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CONSTITUTIONAL PERSPECTIVES ON LABOUR WAGES IN INDIA

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ABSTRACT

In India, till now, there is no uniform and comprehensive wage policy for all sectors of the economy. Wages in the organized sector are determined through negotiations and settlements between employer and employees. However, in unorganized sector, where labour is vulnerable to exploitation, due to illiteracy and having no effective bargaining power, minimum rates of wages are fixed or revised both by Central and State Governments in the Scheduled Employments falling under their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Payment of Wages Act, 1936 was enacted to regulate payment of wages of employees, employed in Industry and to ensure a speedy and effective remedy to them against illegal deductions and or unjustified delay caused in paying the wages on seventh day of the month in case of industries employing less than one thousand employees.

KEYWORDS : Wages- Equality, discrimination, Protection, Personal Liberty,

INTRODUCTION

Indian Constitution has accepted the concept of a social welfare State, i.e. a State which renders social services to the people and promotes their general welfare. Thus, from various provisions contained in the Constitution, it can be easily understood that the Indian Constitution gives a strong base for social security and fair wages. This is reflected in the Preamble, Fundamental Rights and Directive Principles of State Policy.

Fundamental Rights:

Fundamental Rights are needed to protect the rights of the people against encroachment of the power delegated to the Government by them (the people). There are limitations upon all the powers of the Government including the legislative powers and they are essential for the preservation of public and private rights.

In landmark judgment, Bhagwati, J, speaking about the importance of the Fundamental Rights, observed "Fundamental Rights represent the basic values cherished by the people of this country since the ancient times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent"¹.

1. a) Article 14: Equality before the Law:

This Article embodies the idea of equality expressed in the Preamble. It declares that, 'the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India'. The concept of 'Equality before law' means that among equals the law should be equal and should be equally administered, that the like should be treated a like. For example, the right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be the same for all citizens of full age and understanding without distinction of race, religion, wealth, social status, or political influence.

The Supreme Court in D.S. Nakarra², ruled that "the fundamental principle is that Article 14 prohibits class legislations but permits reasonable classification for the purposes of legislation which must satisfy the twin tests of classification, mentioned below;

1. a) It should be based on an intelligible (reasonable) differentia which distinguishes person or things that are grouped together for those that are left out of the gr

b) That the differentia must have a rational nexus to the object sought to be achieved by the statute in question.

1. b) Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

Article 15(1) specifically bars the State from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth or any of them. However, under Article 15 (3), the State is not prevented from making any special provision for the women and children.

The object of Article 15 (3) is to strengthen and improve the status of women. Art 15(3) thus, relieves the State from the bondage of Article 15 (1) and enables it to make special provision to accord socioeconomic equality to women. Further, the scope of Article 15 (3) is wide enough to cover the entire range of State activity including that of employment.

The most significant pronouncement of Article 15 (3) is the Supreme Court case in P.B Vijay Kumar³. In this case the Supreme Court ruled that under Article 15 (3), the State may fix a quota for the appointment of women in the Government services. Also, a rule saying that all other things being equal, the preference would be given to women to the extent of 30% of the posts was held valid with reference to Article 15 (3). The Court has also emphasized that an important limb of the concept of gender equality is creating job opportunities for women. Making special provisions for women in respect of the employment or posts under the State is an integral part of Article 15 (3). To say that under Article 15 (3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15 (3). This power conferred by Art 15(3) is not whittled down in any manner by Article 16.

1. c) Article 19: Protection of certain Rights regarding Freedom of Speech, etc:

There is a close relationship between the right to carry on trade and wages payable to the employees in a trade or industry. Too high wages may affect the economic viability of an industry, but too low wages may amount to exploitation of human labour. Therefore, a balance has to be drawn between the two conflicting values. The Supreme Court has held that the technique of appointing a wage board consisting equally of the representatives of the employers and

workmen with a few neutral members and a neutral chairman for fixing wages in an industry according to factors laid down and according to natural justice, does not amount to an unreasonable restriction on trade and commerce⁴.

Gratuity being a reward for good, efficient and faithful service for a considerable period, there could be no justification for awarding it when an employee resigns only after three years of service except under exceptional circumstances. Accordingly, a provision of law providing for gratuity in such a case amounts to an unreasonable restriction under Article 19 (6) on the employer's right to carry on business and would be liable to be struck down as unconstitutional⁵.

However, the obligation of the employer to pay gratuity to the employee on his resignation or retirement after a continuous service of five years has been held to be a reasonable restriction in the public interest on the employers' right to carry on trade. The court has justified it as a welfare measure in the interest of the general public to secure social and economic justice to workmen to assist them in their old age and to ensure them a decent standard of life on their retirement⁶.

The provisions made for labour welfare providing for annual paid leave or one month's notice for the dismissal have been held to be reasonable⁷. Similarly, in *D.M. Aney*⁸, a statutory obligation to pay the statutory minimum bonus by the employers to the workmen even when the employer sustained loss, has been held to be reasonable and in the public interest, as this is in the implementation of the Directive Principles State Policy in Arts. 39 and 43 of the Constitution. What is sanctioned by the Directive Principles cannot be regarded as unreasonable or contrary to the public interest in the context of Article 19.

1. d) Article 21: Protection of Life and Personal Liberty:

Article 21 of the Indian Constitution lays down that, 'no person shall be deprived of his life or personal liberty except according to the procedure established by law'. A very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post *Maneka Gandhi*¹⁰. Since *Maneka Gandhi*, Article 21 has proved to be multi-dimensional. This extension has been made possible by giving an extended meaning to the word "Life" and "Liberty" in Article 21. These two words are not to be read narrowly. They are organic terms which are to be construed meaningfully.

The right to life enshrined in Article 21 has been liberally interpreted to mean something more than mere existence or animal existence. It therefore, includes all those aspects of life which go to make a man's life meaningful, and worth living.

1. Right to Livelihood:

By defining the word "Life" in Art 21 in a broad and expansive manner, the Supreme Court held that "Right to Life" guaranteed by Article 21 includes the "Right to Livelihood"¹¹. The Court has now implied the 'Right to livelihood' out of the 'Right to life' in Article 21. Further, the Court has argued in *Olga Tellis*¹², a case which was brought by pavement dwellers to resist eviction from their habitat by the Bombay Municipal Corporation that, the Right to livelihood is born out of the Right to life, as no person can live without the means of living, that is, the means of livelihood.

Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation of life would not be in accordance with the procedure established by law, if the Right to

livelihood is not regarded as a part of the Right to life.

In *Delhi Development Horticultural Employees' Union v. Delhi Administration*¹³, the Supreme Court held that 'there is no doubt that broadly interpreted and as a necessary logical corollary, the Right to life would include the Right to livelihood and therefore, Right to work'. But this is in the context of Article 21 which seeks to protect persons against deprivation of their life except according to the procedure established by law. This does not obligate the State to provide work or livelihood to the people. There is no such positive obligation on the State. This matter falls under the Directive Principle in Article 41¹⁴.

2. Health and labour:

Occupational accidents and diseases remain the most appalling human tragedy of the modern industry. Health hazards by the workers in the Asbestos Factories were brought to the attention of the Supreme Court in *CERC v. Union of India*¹⁵. After taking note of the cases¹⁶ in which it has been held that the right in Article 21 includes the 'Right to live with human dignity', the Supreme Court held that the 'Right to Health, Medical aid to protect the health and vigor of a worker while in service or post retirement' is a Fundamental Right under Article 21 read with the Directive Principles in Articles 39(1), 41, 43, 48A, and all related Articles and Fundamental Human Rights to make the life of the workman meaningful and purposeful with dignity of the person¹⁷.

In *Parmananda Katara*¹⁸, the Supreme Court held that, 'it is the professional obligation of all doctors, whether Government or private doctors, to extend medical aid to the injured immediately to preserve the life without waiting for legal formalities to be complied with by the police under Criminal Procedure Code'. The court further observed that Article 21 casts an obligation to the State to preserve life. The patient whether a criminal or innocent, will be liable, later on, for punishment.

III. Economic Rights:

By reading Article 21 along with the Preamble to the Constitution and several Directive Principles, the Supreme Court has ruled that Social justice, Right to economic justice, Right to economic equality, Economic empowerment of the weaker sections of the society constitute Fundamental rights. The aim of social justice is to attain substantial degree of social, economic and political equality. Social justice and equality are complementary to each other¹⁹.

1. Right to live with Human Dignity:

In *Maneka Gandhi's* case, the Court held that 'the Right to live is not merely confined to physical existence, but it includes within its ambit the Right to Live with Human dignity'. Similarly, in *People's Union for Democratic Rights*²⁰, the Court held that nonpayment of minimum wages to the workers employed in various Asian projects in Delhi was a denial to them of their Right to live with Human dignity and violative of Article 21 of the Indian Constitution.

In *Chandra Raja Kumar*²¹, it was also held that the Right to live includes the Right to live with human dignity or decency and therefore, holding of a beauty contest is repugnant to dignity of women and offends Article 21 of the Constitution. The Government is empowered to prohibit the contest as objectionable performance if it is grossly indecent or obscene²².

1. e) Article 23: Prohibition of trafficking in Forced Labour:

According to Article 23 (1), the traffic in human beings, beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law. Article 23(1) proscribes three unsocial practices, namely;

802: (1984) 3 SCC 392. || Supra note 28, [Also known as the Asiad Case].

23. i) Beggar: The term beggar means compulsory work without any payment. Beggar labour or service which a person is forced to do without receiving any remuneration for it²³.
24. ii) Traffic in human beings, and iii) Forced labour : The words 'other similar forms of forced labour' under Article 23 (1) are to be interpreted 'ejusdem generis'. The Supreme Court has given an expansive significance to the term 'Forced labour' used in Article 23(1) in a series of cases beginning with the Asiad case in 1982. The court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract.

Article 23 strikes at forced labour in whatever form it may manifest itself because it is violative of human dignity and is contrary to human values. Not only this, even payment of wages less than the minimum wages would be regarded as forced labour.

CONCLUSION

Opinion that ordinarily no one would willingly supply his labour for less than the minimum wages. He will do so only under force of some compulsion. Moreover, whenever any labour or service is taken by the State from any person, whether he is affected by drought or scarcity conditions or not, the State must pay, atleast, minimum wages to him.

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2. **D.S. Nakarra v.** Union of India, A.I.R 1983 SC Government of Andhra Pradesh v. P.B Vijay Kumar, A.I.R 1995 SC 1648. |
3. **Express Newspapers v.** Union of India, A.I.R 1958 SC 578. | Art. 19 (1) (g) and 19(6) demand that in fixing Living wage or Fair Wage, industry's 'capacity to pay' is an essential ingredient. |
4. **Bakshish Singh v.** Darshan Engineering Works, A.I.R 1994 SC 251. |
5. **M.G Beedi Works v.** Union of India, A.I.R 1974 SC 1832. |
6. **Jalan trading Co v.** D.M. Aney, A.I.R 1979 SC 233. | Art. 43 provides for Living wage, etc, for workers | **Maneka Gandhi v.** Union of India, A.I.R 1978 SC 597. |
7. **Board of Trustees of the Port of Bombay v.** Dilipkumar R. Nandakarni, A.I.R 1983 SC 109. |
8. **Olga Tellis v.** Bombay Municipal Corp, A.I.R 1986 SC 180 [See also, Dr. Hariraj L. Chulani v. Bar Council of Maharashtra & Goa, A.I.R 1996 SC 1706]. |
9. **A.I.R 1992 SC 789.** | Right to Work has not yet been recognized as a Fundamental right in India. | A.I.R 1995 SC 922. |
10. **Charles Sobraj v.** Superintendent, Central Jail, Tihar, A.I.R 1978 SC 1514; Also, Sunil Batra v. Delhi Administration, A.I.R 1978 SC |
11. **A.I.R 1995 SC 940.** | **Parmananda Katara v.** Union of India, A.I.R 1989 SC 2039; (1989) 4 SCC 248. |
12. **Air India Statutory Corp v.** United Labour Union, A.I.R 1997 SC 645. |
13. **People's Union for Democratic Rights v.** Union of India, A.I.R 1982 SC 1473; (1982) 3 SCC 235.
14. **Chandra Raja Kumar v.** Police Commissioner, Hyderabad, A.I.R 1998 AP 302. |
15. **See also,** Bandhua Mukti Morcha v. Union of India, A.I.R 1984 SC



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