which he calls as 'grundnorm'. As he says, the theory, that rules decide cases "has fooled not only library-ridden recluses, but judges."[19] Kuchhimer came out with a bitter criticism of the theories which advocated lack of discretion on the part of judges. He noted: "The half explanatory, half apologetic reference to judge's subservience to the law is at best a playful protective device; at worst it testifies to his unwillingness to understand his role in the social process."[20] Ehrlich[21] took an extreme view on the question of discretion. To him the significance of law on the daily life of people depends far more on persons charged with its administration than on principles according to which it is administered. He observes that "the administration

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18 Hans Kelsen, The Pure Theory of Law, trans by M. Knight (California, 1967), p. 285.

19 K.N. Lelwellyn, "The Constitution as an Instrument", Columbia Law Review, no. 34, 1934, pp. 1-40, at p. 7.

20 Otto Kirchheimer, "Political Justice : The Use of Legal Procedure for Political Ends (Princeton University Press, 1961), p. 187.

21 E. Ehrlich, in The Science of Legal Method, p. 48, as quoted in Schbert, n. 15, p. 44.

of justice has always contained a personal element. In all ages, social, political, and cultural movements have necessarily exerted an influence upon it; but whether any jurist yields more or less to such influences depends, of course, less on any theory of legal method than on his own personal temperament.[22]

Wasserstrom[23] sees the availability of discretion to the judge even while applying precedents. He argues that to characterize a case as falling within a particular class of cases controlled by a given rule, the judge applies his mind. And since the process of characterization (which the judge makes viz-a-viz a particular fact-situation) is neither always logical nor deductive, the discretion plays a very fundamental role in determining the fate of a particular case.

Availability of discretion to the law applying authorities is also necessitated by the fact that many of the norms controlling the conduct are vague, ambiguous, and contradictory. They also have 'gaps' resulting from the inability of the legislature to comprehend all future possibilities and types of conflicts. However, a cursory look at the working of legal system would suggest that

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22 Ibid., p. 74.

23 Richard A. Wasserstrom, The Judicial Decision : Towards a Theory of Logical Justification (Stanford University Press, 1961), p. 19.

"discretionary rules are tolerable as operational realities only in those areas of law where the social order or the economy can afford the luxury of slow, individuated justice. If there is a social interest in the mass handling of transactions, a clear-cut framework of non-discretionary rules is vital."[24]

All these propositions indicate that the mere availability of discretion to the judge cuts at the very basis of the argument that judiciary resolves conflicts in a value-neutral framework. And so, in a society full of a myriad of special interest groups, it is inevitable that the myth of value-neutrality should be dispensed with.

(ii) Judicial Discretion and its Sociological Consequences

Realist movement tore off the mask of detachment from the judges and insisted upon a systematic investigation of law in action to understand it in all its complexities. Friedman observed that the use of non-legal empirical evidence in the process of judicial decision-making "is meant to introduce a new certainity into the knowledge of

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24 K. Friedman, "Legal Rules and the Process of Social Change", Stanford Law Review, vol. 19, April 1967, pp. 786-840, at p. 792.

law--a certainity based on scientific experiment instead of fallacious argument".[25] Carrying this argument further Llewellyn[26] holds that judges respond to the "sense" of fact situation. The realistic movement emphasized the desirability of drawing support for judicial decisions from the evidence and authorities quite outside the formal legal structure, through the instrumentality of what is popularly known as "Brandeis"[27] or the sociological brief.[28] This may be called as "pragmatic" problem solving approach--an approach which is sharply different from the "formal" approach.

Holmes, in a series of lectures at Harvard shattered the elegant world of Austinianism which had consistently denied value-choice to the judge. He packed the whole philosophy of legal method into a fragment of a

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25 W. Friedman, Legal Theory (London, 1953), p. 258.

26 K.N. Llewellyn, The Common Law Tradition : Deciding Appeals (Boston, 1960), as quoted in n. 5, p. 136.

27 Brief filed by Felix Frankfurt in Adkins v. Children's Hospital, 261 U.S. 925 (1923), popularly known as 'Brandeis' brief. It drew support from research done on various aspects of social life.

28 The term was used by Schubert, n. 15, at p. 2. The acceptance of "sociological brief" by the courts was, however, not a simple task as is evidenced from what Craven wrote: "Just as a raconteur will seldom let the facts interfere with a good story, judges seem to have seldom allowed sociology to interfere with a good theory until the time of the new idea has come...." See J. Braxton Craven (Jr.), "The Impact of the Social Science Evidence on the Judge : A Personal Comment", Law and Contemporary Problems, vol. 39, no. 1, Winter 1975, p. 156.

paragraph.

> The life of law has not been logic; it has been experience. The felt necessities of time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which the judges share with their fellowmen have had good deal more to do than the syllogism in determining the rules by which men should be governed. 29

It may be noted that life of law cannot be only experience as noted by Holmes. It is a mix of both the reason and experience. It is at the best experience developed by reason, and reason checked and directed by experience. It is not arguing in circuity but drawing from what Cardozo felt about the judicial process. In a searching auto-biographical note, he stated:

> As the years have gone by, and as I have reflected more and more upon the nature of judicial process, I have become reconciled to the uncertainity, because I have grown to see it as inevitable. I have grown to see that the process in its highest reaches is not discovery, but creation; and that the doubts and misgivings the hopes and fears, are part of the travail of mind the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born. 30

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29 O.W. Holmes, The Common Law (Boston, 1881), p. 10.

30 Benjamin N. Cardozo, The Nature of Judicial Process (Yale University Press, 1921), pp. 166-7.

Law, thus cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. Nor can it be understood in isolation from the cultural milieu which generates it, because "The cultural milieu enfolds legislation and judges alike."[31] Also, the law can never be impartial in the sense of being above the battle of antagonistic demands of various groups within the society. Laski[32] viewed courts as fundamental instruments in that battle because by their very placement in the social structure, they cannot afford to be indifferent to the results which may emerge. He perceived courts as the agents which shape the contours of the society by putting their weight in favour of one set of demands as against others. In the process of pronouncing decisions, judges, according to Auerbach, "ask themselves what consequences would flow from alternative decisions making factual assumptions as to such consequences, and evaluating one set of consequences as against another".[33] This means, choice-making is inherently and unavoidably a consequence of the judicial process. The availability of "choice" to the judge means that interpretation of law, more particularly the

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31 Alf. Ross, On Law and Justice (London, 1958), pp. 98-99.

32 Harold J. Laski, The State in Theory and Practice (London, 1935), p. 183.

33 Auerbach, n. 16, p. 67.

constitutional law, would be moulded to "fit the pattern of judicial values and judicial values would be reshaped by awareness to the consequences of choice among public policy alternatives."[34] Justice Holmes subscribed to this view that public policy issues shape the judicial responses to various disputes that come before it for settlement. He observed that "the very consideration which judges most rarely mention and always with an apology are the secret roots from which the law draws all the juices of life, I mean, of course, consideration of what is expedient to the community concerned. Every important principle that is developed by litigation is in fact at bottom the result of more or less definitely understood views of public policy."[35] The judges were, according to such a view, bestowed with a duty to weigh the considerations of social advantage. This duty Holmes observed, "is inevitable, and the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very grounds and foundations of judgements inarticulate".[36]

Thus we can conclude that law-making is inherent in a judge's function. This further means the judiciary

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34 Schubert, n. 15, p. 2.

35 Holmes, n. 29, p. 35.

36 O.W. Holmes, "The Path of Law", Harvard Law Review, vol. 10, 1897, p. 457. See also Rosco Pound, "A Theory of Social Interests", Pub. Am. Soc, XV 17, as quoted in Schubert, n. 15, p. 44.

does not function in a value-neutral frame of society. A judge, however, may be neutral as between the parties to the dispute and devoted and dedicated to the principles of his craft, but he must choose between alternative paths available. The difference between the choice of one with that of the other does not stem from any difference in their technical knowledge of law, but from their differing responses to the conflicting values which the case pending before them for decision presents. The judges do not, however, have an absolute freedom of choice; it is conditioned and restricted by several variables. Neither are the choices personal choices of the judges nor a result of accidents or arbitrary attitudes, but very much ingrained in the rest of the social system.

(iii) Some Constraints on the Decision-making Discretion of the Judges

The question now arises whether the judges have absolute autonomy and discretion in making judgements on the cases presented before them. A deeper consideration would bring out the fact that a judge does not enjoy the said 'absolute' autonomy. On the other hand, there are a variety of constraints emanating from a variety of sources which define the boundaries of this discretion. As we shall see, these constraints seem to serve the function of maintaining an institutional boundary between the professional and the

layman who may be guided in his judgement by an uncertain array of forces.

Murphy[37] has categorized the limitations which the judiciary faces in the course of making "choice". These are:

(i) restraint of public opinion (only that which has been articulated and expressed or to be more specific which has been communicated).

(ii) technical checks like:

(a) incapacity of the court to initiate an action (courts are not self starters in a great majority of cases).

(b) limits under which a person may bring suits and the limitations as to the jurisdiction of the court in certain matters.

(c) issues to be raised must be justiciable ones.

(d) stare decisis - the great touchstone of judicial regularity i.e. the precedent. The wisdom of past which is the typical rationale of judicial decision-making, limits the free choice.

(e) limited range of remedies available to settle the disputes.

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37 Murphy, n. 1, pp. 19-28.

(iii) Institutional restraints like:

(a) need for obtaining majority opinion.

(b) application of Supreme Court rulings by lower courts pragmatically or like dead-wood.

(iv) Political restraints like:

(a) appointment and removal of judges.

(b) fear of impeachment.

(v) Judicial self-restraint:

(a) arising out of inhibitions to venture into sensitive areas of public policy.

(b) arising out of the fact of their being handicapped and ill-equipped to muddle with economic, social and political aspects of a case i.e. lack of expertise.

Within these restraints, again, the capacity of judiciary to decide one way or the other is affected by three sets of variables:

(i) the legal materials with which the court must work - the law, the precedent and the argument, i.e. the formal reasoning advanced by the lawyers;

(ii) the values which it must take into account (generally the constitutional goals);

(iii) the personality and socio-economic, political and educational background of the judge which includes their personal attributes, their

> professional socialization as law students, lawyers and judges; the situational and organizational pressures, i.e. the norms which define that judges, behaviour and the interaction taking place within the collegiate body of the bench; and the availability of alternative permissible rules[38] or earlier dissents.

The first set of variables may be called "purely legal inputs", the second may be called as "societal ideals input" and the third set may be named as "extra legal inputs". All the three with varying mixes, go as input material in the decision making process. The first two are direct inputs, the conversion of which takes the blend and direction from the third at a particular moment of time and from overall societal environment--its level of hunger, its rate of crime, its political ferver, its cultural mood, its social outlook and even its position viz-a-viz the other nations of the world. The third category of inputs acquire additional importance because judges are themselves the members of the governing elite-groups and create as well as respond to the political situations. Its support for

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38 For an interesting study of various inputs in the judicial process see Charles G. Haines, "General Observations on the Effects of Personal, Political, and Economic Influences in the Decision of Judges", in Schubert, n. 15, pp. 40-50. Also see Chamblis's and Seidman, n. 5, p. 89.

particular values cherished by a sub-group of the ruling elite often proves to be critical factor in this sub-group emerging as a controlling group of the society because if a court puts the stamp of legitimacy for one's course of conduct, it can prove to be a very important political asset for that group.[39]

Can we infer from the above that because of the above restraints both from outside and within, the range of potential outputs is predetermined? Can we say that the statutory construction limits and the precedents tend to limit their choice to relatively marginal and peripheral changes in the existing system? Can we say that the courts can never suggest comprehensive radicals solutions and policies? Can it alter the organizational structures of the society so as to prepare them to meet the desired ends? We shall examine these questions in the light of the case study of Supreme Court contribution to the wage policy for industrial workers presented in the subsequent chapters.

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39 Peltason, n. 3, p. 291.

CHAPTER III

EVOLUTION OF THE CONCEPT OF MINIMUM WAGE AND LEGITIMACY OF STATE INTERVENTION IN WAGE DETERMINATION

In this chapter we shall examine the rationale and the broad evolutionary trend of the idea of minimum wage in the global and Indian context respectively.

(a) Global Perspective

(i) Wage Determination According to 'Status' and Contract Principles

The size of the economic package to the work-force is the most obvious, sensitive, persistent and perhaps inevitable issue that looms large on the public policy planners in any contemporary society. It was not so when the doctrine of laissez-faire which believed in natural harmony of economic system via free-bargaining by the self-seeking agents was a fundamental constituent of the political and social philosophy of the 19th century.

In pre-industrial society the economic relation-ships resulted from the status of individuals within the social structure. In relationships such as master and slave, lord and serf, craftsman and apprentice the role and position of the two parties was described by custom or

religious laws. The economic units were small and the master-employer and the employee dealt with each other at a personal level. The 'wages' were regulated by their relative status in the social structure.

The great leap from status to contract came in the wake of industrial revolution. Work relationships tended to become depersonalized and were cast in a formal-legalistic pattern. However, in the contractual relationships despite the "free consent" doctrine, the one at the giving-end i.e. the employer, dictated the terms. The participants in the economic life came from two categories of people--the owner of capital and the sellers of labour. The latter were left to the mercy of market-forces and it was thought futile to meddle with the free play of the forces of supply and demand. The freedom of contract in its extremity presupposed that any artificial adjustments of matters affecting wages and output, attempted by the State, would be nullified by the operation of automatic economic forces. It was strongly argued that a policy which permits men to bargain with one another unhindered, was not only consonant with the doctrine of individual liberty, but was also necessitated by the nature of things.[1]

Some efforts were made by the early unions to fight the anarchy caused by the unequally large component

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1 C.E.M. Joad, Introduction to Modern Political Theory (Oxford University Press, 1924), p. 31.

of bargaining power wielded by the employers. Humanitarian appeals were made for fixation of social standards of remuneration and of schedule of work. But nothing changed except the name and style of the economic theories of wage. The subsistence theory of wage of the late 18th and early 19th century and the Wage Fund Theory of the mid-nineteenth century gave way to the Marginal Productivity Theory. All these theories, both in form and content remained within the framework of traditional supply-demand analysis.

(ii) From Individual Contract to Collective Bargaining

At this stage two legally factitious entities-- Corporations and Trade Unions which were separate from the men who constituted them were born to perform the entrepreneurial and labour functions. These two institutions devised a mechanism, namely, collective bargaining to settle the issues amongst them. At this stage, the economists also advanced the Collective Bargaining Theory of wages. It was different from the earlier theories both in form and content as it did not explain the wage structure within the framework of demand and supply alone. It emphasized the relative strength of one in its dealings with the other. We must note here that since 'equals' were not bargaining, the work-force could at best, get their aspirations fulfilled marginally. In such a situation of imbalance, neither the humanitarian appeals by social

reformers nor the strength of work-force at the bargaining table resulted in anything substantial for them.

This realization strengthened the belief among the workforce that, nothing but a sharpened conflict was the only way out. However, in the meantime, the successful consolidation of the conflict-ideology was arrested by the political philosophy of liberalism and the idea of welfare state.

(iii) Inequality between the Bargaining Sides and Regulation of their Relationships by State

The idea that the state is a useful and indispensable instrument of human progress, resulted in expanding the role of the state. The state then assumed the well-known four-fold roles,[2] of provider, regulator, entrepreneur and umpire.

In its role as a provider, the state discharges such functions as are commonly associated with the concept of social welfare state, i.e. ensuring a minimum standard of living for all its citizens, according protection against exploitation etc. As a regulator, the state has a critical role to play in controlling the effects of the free play of market forces. In the exercise of this role, it extensively uses administrative and legal leverages of

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2 W. Friedmann, The State and the Rule of Law in a Mixed Economy (London, 1971), p. 3.

control to mitigate economic hardships, inequalities and hazards which are the by-products of an unregulated economy. Both the abovesaid roles involve a compulsory transfer of economic and social benefits to the common man on behalf of the community. As an entrepreneur, it directly participates in economic activity. Discharge of this function, potentially enables the State to set the ball rolling to break the vicious circle of poverty and exploitation. As an umpire, the state sits as a judge over competing interests between various sectors of economy and between various groups of people. It was this enormous expansion of the role of the state, followed with a great variety of administrative and legal measures taken to give concrete shape to these roles which proved a death knell for the gospel of laissez faire.

The growth and acceptance of the concept of 'social justice' compelled the state to discard the earlier non-interventionist attitude and provided it the basis to intervene actively in regulating the free economy and in the establishment of a welfare state.

State intervention was also sought to be justified on a different basis. The regulation of wages was seen as an instrument in achieving various economic, social, ethical and political goals preached by different groups in a society. For example, seen from a purely economic viewpoint the objectives of wage policy may be in controlling the real income of wage-earning groups; in encouraging

economic efficiency and in maintaining the price stability. The ethical justification may lie in the securing of 'wage justice' to the weaker sections of the society and from the sociological and political view point its justification may be seen in it the capacity of eliminating or substantially controlling pressure of competition; establishing a minimum standard below which the employer cannot engage the labour to work; reconciling of conflicts about the distribution of output; and achieving and maintaining of harmonious relations.

The objectives sought to be achieved by a wage policy, as perceived by various groups in the society both overlap and conflict with each other. Who should then resolve these discripencies? Obviously, in the contemporary setting, the state is bestowed with this duty and it uses a variety of administrative and legal tools which blend the various objectives discussed above in varying mixes depending upon the socio-economic and political environment. The state then leaves it to the judicial system to sit and decide the issues arising therefrom. The judiciary functioning as an umpire settles the issues keeping in mind the constitutional goals.

(iv) Minimum-Wage and Maximum-Hour Legislation

In capitalist or mixed economic set-up societies of the world, minimum wage and maximum-hour legislations

(social standards of remuneration and of the schedules of work) were enacted. It means that "reasonable" restriction on the freedom of contract were placed. Beyond this minimum, the wage determination was again left to the traditional framework of demand and supply, though, often, mediated by the process of collective bargaining resorted to by the institutions of trade union and the corporations represented by their managements.

The 20th century has thus become era of regulated wages in which wage structures are not only resultant of the interplay of many economic variables but also of the initial dictum of social and economic welfare--a political ideology.

We can, therefore, conclude that by providing a minimum wage for prescribed work, the state intervention becomes substantial, because in such situations, the state administrative organs interpose themselves between workers and employers and to a very great extent make the organizations of employers and employees as well as the process of collective bargaining, an essentially dependent feature of the state-dominated and state-defined system of industrial relations. This also tends to control the extremities of political consequences of economic conflict. This phenomenon is particularly true in such states which are committed to planned economic development as well as those states which realize that injustice and poverty

anywhere is a threat to justice and prosperity everywhere. Such states cannot tolerate, for reasons of economic and social disaster, the luxury of sharp and extended conflicts between the two parties. To prevent such conflicts they create a system of rules pertaining to areas prone to generate conflict. Such rules define the permissible limits of the behaviour of the two parties. This observable phenomenon is not a distortion of some normal, unilinear evolutionary process concerning the economic system; it is a logical outcome of the extended role of the modern state.

(b) Indian Context

(i) Genesis of the Notion of State Intervention on the Issue of Wages in India

State intervention in the field of industrial relations, which has been a global phenomenon during the last fifty years or so took a concrete shape in India with the enactment of Indian Trade Disputes Act, 1929. The state intervention at this stage was largely for regulation of wages.[3] In the same year the government appointed the Royal Commission on Labour, popularly known as Whitley Commission to enquire into and report on the existing conditions of labour in industrial undertakings and

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3 Report of the National Commission on Labour, Government of India, Ministry of Labour, Employment and Rehabilitation (New Delhi, 1969), p. 220, para 15.2.

plantations in British India, on the health, efficiency and standards of living of the workers and on the relations between employers and the employees and to make recommendations thereupon. This Commission, apart from giving a factual account of wage levels in various industries, referred to questions connected with minimum wages, standardization, inter-sectoral wages and incentives, and suggested surveys for collection of wage data. It further recommended a minimum wage-fixing machinery of a Wage Board type for certain industries and hinted on the need of a legislation. The main emphasis of the Commission, however, was on how to check the pervasive and widespread practice of unfair deductions from the wages for which it emphasized the necessity and desirability of a suitable legislation. Pursuant to the report of the Commission, submitted in 1931, the Government enacted the Payment of Wages Act, 1936. The general purpose of the Payment of Wages Act, 1936 as revealed in its preamble, was to regulate the payment of wages to certain classes of persons employed in industry. The courts while construing the Act laid down that the general purpose of the Act is "to provide for payment of wages without any unauthorized and illegitimate deducations and to prevent any delay in their payments".[4]

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4 Arvind Mills Ltd. v. K.R. Gadgil, A.I.R. 1941 Bombay 26; Argumgham v. Jawahar Mills, A.I.R. 1956 Madras 79; Codialabail Press v. Monappa (1963) 1, L.L.J. 638.

(ii) Attitude of Expert Committees on Industrial Wage

Various committees and commissions set up from time to time, viewed the issue of wages as an integral part of the economic and social system. The Whitley Commissions observed:

> Indian industry is not a world in itself; it is an element, and by no means the most important element, in the economic life of the community. Care must be taken, therefore, to ensure that in adopting measures for the betterment of industry or of industrial workers, the interest of the community as a whole were not overlooked. 5

This observation stressed the obvious i.e. the problem of wages of the work-force should not be considered in isolation and that the prosperity of all sections of the society had to be advanced simultaneously.

Thereafter, in some provinces, the Government appointed ad hoc committees for settling the wage structure. This suggests that the government intervened at a level much different and much higher than the declared objective as articulated and reflected in the Payment of Wages Act, 1936. It was a case of not remaining only within the legally prescribed limits of preventing unfair deductions of wages as provided in the Act of 1936, but directly becoming a party in the issue of wage determination.

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5 Report of the Royal Commission on Labour, Government of India (New Delhi, 1931), p. 211.

The policy of active governmental intervention on the issue of wages was followed on an all-India basis during the Second World War. We can say, therefore, that in the Indian context, the concept of absolute freedom of contract became obsolete and the idea of active governmental intervention on the issue of wages was universalized at informal non-legalistic plane at this stage of history.

After the Second World War, and in the wake of mounting labour discontent the government drew the famous 1946 programme based on the Labour Investigation Committee's (Rege Committee) report of 1946. It elaborated many important elements of wage policy out of which two deserve to be taken note of, for the purpose of our study. These were; (i) The statutory prescription of minimum wages in sweated industries, occupation and in agriculture; and (ii) promotion of 'fair wage' agreement.[6]

The Government did not cast (i) above, into a formal legal pattern immediately after the submission of the Rege Committee report, but adopted a cautious attitude by emphasizing that it should be observed in the determination of wages. No policy declaration was, however, made in respect to (ii) above.

Immediately after 1947, the most significant event was the convening of an Industrial Conference by the

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6 Report of the Labour Investigation Committee, Government of India (New Delhi, 1946), pp. 271-2.

Central Government with the aim of ending industrial unrest and restoring healthy relations (based on sound foundations) between the employers and employees. The Conference adopted the famous Industrial Truce Resolution, emphasizing the need for co-operation between labour and management. It laid down that:

> "...the system of remuneration to capital as well as labour must be so devised that, while in the interests of the consumers and the primary producers, excessive profit should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of fair wage to labour (emphasis added), a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertakings." 7

The Industrial Policy Resolution, 1948, also emphasized the necessity of fixation of statutory minimum wages and of promoting the fair wage agreements.

Before the Industrial Policy Resolution 1948, the Minimum Wage Act had already been passed by the Constituent Assembly of India.[8] It was emphasized that the Bill was intended primarily to cover those employments where "workers are not in a position to organize themselves and get their grievances removed and their legitimate demands

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7 Report of the National Commission on Labour, n. 3, p. 221, para 15.4.

8 Constituent Assembly of India (Legislative), Official Report, vol. 1, no. 9, 9 February 1948, p. 464.

fulfilled by employers".[9] An analysis of the debate shows that three different views were expressed:

(i) That the Minimum Wage should be fixed on the basis of a living wage, i.e. it should be fixed at a level representing a standard of living which provides not merely for a bare physical subsistence but for the maintenance of health and decency, a measure of frugul comfort including education for the children, protection against ill-health, requirements of essential social needs and some insurance against the most important misfortunes.

(ii) That the idea of minimum wage is illusory and the Bill was trying to achieve utopia. The concept of minimum wage was considered as something which was out of tune with social and economic realities of India. It was called a baby conceived at Geneva (ILO) which was left to us to nurse. It was also feared that, if implemented, it would not even leave the employer with bread and butter.

(iii) The ruling party and the Ministry of Labour, through their spokesman Minister, however, made it clear that they only asked for a minimum wage which was neither a living wage nor a fair wage[10] and that, if an industry was not in a position to pay even the barest minimum, it was

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9 Ibid., vol. 1, no. 7, 6 February 1948, p. 339.

10 Official Report, n. 8. (Jagjivan Ram's statement on p. 464).

better to close it. If the continuation of such an industry was considered in the interest of nation, then it should be subsidized.[11] It was further stated that we should not sanction exploitation of working class for the sake of continuing these industries.[12]

From The view expressed at (iii) above can be clearly seen that it was a compromise between the two extreme views [(i) and (ii) above] expressed by some other members. It surely asserted the philosophy that wages could not be left to be determined entirely by market forces and these forces were not to be allowed to operate at all, if their operation resulted in exploitation of workmen. This is nothing but an unequivocal assertion of the pious wishes of establishing a welfare state through such legal measures which were hoped to become the "charter of emancipation for the down-trodden and usher an era of social revolution."[13]

Similarly, a close study of the recommendation of the Rege Committee 1946, the Industrial Truce Resolution of the Industrial Conference 1947, and the Industrial Policy

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11 Ibid., p. 463.

12 Ibid., p. 464.

13 ibid., vol. 1, no. 7, 6 February 1948, p. 356.

Resolution 1948, and the views presented in the Constituent Assembly by the Ministry of Labour leads to some very interesting insights.

Rege Committee's recommendations and the attitude of the Government as reflected in the Industrial Policy Resolution 1948, and the debates in the Constituent Assembly clearly bring out that both emphasized "the statutory prescription of minimum wage" and suggested "promotion of 'fair wage' agreements". It was in tune with the global tendencies as reflected by the recommendations of International Labour Organization on the issue of wages. We must, however, note that trade unions or workers at large did not play any active role either in the deliberations of Rege Committee, or in the declaration of the Industrial Policy Resolution. On the other hand the recommendation that "both will share the product of their common effort after making provisions for payment of fair wage to labour"[14] contained in the Industrial Truce Resolution could be attributed to the active participation by the work-force in the deliberations of Industrial Conference 1947.

Logical deductions from the above, therefore, suggest that the protections granted under Minimum Wages Act 1948 was the maximum that the government was interested

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14 Report of the National Commission on Labour, n. 3, p. 221, para 15.4.

in giving to the work force. Fixation of wages over and above this level was desired to be left to the process of collective bargaining between the employers and the employees. This policy continues to rule the wage-scene even till date.

In pursuance of the recommendations of the Rege Committee and the Industrial Policy Resolution 1948, regarding promotion of fair wage agreements, the Government appointed a Committee on Fair Wages to determine the principles on which fair wage should be based and to suggest the lines on which these principles should be applied. The Committee suggested that actual wages should be determined by considering the following factors; (i) the productivity of labour, (ii) the prevailing rates of wages, (iii) the level of national income and its distribution, and (iv) the place of industry in the economy of the country.[15] The fair wage should be related to fair load of work and the need of a standard family and the capacity to pay. It also recognized that the present level of our national income does not permit the payment of a "living wage" on standards prevalent in more advanced countries but it should not preclude the fixation of fair wages on different and lower standards.

To give effect to the recommendation of the Committee on Fair Wages, the Fair Wage Bill was introduced in the

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15 The Report of the Committee on Fair Wages, Government of India (New Delhi, 1949), p. 10.

Constituent Assembly of India (Legislative). Before it could become an Act, the Assembly was dissolved. At this stage, the then Prime Minister, Jawaharlal Nehru made a policy statement which clearly noted that the "Government are committed to the principles of fair wages as recommended by the Tripartite Committee".[16] Despite the fact that the Constitution of India in Directive Principles of the State Policy declared that "the state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring decent standards of life" (Art. 43) no legislative effort was made to secure, for the working class, either a fair wage or a living wage. This proves our point that the government desired to leave the question of fair wage to the parties concerned, to be determined through the process of collective bargaining.

There also appears to be a close fit between the global tendencies (except in communist world) as reflected by the International Labour Organization's (ILO) approach and as laid in our own Constitution. The constitution of ILO lays down that universal and lasting peace can be established, only if, it is based upon social justice. The preamble of our constitution lays down the objective of

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16 Indian Parliamentary Debates, vol. IV, part II, 20 April 1950, pp. 2973-4. (Statement regarding Bill relating to Fair Wages).

establishing "justice--social, economic and political". The ILO in a meeting of experts on minimum wage fixing[17] observed that in developing countries minimum wage fixation was to be seen as one of several measures in the strategy of an attack on poverty and it was a positive measure to redistribute incomes and accelerate development.

A trend which consolidated the coming years as reflected in various plan documents and from the creation of wage boards for various sectors of economy, was that of promoting the settlement of wage through the collective bargaining process and not through legislative measures. This it need not be difficult to understand, obviously was helpful, at the most to the organized labour which was even otherwise relatively better off than their unorganized brotheren.

Summing Up

In summary, we may recaptulate some of the broad trends highlighted in the history of the idea of industrial wage, both in the global and Indian contexts.

Even though prior to the era of large scale industrial production, the bargaining sides to an economic transaction were left to fend for themselves, it was thought

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17 Geneva Meeting of the ILO, 25 September-6 October 1967, as quoted in K.S.V. Menon, Foundations of Wage Policy (Bombay, 1969), pp. 275-6.

desirable that state should impart strength and protection to the weaker bargaining side. Thus, consequent upon the acceptance of contract principle in economic transactions, the idea of state intervention gained its ground. A variety of expert committees appointed--particularly in the Indian context--lent strength and legitimacy to an effective regulation of the wage scene by the state. In the whole evolution of ideas and policies on industrial wage we thus discover, firstly, a passage from status to contract and then to the idea of state intervention via humanism. This also comes out clearly in the Indian section that the effective concern of the state was confined only to obtaining minimum wages for the work-force in the country and as far as fair wage or living wage was concerned, it merely adopted a patronizing and supportive attitude. As against this, we find a much clearer insistence on the fair wage in the opinions and attitudes of the expert committees. It is also noteworthy that in expert committees and commissions where representatives of the work-force also participated, the insistence on living wage and fair wage is clearer still.

The sociological explanation to the attitude of the ruling elite discussed in the preceding pages lies in clearly understanding the political system as a sub-system of the wider social structure involved in continuous transactions with other criss-crossing sub-systems where a

very large number of variables interact simultaneously in many subtle ways. Both compromises and gradual building of consensus is taken to be part of the entire political process. The nature of compromise and consensus that emerges in turn depends upon the social basis of power of the political actors.

The consensus that emerges in the process is translated in the form of a legislation--a process carried on by the political actors--performing their role within the institutional setting of legislature. The definition of the role comes from their 'representing' the particular interests of individuals, collectivity or their political 'alliances' which help them continue to hold the power. The law that emerges is accorded legitimacy because the legislature bases its claims to higher legitimacy as its being more fully representative than any other public authority and also from the argument that it represents a social consensus. The different weights exerted by contending influences shape the institutional life and structure of the legislature which obviously affects its decision-making capacity.

Now, if we look into the nature of ruling party's political ideology at the time of the enactment of this piece of legislation, we find that it advocated an 'indigeneous type of socialism'. It declared the

unsuitability of both capitalism and communism and argued for a middle path. It wanted to bring forth a social transformation without disturbing the stability and continuity of the system and for it, it adhered to the policy of evolutionary change. The said political ideology of the ruling elite is well reflected in the enactment of this piece of legislation on minimum wages for the working class which provides for the social standard of remuneration and yet leaves the scope for freedom of contract over and above that social standard of remuneration.

We may thus conclude from the above that the legislature, in its functioning (both manifest and latent) contributed to the stability and maintenance of the social system.

CHAPTER IV

JUDICIARY'S PERCEPTION OF STATE INTERVENTION AND ITS RESPONSE TO THE MINIMUM WAGE ENACTMENT

In this chapter, we examine various components of legitimacy of the state intervention on the issue of wages, as perceived by Supreme Court. Our assumption is that to a very effective extent Supreme Court's attitude towards any legislative measure by the government and its application in concrete cases appearing before the court would be strongly influenced by the court's perception of the justification with which the state can intervene on the issue of wages. We examine this and other related questions under various sections below. In addition to this, we shall also consider Supreme Court's response to specific enactment passed by the legislature on minimum wages.

(a) Basis of Legitimacy of State Intervention on the Issue of Wages

We shall now consider two main components of legitimacy viz. juridical legitimacy and legitimacy in terms of social relevance. For this presentation, we shall draw upon all the significant court decisions spanning over more than twenty five years i.e. from 1950 to 1975 which touch upon the issue of state intervention.

(i) Juridical Legitimacy of State Intervention

In Rai Bahadur Diwan Badri Das and others vs. Industrial Tribunal,[1] the Supreme Court observed:

> The doctrine of the absolute freedom of contract has to yield to the higher claims for social justice....Industrial adjudication does not recognise the employers' right to employ labour on terms below the terms of minimum basic wage. This, no doubt, is an interference with the employer's right to hire labour; but social justice requires that the right should be controlled.
>
> It is, however, necessary to add that the general question about the employers' right to manage his own affairs in the best way he chooses cannot be answered in abstract.... The right would be recognized and industrial adjudication would not be permitted or would be reluctant to trespass on that right or on the field of management functions unless compelled by overriding considerations of social justice. The right would not be recognized and would be controlled if social justice and industrial peace require such regulation. 2

This case spells out the basis and accords legitimacy to the question of state intervention in the sphere of contractual relations between the employer and employees. Both, in pith and substance, we may say that this decision views the entire issue of wages to the work force, as an integral part of the whole socio-economic milieu and

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1 (1962) II L.L.J. 366.

2 Ibid., p. 370.

suggests that any attempt to separate the issue of wages from the claims of social justice would mean, looking at the issue in abstract, divorced from reality - a position, that would lead to most undesirable results.

(ii) Legitimacy in terms of Social Relevance

The Supreme Court very clearly observed that the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes.[3]

In another case[4] the Court observed that fixation of wages by the government is a matter of policy, i.e. it is merely an administrative act and not a result of the discharge of any quasi-judicial function. It went further to stress that there cannot be any judicial review on the question of the quantum of wages fixed.[5] The Supreme Court

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3 J.K. Cotton Spinning & Waving Mills Ltd. v. Labour Appellate Tribunal (1963) II, L.L.J. 436.

4 P. Gangadharan Pillai v. State of Kerala, A.I.R. 1968 Ker. 218. See also Chandra Bhavan Boarding & Lodging v. State of Mysore, A.I.R. 1968 Mys. 156.

5 Punchiri Boat Transport v. State of Travancore Cochin, A.I.R. 1955 T.C. 97.

very clearly noted that "it is quite likely that in under-developed countries, where unemployment prevails at a very large scale, unorganized labour may be available on starvation wage, but the employment of labour on starvation wage cannot be encouraged or favoured in a modern democratic state."[6] (emphasis added)

The gist of these cases clearly shows an awareness on the part of the court, of the current socio-economic thinking as reflected in the constitution and an adequate appreciation of the functions of a modern welfare state. It may be noted that this approach as adopted by the court comes very close to the policy oriented approach advocated by the school of sociological jurisprudence. This approach affords the court an opportunity to become an equal partner with the legislature in bringing forth the much desired socio-economic transformation through the instrumentality of law.

(b) Court's Response to Legislative Enactment on Minimum Wages

(i) Objectives atrributed to the Minimum Wage Enactment

The supportive attitude of the court is well brought out in its response to the cases challenging the constitutional virus of the Minimum Wages Act, 1948 which

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6 Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30.

was enacted by the Parliament (in pursuance of the powers vested in it under entry 24 of the concurrent list in the seventh scheduled of the Constitution of India) to give effect to the recommendations of the International Labour Organization on the desirability of fixing minimum wages.[7]

The court spelling out the objectives of the Minimum Wages Act, 1948, said that it lays down the minimum wage which must be paid to workers,[8] and this policy of fixing the minimum wage is conducive to the interests of the public.[9] It aims to prevent the chances of exploitation of labour,[10] particularly in those industries where by reasons of unorganized labour or want of proper arrangement for effective regulation of wages or for other reasons the wages of labourers were very low[11] and inadequate as compared to both the general level and subsistence level

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7 South India Estate Labour Relations Organization v. State of Madras, A.I.R. 1955 Mad. 45.

8 Bhikusa Yamasa Kshatriya v. Sangamner Akola Taluka Bidi Kamgar Union, A.I.R. 1963 S.C. 806.

9 Bojoy Cotton Mills v. State of Ajmer, A.I.R. 1955 S.C. 33.

10 Edward Mills v. State of Ajmer, A.I.R. 1955 S.C. 25.

11 Ibid., see also n. 8.

of wages.[12] The sum and substance of the Act, therefore, is to provide for the welfare of labour[13] and thus help, march towards the broader objective of social justice.[14]

(ii) Constitutional Conflict Consequent upon the Enactment of Minimum Wages Law and its resolution by the Court

The Supreme Court did not only spell out and elaborate the objectives of the Act, but also gave its candid approval to the objectives, as perceived by the legislature. The logical outcome of such an attitude could only be the upholding of the constitutional virus of the certain portions of the Act that were challenged.

From our point of view, and to understand the attitude of the court viz-a-viz the desirability of such a social legislation like the one before us, it would be appropriate to locate and analyse such decisions which bring out clearly the process of balancing the fundamental rights and directive principles of state policy as laid in part three and part four of the constitution respectively.

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12 n. 8.

13 Panihati Municipality v. Secretary, P.M.L.W. Union, A.I.R. 1965 Cal. 229.

14 Madhya Pradesh Mineral Industry Association v. Regional Labour Commissioner, A.I.R. 1960 S.C. 1068.

An opportunity to do so is provided by the Supreme Court's decision in Bojoy Cotton Mills Ltd. and others v. State of Ajmer.[15]

In this case the State Government of Ajmer fixed a minimum wage @ Rs.56 per month for the workmen working in the mill. The Industrial Tribunal rejected the basis of fixation and instead suggested a wage of Rs.35 per month. In the meantime the employer closed the mill expressing his inability to pay (a penal offence as per provisions of the Act) at the rate fixed by the Government. The workers approached the management of the mill requesting for its reopening and expressing their willingness to work on Rs.35 per month.

The management of the mill challenged the constitutionality of the Minimum Wages Act, 1948 on the grounds that it comes in the way of the company carrying on its business and hence violative of the fundamental right to freedom of trade or business guaranteed under Art. 19(1)(g)[16] of the Constitution of India. The most interesting aspect of the case was, that the workers willing to work on less than minimum wages fixed by the

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15 n. 9.

16 Article 19(1)(g). All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

government also filed another petition, supporting the management's point of view.

The Supreme Court held that

> If the labourers are to be secured in the enjoyment of minimum wage and they are to be protected against exploitation by their employers, it is absolutely necessary that restraint should be imposed upon their freedom of contract and such restrictions (which tend to curtail the absolute freedom of contract) 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 labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages.... (emphasis added). 17

Replying to a very strong argument advanced on behalf of both the mill and the workers that the fixation of minimum wage is both oppressive and unreasonable with regard to at least that class of employers, who for purely economic reasons cannot pay the minimum fixed (but who have no intention to exploit), the Court said:

> it is in the interest of general public that the labourers should be secured adequate living wage, the intentions of the employer whether good or bad are irrelevant. If an employer cannot pay the minimum wage due entirely to his economic conditions this cannot be a reason for striking down the law as unreasonable....Restrictions though they interfere to some extent with the

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17 n. 9.

> freedom of trade and business guaranteed under Article 19(1)(g) of the constitution are reasonable, in the interest of general public and protected by the terms of clause (6)[18] of Article 19.[19]

We see, therefore, that the court not only approved the interference by the State in purely private contractual relations of employers and employees but asserted that the minimum fixed by the state must be paid by the employer to his employees and if that cannot be paid, it was better to close down[20] an enterprise rather than permitting it to pay at a level below the minimum. The court, thus in this judicial pronouncement sanctified and legitimized the idea of social welfare sought to be achieved by the legislature through this Act. Alternatively, we may say that the court struck a final death blow to the doctrine of absolute freedom of contract which was a by-product of the laissez faire philosophy

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18 Art. 19(6). Nothing in sub-clause (g) of the said clause [Art. 19(1)] shall affect the operation of any existing law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the state from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

19 n. 9.

20 Kamani Metals & Alloys Ltd. v. Their Workmen, (1958), I L.L.J. 1; U. Unicoy v. State of Kerala, A.I.R. 1962 S.C. 12; see also n. 6.

and hence played a role compatiable with and complimentary to the social philosophy advocated by the then legislative wing of the state structure.

With the pronouncement of this decision the court came under a scathing criticism from several 'influential' quarters. These represented the class interest of the haves in the society. The critiques characterized the judgement as one which was illustrative of the court's unwillingness to criticize current dogmas in employer-employee relations implying thereby the very negation of the idea of state intervention in favour of the class of have nots. They agreed that the whole objective of the Act was to prevent exploitment, and prevent beating down of the workers by the employers who had a superior bargaining power but wondered how could these objectives be achieved by forcing the closure of an industrial enterprise. They noted that no court ever attempted to answer the question that "if a labourer cannot live except on minimum fixed by state how is it proposed to make him subsist on no wage at all, if as a consequence of the inability of a company to pay, it closes down?"[21]

Despite this criticism, the Supreme Court did not budge from its earlier interpretation and view on

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21 Seervai H.M., Constitutional Law of India (Bombay, 1975), vol. 1, p. 425. Also see Seervai's argument in n. 9.

the constitutionality of the Act. Instead it went further to state that the limitation sought to be imposed by the Minimum Wages Act, 1948, on the freedom of trade and business was neither arbitrary nor excessive but geared to public interest. The restriction imposed was a product of intelligent care, thorough deliberation and the choice made by the legislature was dictated by the reason.[22]

(iii) Self-Imposed Norm by the Court

In the process of defending its decision in this case, the Supreme Court also laid for itself, a norm to be observed at the time of deciding those cases which challenged the constitutional virus of social legislation which tended to encroach upon the fundamental rights given to the citizens under the constitution. It said, that

> both the substantive and procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the courts should not consider only the factors such as duration and the extent of restrictions but also the circumstances under which and the manner in which their imposition has been authorized.... The nature of right alleged to have been infringed, the underlying purpose of restrictions imposed, the extent of urgency

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22 Chitamani Rao v. Madhya Pradesh, A.I.R. 1951 S.C. 48. The position was reasserted in Express News Paper Ltd. v. Union of India, A.I.R. 1958 S.C. 578.

> of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter the judicial verdict. 23

The laying down of this norm for its own functioning brings out in bold relief court's predominant concern with contemporary social issues and a much wider self-definition of its role than merely legal.

Summing Up

We may infer from the fact of Supreme Court according legitimacy to state intervention, that the entire approach of the court, on the question of employer-employee relationship and more particularly on the issue of wages, was a pragmatic policy-oriented approach, which drew its strength from the socio-economic thought engrained in the constitution of India and as translated by the legislature in the shape of Minimum Wages Act. In upholding the constitutionality of the Minimum Wages Act, it moderated, though only to some extent, the fundamental rights and gave weightage to the otherwise non-justiciable directive principles of state policy. Further, in the process of extending its support to the policy of state on the issue of wages, it naturally discarded the argument of vested interest which pleaded for absolute freedom of contract, particularly

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23 Dr. N.B. Khare vs. Delhi, A.I.R. 1950, S.C. 211.

when there existed no apparently visible coercion on the workers to sell their labour at a wage below the minimum fixed by the state. The court thus withstood strong pressures coming from the vested interest against an enactment which in its view was absolutely vital to uphold in the wider public interest.

The pragmatic policy-oriented approach of the Supreme Court, does not, however, owe its origin only to the fact of its having been incorporated in the constitution or to the individuals who constituted the Supreme Court bench, but also to the court's very existence within a particular socio-political milieu which propagates these egalitarian ideas.

Putting it differently, we may say, that the courts, as a constituent of the state system, shared a common philosophy enshrined in the Constitution of India with its other constituents, more particularly with its legislative wing. This suggests that theoretically there existed a close-fit in the various constituents of the state system with regard to the policy of state intervention in the sphere of employer-employee relationship.

This 'fit' in the policy, however, existed only to the extent of providing the working class in the organized sector of industry with a minimum wage and not beyond that i.e. not on the issue of fair wage and living wage. It would be well brought out in our next chapter

that the Supreme Court did not subscribe to the executive's view that determination of wages beyond the minimum fixed by it should be left alone to the process of collective bargaining between the two economic classes. The Supreme Court instead insisted upon providing a guideline to the wage fixing authorities which was to be followed by them while fixing wages over and above the minimum. The assumption of this attitude on the part of the Supreme Court suggests that it well realized the inequalities and imbalances that existed in the respective collective bargaining strength of both the economic classes. This clearly reflects that Supreme Court was not bogged down to the 'scheme' of government for bringing about some amount of economic equality, rather, it devised its own scheme.

This scheme enabled the courts to interpose at an abstract level in the process of collective bargaining which would have developed according to its own dynamics in the absence of such an intervention. The work-force through such intervention was placed in a comparatively comfortable position because wherever they lacked the necessary strength to bargain for fair or living wages, they could raise the dispute and thereby invite the intervention of state which in most cases responded by appointing a wage board to determine the wages not only

in that particular unit but in the industry as such. The wage boards functioned not on the basis of respective collective bargaining strength of both the parties but on a different basis which were formulated and prescribed by the Supreme Court.

Sociologically, this attitude of the Supreme Court implies nothing short of altering the institutional structure of industrial relations by introducing a new element (that of availability of wage board etc. which were to work as per the norms given by the courts, to settle disputes pertaining to wages in case collective bargaining does not bear desired results) in the social process of collective bargaining - an element which could be 'exploited' by those placed at the lowest stratum of society in advancing their economic interests. We may note, however, that such like efforts as made by the Supreme Court could only help in bringing about a marginal change in the social stratification. Nonetheless even such marginal changes brought about through the mechanism of the court process indicate the value and significance of their very existence.

CHAPTER V

NORMS FOR WAGES

In this chapter, we shall discuss (in the light of overall 'purpose' imputed by the Supreme Court to its own function of adjudication on the wages) the broad guidelines and operative norms laid down by the Supreme Court for effective and purposive functioning of industrial tribunals and wage fixing authorities, and also some of the major considerations which should be taken into account while adjudicating on wages, over and above the minimum fixed by the executive wing of state structure. In other words, we shall look into two important aspects of the Court's self-view. Whatever be the nature of these two dimensions, these should logically relate to the stand generally taken by the Court on the issue of wages. We have based this chapter on the judgements given by the Supreme Court in cases relating to Industrial Wages.

(a) Purpose and Guideline

(i) Imputed Purpose or Perceived Objective

The court, noted,[1] that in fixing the wage structure the industrial adjudication attempts, gradually and

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1 Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30.

by stages to attain the principal objectives of a welfare state, namely, to secure to all citizens social and economic justice. The process of achieving this ultimate ideal, by industrial adjudication is facilitated by the disputes which are brought before it. The immediate objective then is the settling of that particular dispute and, in that, the foundations for achieving the ultimate objectives are laid.

(ii) Role of Industrial Tribunals and Court as Perceived by Supreme Court

In the opinion of Supreme Court, industrial tribunals could play a meaningful role to achieve the objectives of a welfare state. To facilitate their functioning in this particular direction, the Supreme Court laid down broad guidelines and operative norms. This was done during the course of very exhaustive comments on the system of adjudication, of various cases viewed by us. These two aspects were dealt with comprehensively by the Supreme Court in the famous case of Bharat Bank Ltd v. Employees of Bharat Bank Ltd.[2]

The Supreme Court laid down that

> The function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges

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2 (1950) L.L.J., 921.

> on either party which it considers reasonable and proper....It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. (emphasis added)

It is clear from this, that the wider extra-legal role with regard to industrial disputes which the court defines for its own functioning is also projected on the functioning of industrial tribunals.

The judgement cited above clearly brought out that pre-existing laws are not the only input in any decision aimed at settling dispute. The emphasis on 'creating new rights and obligations', in turn meant redefining the basis of relations between the employers and employees.

In State of Madras v. C.P. Sarathy,[3] the utility of industrial adjudication as a method for peaceful and expeditious settlement of industrial disputes was reiterated and it was emphasized that courts should not be bothered about formal defects and technical flaws to overthrow such settlements. The guidelines for the courts was thus set in this case - they were not to look into legal niceties but beyond that. "Beyond that" was defined in another case where it was observed that "an award made

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3 (1953) I L.L.J. 174.

in the industrial adjudication may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony between the employer and his workmen....Such award may alter the terms of employment if it is thought fit and necessary to do so."[4]

This judgement further focussed the attention on the desirability of giving wide powers to the industrial adjudication machinery to interfere in the sphere of contractual relations between the employer and employees once thought to be inpenetrable. It also emphasized that creation of new laws should be done with a view to achieve social justice.

This means that the court not only legitimized the intervention of state in the sphere of contractual relations as seen earlier, but also assumed upon itself that role. The role, however, was to be fulfilled with a view to achieve industrial peace which according to it, was very vital for the society at large and in this process, it was not to stick on to or look forward to the existing norms; instead, it could create new norms.

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4 Bidi, Bidi Leaves and Tobacco Merchant's Association v. State of Bombay (1961), II, L.L.J. 663.

(iii) Choice-Making in the Light of Constitutional Objectives

The granting of the role to create new norms to the courts with a rider, namely, in the interest of social justice', it may be submitted leads to a situation where it may become pertinent to ask what is social justice? Who perceives its meaning? How is it translated into laws? What are the factors in the social milieu which effect its meaning? Is it possible to implement the meaning given by the judge to social justice? If not which elements in the social structure tend to dilute its nature? and so on.

The answer to such like questions would imply that the task of industrial adjudication will have to be necessarily performed through an insight into social, economic and political ramifications of industrial relations. This means that by virtue of these necessities the process of juridical decision-making becomes very delicate and complex; and the judge has to choose any one of the several value-alternatives available to him within the social milieu.

Whose choice shall prevail thus becomes the focus of enquiry. To answer this, we shall have to look into the articulated opinions of judiciary. Note, for example, the following excerpt from the Gandhi Memorial Lectures at

Nairobi delivered by Dr. P.B. Gajendragadkar, the ex-Chief Justice of India:

> We the judges of the Supreme Court, do not function individually, but...institutionally. In the discharge of its duties, the court has on many occasions, so far to face difficult and delicate problems, the solution of which is not always easy to find. The choice is sometimes between good and better, and faced with such a choice, the process of reaching the ultimate decision is agonising." 5

Howsoever, agonizing the process of making this choice may be, it has to be made. It is inevitable because the court has no option but to decide a dispute that comes before it. But then how to do it? Dr. Gajendragadkar, himself, suggested a way out when he said -

> when lawyers argue their cases...and judges decide them, it is not their function to consider the propriety of the policy adopted by the legislature....I have always felt that a judge should never allow his personal, economic, political or social views to trespass in his judgement. 6

It flows from the above that in the process of judicial decision, the judge was to interpret the law either in the light of the 'objectives' as perceived by the legislature or in the light of the constitution which

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5 V.D. Mahajan, Chief Justice Gajendragadkar, New Delhi, 1966, p. 20.

6 Ibid., p. 17.

spelled out the "grundnorm" i.e. the highest law which obviously reflected the ideals and the higher values of the society. The court accepted that the "choice" available to it is limited within the four walls of constitutional ideals, when it observed, that in fixing wage structures the industrial adjudication attempts to attain the principle objectives of a welfare state, namely, to secure to all citizens social and economic justice. The process of settling a particular dispute then means nothing but redefining or restoring the basis of relationship between the parties, and through such a process laying the foundations for achieving the ultimate values and objectives enshrined in the constitution.

It may be noted that such an "attempt" could be made either by adopting a purely legalistic approach to the disputes which came before the Supreme Court, meaning thereby a slow process of change, or by adopting a progressive outlook which fastened the process of change with the framework of rule of law. The Supreme Court of India adopted the latter.

(iv) Progressive Interpretation of Law as the Norm

In the process of pronouncing judgements the Supreme Court[7] laid down norms and guiding principles for

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7 Article 141 of the Constitution of India reads: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."

its own functioning. It imposed upon it the duty of balancing competing claims of economic progress and social justice, industrial efficiency and industrial peace[8] i.e., it required itself to mediate between the existing economic realities and the egalitarian objectives of the constitution.[9]

One of the most important contributions of the Supreme Court in this direction lies in giving a "progressive" orientation to judicial interpretation of labour legislation and not adhering to the old practice based upon golden rule of interpretation of statutes according to which the words of the statute should be prima facie construed in their ordinary, natural and grametical meaning. The court observed[10] that, if a social legislation confers certain benefits on workmen then it should receive a liberal and beneficient construction from the courts. The liberal construction, it ruled, must however, flow from the words of the statute. If on the other hand, the words used are

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8 Rai Bahadur Diwan Badri Das v. Industrial Tribunal, (1962) II L.L.J. 366.

9 Directive Principles of State Policy (Part IV of the Constitution of India) lays down the egalitarian objectives of the constitution which include achieving of living wage for the working class.

10 Union of India v. Triloki Nath Basin, A.I.R. 1961 Punj. 154. See also Alembic Chemical Works v. Workmen, A.I.R. 1961 S.C. 647; Buckingham and Carnatic Co. v. Venkatiah, A.I.R. 1968 S.C. 1272.

capable of two constructions, one of which is shown patently to assist the achievement of the objects of the Act, courts would be justified in preferring that construction to the other which may not be able to further the objects of the Act. Applying the rule of strict construction and not giving benevolent or beneficial construction to such statutes would amount to defeating the real objects and purpose of such enactments.

It is in the light of this norm of interpretation to be used in interpreting social legislation, that the Supreme Court rejected the earlier held view that "the conception of social justice ought not to be imported while interpreting the provisions of the Industrial Disputes Act or other similar Acts."[11] Rejecting it in most emphatic terms in J.K. Cotton Spinning and Weaving Mills Ltd. v. Labour Appellate Tribunal[12] case, the Supreme Court observed:

> In our opinion, the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasized the

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11 Central India Spinning, Weaving and Manufacturing Co. Ltd., v. State Industrial Court (1959) I L.L.J. 468.

12 (1963) II L.L.J. 436.

> relevance, validity and significance of the doctrine of social justice.... 13

It may thus be said, that, the choice available to the judiciary in the interpretation of social welfare legislations was narrowed down to one which tends to achieve the ideal of social justice i.e. the values and ideals enshrined in the premable to the Constitution of India.

We may infer from the preceding paragraphs that the Supreme Court of India took upon itself the role of creating new laws by drawing from the felt needs and aspirations of society and articulating them through judicial pronouncements without giving undue weightage to the technicalities of law. The pulse of felt need, of the people was not to be gauged from any other evidence but from the egalitarian objectives enshrined in the Constitution of India.

Hence, we may conclude that the tribunals and the hierarchy of courts in India, were required to function in a value-oriented framework with the objective of translating the constitutional ideals into reality.

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13 Ibid., at p. 444.

(b) Creative Inputs by the Supreme Court on the Issue of Wages

In this section, we shall continue with the theme of social justice and progressive interpretation of law as laid down by the Supreme Court in the preceding section. Two very important things will come out in the present section. (i) That the Supreme Court during the course of adjudication on the issue of wages did not remain confined to the statutory definition of the minimum wage. Rather it expanded this concept to include some more logically related components. (ii) Not only that but the court also emphasized strongly the necessity on the part of the industry to go beyond minimum wage and give fair and living wage[14] to the workers. In other words, holding the necessity of paying minimum wage as absolutely necessary and beyond challenge, it also suggested some further benefits to the labour and suggested norms for its achievement.

(i) Minimum Wages, Fair Wage & Living Wage

1 The Minimum Wage

The minimum wage, according to the court is the starting point below which no industry can be allowed to

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14 The fuller meaning of these terms i.e. fair wage and living wage heave been discussed in this very section in the subsequent pages.

pay.[15] It must be at a level above the bare minimum required for mere subsistence and the bare physical needs of the worker and his family.[16] The Supreme Court made it very clear that the minimum wage principle has no reference to the value of work done by the worker. It has to be determined on the basis of the cost of living and the normal or reasonable needs of the worker and his family on the bare subsistence level.[17] It later expanded the concept of minimum wage by adding the component of efficiency when it noted that "the wage must be such which can preserve his (worker's) efficiency as a worker".[18]

The two components, namely, the fulfilment of bare physical needs and the preserving of his efficiency as a 'worker' were not found satisfactory by the court because these tests tended to treat the worker as a clog in the social machine and appeared to be derogatory and inhumane vis-a-vis the worker. The court, therefore, added three more components besides the two noted above, in the fixation of minimum wage. These were; (i) Some

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15 Hindustan Times Ltd. v. Their Workmen, (1963) I L.L.J. 108; M/s. Woolcombers of India Ltd. v. Their Workmen, A.I.R. 1973 S.C. 2758.

16 Express Newspaper v. Union of India, A.I.R. 1958 S.C. 578.

17 Ibid.

18 U. Unichoyi v. State of Kerala, A.I.R. 1962 S.C. 12.

measures of education for worker and his family;[19] (ii) medical requirements of the worker and his family;[20] and (iii) the generally necessary amenities for the worker and his family.[21] The evolution from bare minimum to the statutory minimum, to be fixed after taking into account the above mentioned components reflects not only the non-static nature of this category of wage but also the faith of the court, that the concomitants of minimum wage must necessarily change and increase with the progress of society.[22]

2 Fair Wage

Fair wage represents a level which is in between the minimum wage prevalent presently and living wage. The Supreme Court considered it as an essential step towards the progressive realization of the ideal of living wage. In the initial stages it may be close to the level of minimum wage, it was to be gradually enhanced, depending upon the capacity to pay so that in time it would progressively

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19 Standard Vacuum Refining Co. v. Its Workmen (1961) I L.L.J. 227.

20 Ibid. See also Phaltan Sugar Mills v. Their Workmen, (1954) II L.L.J. 341.

21 n. 16.

22 Chandra Bhawan Boarding & Lodging v. State of Mysore, A.I.R. 1970 S.C. 2042.

approach the living wage.[23] The reasonableness and fairness of the wage was to be judged by posing the question; whether it was adequate to cover the normal needs of the average employee regarded as a human being living in a civilized community and whether it secured to each section of the workers those conditions which are necessary for the continuous and efficient fulfilment of its particular function in the social machine?[24]

The Supreme Court, noted,[25] that in an effort to secure a truly fair wage, the need-based minimum as formulated at the 15th Indian Labour Conference in 1957[26] must

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23 n. 16.

24 n. 19.

25 All India Reserve Bank Employees Association v. Reserve Bank of India A.I.R. 1966 S.C. 305.

26 For a description of need based minimum wage as formulated at the 15th Indian Labour Conference in 1957 see Menon, K.S.V., Foundations of Wage Policy (Bombay, 1969), pp. 254-5.

The Supreme Court in Reserve Bank case (ibid) observed that "Three Consumption Unit formula is on the lower side....The formula ignores the frequency of variation in family size in certain regions and employments, it ignores number of wage earners available at different stages, it ignores the increase or decrease in consumption at different stages in employment i.e. the age structure and its bearing on consumption. It does not consider the number of years over which the family would grow to the 'max' fixed of 3 consumption units."

The Court further observed that the Sastry Tribunal which thought of 3 consumption units at the 10th years and the Sen Tribunal at the 8th year missed the realities of our national life. In our country it would be wrong to assume that on an average 3 consumption units must be provided for by the end of 5 years service and the consumption units in the first 5 years of employment should be graduated.

be achieved despite the fact that the acceptance of this formula is really very difficult. This clearly indicates that Supreme Court was not satisfied with even the criterion adopted for fixation of minimum wage as it exists presently. It first asked for the achievement of the minimum which would be 'fair' and then the fair wage which should be paid to a worker living in a "civilized" society. The concept of "civilized" society being very vast to include every possible thing that goes on to make the worker comfortable, efficient and ultimately a still "better" citizen.

3 Living Wage

The Supreme Court, quoting Philip Snowden, noted in Standard Vacuum case:[27]

> it may not be possible to give a precise or satisfactory definition of a living wage, but it expressed an idea, a belief, a conviction, a demand. The idea of living wage seems to come from the fountain of justice which no man has ever seen, which no man has ever explained, but which we all know is an instinct divinely implanted in the human heart. A living wage is sometime far greater than the figures of wage schedule. It is at the same time a condemnation of unmerited and unnecessary poverty and a demand for some measure of justice.
>
> ...the idea of living wage is that every workman shall have a wage which will

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27 n. 19.

> maintain him in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well being, enough to enable him to qualify to discharge his duties as a citizen. 28

This judgement reflects that the Supreme Court accepted in an unqualified manner the ideals as laid down in Article 43 of the Constitution. The court, as in the case of minimum wage, also noted that the concept of living wage is not static one; it is expanding and the number of constituents and their respective contents are bound to expand and widen with the development and growth of economy. It was also not possible, rather it would be in expedient and unwise to make any effort to concretise the said concept in monetary terms with any degree of definiteness or precision.[29]

The Supreme Court took a realistic view of the situation when it noted that "while the industrial

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28 In the Express Newspaper v. Union of India A.I.R. 1958 S.C. p. 578. The court observed: Living wage is one which enables the workers to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but also a measure of frugal comfort, which includes education for his children, protection against ill health, requirements of essential social needs and a measure of insurance against old age and the misfortunes that may fall on him.

29 n. 19.

adjudication will be happy to fix a wage structure which could give the workmen generally a living wage, economic consideration make that only a dream for the future[30] and so the efforts should be made to achieve 'fair' wage to the work-force."

The positive function which the Supreme Court performed in defining these concepts was;

(a) stressing that the components which constitute these categories have to change with changing economic and social scene.

(b) translation of abstract categories not in terms of monetary value but in terms of their certain real-life-components, thus facilitating the task of wage fixing authorities; and

(c) expanding the components of minimum wage taking it from bare subsistence to something more than that and thus making it obligatory upon the executive to fix wages at a level much higher than were being fixed earlier.

This indicates that Supreme Court adopted a very pragmatic and realistic view point which was clearly oriented in favour of the work-force engaged in the industrial sector of our economy.

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30 n. 15.

(c) Operational Norms for Achieving Fair Wages

The Supreme Court, not only pointed out the necessity of giving fair wage to the workers but also took upon itself to lay down operational set of norms for determining these wages. This urge on its part can be seen to be flowing directly from its attitude of social justice. These norms are as follows:

(i) The Capacity of Industry

The financial capacity of the industry to pay is a primary consideration for awarding a revision of the wage scales. The only exception, as discussed earlier being in the cases of bare subsistence or minimum wage which the employer must pay irrespective of such capacity failing which he should close down his establishment.

The guiding norms laid by the court for the wage fixing authorities, while fixing wages over and above the minimum which touch upon the issue of capacity of industry to pay are summed up as under:

(i) The burden above the minimum can only be justifiable, if the industry is capable of meeting it.[31]

(ii) Tribunals must record evidence and reach a definite finding about the capacity of employer to bear the

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31 Workmen of Gujarat Electricity Board v. Gujarat Electricity Board, A.I.R. 1970 S.C. 87; Hindustan Antibiotics Ltd. v. The Workmen, A.I.R. 1967 S.C. 948.

burden of the proposed increase in the wage scales,[32] and the employer must be given an opportunity to establish that he cannot bear the additional financial burden.[33]

(iii) The problem of additional burden which the proposed wage structure would place upon the employer must be taken into consideration.[34] It would include assessing its quantum, reasonableness and the employers' capacity to bear the burden, both in the context of present and future.

(iv) Flowing from the guiding norm (i), assessment should be made of (a) the financial position of employer; (b) progress made by the industry historically, (c) past performance and future prospects of the industry;[35] (d) profits and/or losses made by the industry; (e) the nature of demands fulfilled and proposed to be fulfilled by the industry; (f) allowance for depreciation and allocation for reserves to keep industry in good health; and (g) unemployment that may be caused due to an increment in wages.

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32 Federation of Small and Medium Industries v. Their Workmen, A.I.R. 1972 S.C. 2126; Airlines Hotel (Pvt) Ltd., v. Workmen (1964) I L.L.J. 415.

33 Unichem Laboratories Ltd. v. Workmen (1972) I L.L.J. 567. See also Wanger & Co. v. Their Workmen (1963) II L.L.J. 403.

34 Sangam Press Ltd. v. The Workmen, A.I.R. 1975 S.C. 2035.

35 T.M. Abdul Rahim & Co. v. N.A.D.B. Workers Union (1958), II. L.L.J. 736.

(v) Usual profits made or losses incurred by the industry as a result of adventitious circumstances should not be allowed to play a major role in the construction of wage structure. Similarly, a mere possibility of acquiring financial stability in future, resulting in profits, was not considered a good reason for requiring the industry to bear the additional burden out of capital, i.e. by encroaching upon the capital.[36]

(vi) Increasing of wages only on ad hoc basis while the larger issue of deciding the wage structure was pending was not considered to be correct.[37]

(vii) Attempts should be made to reconcile the natural and just claims of employees for a fair and higher wage and the legitimate desire of employer to make a reasonable profit i.e. allowances should be made for a reasonable return on capital.[38]

(viii) The fact that directors of a particular small company are also the directors of a bigger and prosperous concern is not relevant and material in considering the financial position of the former.[39] But large emoluments

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36 Delhi Cloth Mills Chemical Works v. Its Workmen (1962) I L.L.J. 388; see also William Sons (India) Pvt Ltd. v. Its Workmen (1962) I L.L.J. 302.

37 Airlines Hotel (Pvt) Ltd. v. Workmen, A.I.R. 1962 S.C. 676.

38 n. 1.

39 Filmistan (Pvt) Ltd. v. Its Workmen (1966) I L.L.J. 744.

paid to the directors is an indication of satisfactory financial position.[40]

(ix) The increments of wages or scale of remuneration could only be fixed having due regard to the capacity.[41]

The Supreme Court, however, warned[42] that the industrial adjudication should not lean too heavily on 'single-purpose' statements or adopt any of the tests evolved from such statements, whilst it is attempting the task of deciding the financial capacity in the context of the wage problem. It also suggested for a detailed examination of the position and emphasized that the decision should be based on a broad view which emerges from a consideration of all the relevant factors and giving adequate weightage to the interests of the consumers.[43] It also laid down by implication that the norms discussed above must be followed when it observed that an award fixing increased rates and scales of wages without considering the employers financial position is bad in law.[44]

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40 Williamsons (India) Pvt Ltd. v. Its Workmen (1962) I L.L.J. 302.

41 Britania Building & Iron Co. Ltd. v. (1954) I L.L.J. 661.

42 Ahmedabad Millowners Association v. Textile Labour Association (1966) I L.L.J. 1.

43 Menon K.S.V., Foundations of Wage Policy (Bombay, 1969), p. 25.

44 Novex Drycleaners v. Its Workmen (1962) L.L.J. 271.

(11) Industry-cum-Region Formula : The Issue of Comparable Concerns

Once the capacity of the industry to pay is established, the reduction of this capacity to monetary terms has to be done through what is popularly known as industry-cum-region formula, taking a fair cross-section of the industry as a guide. Relying on the capacity of any single unit in the industry or the capacity of all industries in the country as a whole in fixing the wage structure would lead us to wrong measures.[45] The Supreme Court made it clear that an award revising the wage structure in any establishment in violation of the formula is invalid.[46]

The question that crops up then is whether to emphasise on the industry or the region part of the formula? To resolve this, the Supreme Court laid the broad guidelines as under:

(a) Where there are a large number of industrial concerns of the same kind in the same region, it would be proper to put greater emphasis on the industry part of the industry-cum-region principle in the matter of fixing wages.[47]

(b) If the number of industrial concerns of the

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45 n. 16

46 Burn & Co. v. Their Workmen, A.I.R. 1959 S.C. 529.

47 Greaves Cotton & Co. Ltd v. Their Workmen (1964) I L.L.J. 342.

same kind is small in a particular region, it is the regional part that assumes importance.[48]

The emphasis on the industry-part of the formula reflects an attempt on the part of the Supreme Court to put all concerns in that particular industry on more or less the same footing in the matter of competition in the market. The court considered it a desirable duty of industrial adjudication to have as much uniformity as possible in the wage scales of different concerns of the same industry working in the same region despite different financial capacities of the concerns.[49]

The Supreme Court felt that the above classification holds good for the blue collar work-force in the case of whom, the industry-cum-region principle must strictly be applied and comparisons must be made only with concerns in the same industry. In the case of clerical and subordinate staff, the stress is on "region" and not so much on "industry" because the nature of their work is more or less the same, whatever be the industry in which they are employed. In their case the comparison with concerns in other industries or other lines of business situated in the same region is permitted.[50]

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48 Ibid.

49 Workmen of Hindustan Motors v. Hindustan Motors Ltd., (1962) II L.L.J. 352.

50 French Motor Car Co. Ltd v. Their Workmen, A.I.R. 1966 S.C. 1327; Workmen, Orient Paper Mills v. Orient Paper Mills, A.I.R. 1969 S.C. 976; Lipton Ltd. v. Their Employees, A.I.R. 1959 S.C. 676.

The Supreme Court, through some of the judicial decisions added a rider to the guideline (a) above. It laid down that even in the same line of business i.e. where industry part of the formula is to be given importance, it would not be proper to compare the non-comparable concerns. This in turn means, that neither a disproportionately bigger concern fit for comparison with smaller a concern nor is a small struggling concern with a flourishing one.[51] It even endorsed the stand taken by a tribunal which refused to accept for comparison a small concern located in a small town with a company in the capital city of a state.[52]

Now the question that arises is whether comparability means exactly equal in all respects? How should a tribunal decide on this question? The Supreme Court in some leading cases laid down:

A Tribunal should see that the disparity is not so large as to make the comparison unreal. It would not be safe to compare a comparatively small concern with a large concern in the same line of business and impose a wage structure prevailing in the large concern as a rule of thumb without considering the standing, the extent of labour force, the extent of business and the extent of profits made

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51 French Motor Car Co. Ltd v. Their Workmen, A.I.R. 1966 S.C. 1327.

52 Patna Electricity Supply Co. Ltd. v. Their Workmen (1964) II L.L.J. 148.

by the two concerns over a number of years;[53] the presence or absence of reserves; the dividends declared by them and their prospects in future;[54] number of customers; comparability of wages being paid to workers; the techniques of production i.e. capital or labour intensive; and the productive capacity.[55] Attempts to level up wages without making sufficient allowances for differences leads to hardship[56] and hence the comparisons must be made cautiously.

The Supreme Court also laid another norm for the tribunals when it observed that the comparable character of other concern under consideration has to be determined in the light of material factors bearing upon their similarity with the concern. These factors have to be established by relevant documentary evidence, and the question cannot be decided merely upon the opinions expressed by a witness produced by an employer.[57] The Supreme Court held that the burden to prove his claim that he paid wages at a higher rate than others (by producing relevant material) lay on

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53 Marina Hotel v. Their Workmen, A.I.R. 2962 S.C. 1258; see also n. 40 and n. 51.

54 n. 40.

55 n. 44.

56 Kamani Metals & Alloys Ltd. v. Their Workmen, A.I.R. 1967 S.C. 1175.

57 Workmen of Balmer Lawrie & Co. Ltd. v. Balmer Lawrie & Col. Ltd.(1964) I L.L.J. 380.

the employer.[58] If the employer wanted to plead his inability to pay at the rates fixed by tribunal, the justification of the plea of want of capacity would depend upon the evidence of the employers financial position over a period of years which alone would indicate whether or not, it is a purely temporary or fortuitous situation.[59]

By spelling out in detail the tests of capacity of industry to pay; the application of industry-cum-region formula and the emphasis on comparability of comparable concerns, the Supreme Court, it may be said, worked in a direction of laying sound foundations for determining fair wages. In the absence of these, each of the wage fixing authorities may have resorted to evolving their own norms and laying down of different basis for the determination of fair wages. This, it may be submitted, would have resulted in creating confusions, different standards and industrial tension - a logical outcome of applying different standards to workers engaged in different industries.

(iii) Basis for Upward Revision of Wages

The court also laid down norms on the issue of revision of wages. The thrust of the various judgements is towards favouring the interests of the working class.

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58 Dalmia Dadri Cement Ltd. v. Avtar Narain Gujral (1962) I L.L.J. 261.

59 Kirlampudi Sugar Mills v. Industrial Tribunal (1971) II L.L.J. 491.

The important doctrines of res judicata was rejected by the Supreme Court in Workmen of Balmer Lawrie and Co. Ltd. v. Balmer Lawrie & Co. Ltd.[60] The court laid down in this case that the technical considerations of res judicata should not be allowed to hamper the discretion of the wage-fixing authorities and hence the workmen's demands cannot be rejected only on the ground that enough time has not passed after the last award. This decision permitted the workmen to raise their demand for revision of wages as soon as they felt the pinch of rising prices and other circumstances.

The court also laid down that if the last adjudication effected only minor modifications in the wage structure originally fixed, thus leaving it mainly as it was, a case for upward revision exists in view of the changed circumstances.[61]

A rise in the cost of living was yet another factor which according to the Supreme Court permitted a revision in the wage-structure. It laid down that revision of wages must be done if wage scales have remained static and unaltered over a long period of time during which cost of living has considerably increased[62] even though a previous tribunal refused

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60 n. 57.

61 Patna Electricity Supply Co. Ltd., v. Their Workmen (1964) II L.L.J. 148.

62 Cinema Theatres v. Their Workmen (1964) II L.L.J. 928. See also n. 15, and n. 51.

to do so on a valid ground[63] and even if the company is paying the highest wages in the area.[64] In this context, the Supreme Court also noted that -

> the existence of a scheme of dearness allowance linked to the rise in the cost of living is no answer to the workmen's demand for revision of wage structure on the ground of increase in the cost of living since the last award unless the tribunal reaches a definite conclusion that the prevailing scheme of dearness allowances gives complete neutralization against the rise. 65

The cases discussed above indicate that the Supreme Court by discarding the doctrine of res judicata and by laying emphasis on the merits of each case clearly brought forth the importance of changed economic scene and the futility of dogmatic approach in the context of the issue of revision of the wages. The shedding off, of the technical-legal niceties in the context of changed circumstances, is an indicator of the pragmatic and progressive choice which the court made instead of a status-quoist attitude. It is, it may be submitted, an attitude which is in tune with both the contemporary theories of judicial process and the expected role of the courts in the context of developing democratic societies committed to rule of law.

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63 Indian Oxygen Ltd. v. Its Workmen (1963) II L.L.J. 83.

64 n. 51.

65 n. 57.

(iv) Standardization of Wages

A heterogeneous growth of wage in industries has been one of the heritage of the past. This heterogeneity prevailed for the same skill as between different industries as also for similar skills within an industry itself.[66] This aspect was considered by various committees[67] and homogeneity in wages was defined as an objective of the First Five-Year Plan.[68]

The court gave its overwhelming support in the implementation and achievement of standardized wage structure while keeping the interest of labour above board, wherever possible.

The issues was for the first time raised before Bombay High Court in Ahmedabad Mill Mazdoor Mandal v. Ahmedabad Spinning and Manufacturing Co. Ltd.[69] In this

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66 Report of the National Commission on Labour, Ministry of Labour, Employment and Rehabilitation, Government of India (New Delhi, 1969), p. 198.

67 Bombay Industrial Dispute Committee 1922; Textile Tariff Board 1927; Bombay Strike Enquiry Committee (1928-29) Report; Whitley Commission Bombay Textile Labour Enquiry Committee 1940. Rege Committee Report 1946; Committee on Fair Wages 1949; Source: Report of the National Commission on Labour, Government of India,(New Delhi, 1969), paras 14.38, 14.39 pp. 198-9.

68 Ibid., para 14.40 p. 199. "The First Plan recommended a clear objective of accelerating the process of standardization of wage rate and extending this process to as large a field as possible."

69 (1955) I L.L.J. 555.

case the company sought to reduce the 'going' wages (prevailing wages) in the light of an award of the tribunal set up to standardize the rates of wages of various categories of textile workers. It was challenged by the employees on the ground that there was no legal provision which contemplates that employer cannot pay wages over and above the wages fixed by the award; his only obligation is not to pay wages less than those fixed. The mill contended that the award had standardized the wages, non-payment of which would be an offence under the Bombay Industrial Relations Act, 1946. The Court rejecting the plea of the workers held that in the case of minimum wage, the obligation upon the employer is not to pay less than the minimum fixed, whereas in the case of standardization of wages the obligation upon the employer is two fold: He can neither pay less nor pay more than the wage fixed because the intention in the case of standardization is to stabilize the wages on a definite basis. Even though, in the process of standardization, some workers may get wages lower than what they were previously getting the loss to them would not be considerable and whatever the loss be, it would be mitigated by the larger interest of labour which such standardization serves. According to the court, elimination of divergences in the standards of payment of workers leads to the removal of a fruitful cause of recurrent wage disputes, besides promoting a feeling of solidarity among workers and greater national output.

This view was approved by the Supreme Court in Birla Mills case[70] where it clearly spelled out that to achieve standardization the wages should be raised to the standardized level where they are low and reduced where they are high.

These cases laid down the principle, that, it would not be correct to say, that under no circumstances (except when the structure falls in the category of subsistence or minimum) can the wage structure be revised to the prejudice of the workmen.

The Supreme Court, however, did not rest at this stage. It went further[71] by laying down some practical considerations for the tribunal. It observed that the tribunal should keep in mind that substantial reduction in the wage structure is likely to lead to discontent among workmen and may result in disharmony between the employer and his employees; and that would never be for the benefit of the industry as a whole. On the other hand, while assessing the value or importance of possible discontent amongst workmen resulting from the reduction of wages, the industry is burdened with a wage structure beyond its financial capacity, its very existence may be in jeopardy and that would ultimately lead to unemployment.

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70 Birla Cotton & Spinning and Weaving Mills v. Workmen (1962) I L.L.J. 642.

71 n. 1.

It may, thus be observed, that the Supreme Court moderated ~~diluted~~ the very strong and clear rule laid earlier according to which the wage structure could be revised to the prejudice of the worker in the process of standardization by introducing the quite obvious element of discontent amongst workmen as a result of such a reduction.

We may conclude that by introducing the element of discontent amongst workmen (which may result from a reduction in wages in the process of standardization) the Supreme Court, (upholding the desirability of standardization vested the tribunals with a discretion to look into each case on its merits) thus preventing the mechanical applicability of the rule. The new norm which emerges from this is, that the on going wages should not normally be reduced unless a clear case on merit can be made out to the satisfaction of the tribunal. This again is an interpretation which has pro-labour orientation.

Summing Up

The content analysis of the cases discussed under this chapter reveals that the perception of the role of the court by those who manned it, was much wider than the role of dispute settlement attributed to it by the classical thought. The court was not seen as 'just' a part of the whole societal machine mechanically fulfilling the task attributed to it in

the traditional sense but as an institution which could perform creative policy making functions.

This is well reflected from the purpose that the court imputes to itself, namely, that of not confining to administration of justice in accordance with the given law but also creating new norms and evolving new patterns of contractual relations between the employers and the employees--the two social classes in the social structure of our society. In doing so the guiding light was to come from the arguments based upon the concept of social justice as well as the ideals of egalitarianism enshrined in the Constitution of India. The operative mechanism to achieve it was to be found in the norm of 'liberal' and 'beneficient' interpretation of social legislations, which the court defined for its own functioning. This could be viewed as reflecting a commitment on the part of the court to achieve an egalitarian society as described in the constitution via the liberal interpretation of a particular enactment of substantive law.

Our view is further substantiated by the data which reveals that the Supreme Court added new components to the already existing components (as defined by executive) of minimum wage, thus giving 'more' to the working class as compared to what they were initially getting. This in turn also reflects upon the commitment of court to bridge the gap

between glaring economic inequalities that exist in social structure.

The assumption by the court of the role of spelling out norms for the wage fixing authorities in the fixation of fair wages similarly point out to its concern for evolving a sound wage policy. This is of particular significance from our point of view because the Supreme Court did all this in the absence of both a substantive law on fair wages and in the absence of a policy direction from the executive to various wage fixing authorities on the question of determining fair wages. This attitude on the part of court suggests that the classical theory of distribution of power amongst the various constituents of state system stands modified because the policy formulation functions according to that view should have been done by legislature and not by courts. This suggests an important change in the expected role of the institutional structures of the judiciary, as seen in its classical sense.

As a point of departure, it would be of particular interest to note here as to how such a wide role for itself was perceived and assumed by the court? The answer to this has not to be found in the abstract jurisprudential and sociological theories concerning the functioning of judiciary but from the entire socio-political milieu in which courts function. Some of the variables which point to the socio-political milieu are:

(a) Existence of pre-defined constitutional goals and the value enshrined therein which provide the guideline for the development of our society;

(b) Existence of a basic substantive law which provides a sound base not only for the achievement of a particular objective but also facilitates the court to improvise upon the substantive law through the mechanism of interpretation;

(c) Absence of restraints of public opinion which was never against the idea of fair return to the working class;

(d) Policy statement of Mr. Nehru already referred to in chapter III reflecting Government's clear-cut commitment of achieving fair wage for workers through the mechanism of law.

The perception by the court of a policy making role because of the above stated and a host of other variables lead us to a very interesting sociological insight: —

— That the court exists as a 'partially independent' sub-system of the state structure meaning thereby that procedural processes of the court are insulated from external influences making it procedurally independent and at the same time not making it unresponsive to social interests and to the articulated demands of various sections of the society. Its response to such demands is patterned according to its

internal dynamics which in turn reflects besides many other things the dominant concern of the practitioner group i.e. the judges and the lawyers.

We may thus say that the judiciary as a sub-system of the overall legal system has a differentiated structural home which prevents it from either becoming subservient to the ruling elite where it starts disregarding the interests of other organized groups and collectivities or from becoming completely autonomous and thus insulated from the influences of social environment.

In the light of the data on the question of wages to the working class engaged in the industry, we may extend the argument further to conclude that in the context of our society which is wedded to a process of evolutionary change through the mechanism of law and which adheres to the rule of law in its very functioning and existence, the judiciary is not a superfluous but a really meaningful institution. We say so because what the legislature could not do to promote the process of social change through the specific case of wages for industrial workers because of its almost total reliance on a variety of interest groups for its legitimate existence and also due to its desire to evolve a social consensus was done by the Supreme Court because of its comparative autonomy and also from the fact that it seeks legitimacy for its existence in a greater proportion from the constitutional

goals i.e. the societal ideals and not from vested interest groups and collectivities.

But it does not suggest that the Supreme Court performed a role much different in content from the role performed by the legislature vis-a-vis the social system. The court very much like the legislature, performed a system maintaining role though the levels at which it was done differed. Whereas the legislature attempted to maintain the social system by trying to work out a social consensus and compromise satisfying varied interest groups which accord legitimacy to it; the court performed a similar role by trying to translate and give meaning to the abstract ideals enshrined in the constitution thereby preventing the erosion of the faith of people in such ideals.

CHAPTER VI

CONCLUSIONS AND PROJECTIONS

Conclusions

The present study of Supreme Court's attitude to the issue of industrial wages, in particular, its response to the states' enactment on minimum wage, corresponds to the 'instrumentalism' approach - one of the four approaches in the sociology of law. In that, it views legal system as a potentially dynamic system capable of meaningfully aiding to the process of planned social change. In contrast to the 'antiformalism' and 'pluralism' - another two approaches in the sociology of law, our work gives affirmation to the formal legal system and views it as a significant social reality rather than derogating and downgrading it. Our study also asserts value-choice on the part of the court in its functioning without which it would not be possible for the court to go beyond the stipulations of the legislature on the issue of industrial wages.

The attitude and response of the court can be understood in the broader context of certain set of constitutional values as articulated through various institutions of the society.

In the sociological sense, the very incorporation of pro-labour orientations in the 'directive principles of state

policy of our constitution can be understood as reflections of global values of humanism and the notion of welfare state (anti-laissez faire) both of which prospered in the high-tide of industrial revolution. Once these values become incorporated within corpus of Indian constitution and came to be regarded as high value points, it becomes interesting to analyse how these find expression through various institutional settings such as the judiciary.

We selected for our present study the particular issue of state enactment on minimum wages as responded to by the judiciary. In keeping with the said constitutional values Government of India enacted a legislation on minimum wages making it obligatory on the part of industry to disburse remuneration to its work-force accepting certain minimum wage level as absolutely necessary and beyond challenge. For our analytical purposes, we regarded this enactment as an operational varient of the said value orientations.

Using extensive case material from Supreme Court judgements, we tried to read the nature of courts' response to this enactment. We discover, in this response pattern three distinguishable, yet related components as follows:

(i) First of all, the case data revealed that Supreme Court's attitude was supportive of states' attitude. In other words, it not only found nothing wrong with the

legislation but also found it fully in keeping with the spirit of social justice and industrial peace which it saw embedded in the very fabric of constitution.

(ii) Secondly, the Supreme Court's attitude is 'augumentative' of the basic provisions of the law, which means, that Supreme Court while issuing judgements on various wage cases even advanced and broadened the substantive framework of the law. It provided some additional components which should go into formulation and determination of minimum wage.

(iii) Thirdly, Supreme Court did not confine its judgements only to the issue of minimum wage but also suggested that it should be transcended so as to introduce the concept of living wage and fair wage. For this argument the Supreme Court, once again drew its strength from the values of humanism and social justice as enshrined in the Constitution of India. This behaviour on the part of the Supreme Court, may therefore, be said to be anticipatory in nature. In that, it anticipates set of legislative measures which lied ahead of state once minimum wages to the work force have been provided.

In a nutshell we can say that by adopting a policy-oriented approach, the Supreme Court discharged not only the legitimacy according function to the issue of state intervention in the sphere of employer-employee

relationship but also further advanced the logic of the enactment on minimum wages by giving it a broader connotation and also by charting out the future course of action along the same lines. In this, as seen earlier in chapter IV, it also caused an alteration in the institutional structure of industrial relations and the process of collective bargaining by indicating the availability of state appointed wage boards etc. to settle disputes pertaining to wages. The interposing by the court in the process of collective bargaining prevented the development of this institution according to its own dynamics and in turn helped this institution to become an integral part of the entire effort aimed towards bringing social change through an evolutionary process.

Further, in chapter five, we have seen that the role of the court was perceived by the judges in a much wider sense than the role of dispute-settlement attributed to it by the classical theory of distribution of powers between the legislature, the executive and the judiciary. It was not seen as 'just' a part of the whole societal machine mechanically fulfilling the task attributed to it in the traditional sense but as an institution which could perform creative policy-making functions. The assumption of this role, we trace, to the existence of the court as a partially independent sub-system of the state structure

and its having a differentiated structural home in the social system which prevents it from either becoming subservient to the ruling elite or from becoming completely autonomous and insulated from the influences of social environment. From this, we may infer that the classical theory of distribution of power is not adhered to by the Supreme Court since it seems to aid and assist both legislature and executive by advancing logical projections of the enactment. This means that state structure as understood in the traditional sense also stands altered in some measure and the functions of one constituent of the state system overlap that of another.

Our study (chapter IV) also points out the existence of value-congruance between the legislature and the judiciary on the issue of industrial wage. The apparently 'progressive' attitude of the court vis-a-vis the legislature has been explained in chapter V. We have seen, that in a state structure like ours it is the legislature alone which can be the initiator of social change through the mechanism of law even though its capacity to do is moderated because of its desire to legitimize its very existence for which it adopts a policy of compromise and social consensus. The legitimacy of the court on the other hand largely depends upon how effectively it gives meaning and content to the abstract societal goals incorporated in the Constitution. Its relative independence

and autonomy not only helps it innovate upon the substantive law which is just a technique of bringing about social change but also facilitates it to integrate all efforts aimed towards the same end.

Our study clearly brings out that both legislature and judiciary essentially perform system-maintaining functions, though the levels at which they do so differ. Both these i.e. the legislature and the judiciary are, therefore, not only functional for each other but also for the social system as such.

Projections

It has often been pointed out by various governments trying to engineer fast social change, especially in the developing countries that judiciary is coming in the way of some radical socio-economic measures sought to be implemented by them. At least in the context of the problem under study here we find no such conservatism on the part of judiciary. On the contrary, its attitude is one or two steps ahead of the legislature towards bringing a progressive society. We, however, agree that the court can only bring about marginal changes in the social structure meaning thereby that it has no potentialities of either altering the class structure or the power structure.

Our work lends enough support to the assertion that law can be a very potent source of social change. Both the law making body and the law judging body perform their specific creative functions vis-a-vis the formal perview of law but the same facts also lead to the conclusion that mere enactment of the law is only a poor guarantee for any healthy trend of change to come in. The judiciary must, of necessity, have a substantive degree of autonomy so that it can not only legitimize the social change envisaged under a formally codified law but also enhance and extend it along its logical directions.

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