CHAPTER-3
CLASSIFICATION OF WAGES

The term minimum wages has not been defined under the provision of the Minimum Wages Act, 1948 presumably because it would not be possible to lay down a uniform minimum wage for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one party country to another. The legislature also thought it inexpedient to apply the Act to all industries at a time. In order to understand the concept of minimum wage. It would be desirable to know the meaning as such. Wage is a remuneration to labour for the work done or the service rendered by it to the employer. Of all the problems that face the worker that of wage is the most vital and important to him.

The Fair Wages Committee, formulated the concept of living wages, fair wages and minimum wages. The Fair Wages Committee Report published by the Govt. of India in 1949 has been broadly approved by the

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Supreme Court in Express News Paper (p) Ltd v/s Union of India and standard Vacuum Refining Co. of India V/s Its Workmen living wage i.e. at the apex a political aim and in view of the level of national income a distant goal to be achieved in the course of years, at bottom is the minimum wages which must provide not merely for the bare sustenance of life but for the preservation of efficiency of worker. For this purpose, minimum wage must also provide for some measure of education, medical requirements and amenities. On the basis of decided cases the concept of minimum wages may be simplified. As a matter of fact, there are three concepts in this regard, i.e. living wage, fair wage and minimum wage. It would be desirable to discuss these concepts in some details in order to bring out the clear meaning of the concept of minimum wage.

(A) Living wages

The term ‘living wage has not been defined under the provision of the Minimum Wages Act. However, “an instance of statutory definition of living wage is provided in South Australian Act 1912 which states the living wage” means a sum sufficient for the normal and
reasonable needs of the average employee living in a locality where the worker under consideration is done or is to be done”. In the famous Harvester case, The Commonwealth Arbitration Court has visualized a living wage as a sum which is adequate to satisfy the normal needs of the average employee regarded as human being in a civilized community.

The living wage, according to the Committee on Fair Wage represented the higher level of wage and, naturally, it would include all amenities which a citizen living in modern civilized society is entitled to when the economy of the country is sufficiently advanced and the employer is able to meet the expending aspirations of his workers. As the traditional doctrine interprets it, living wages as is “a will” the wish which floats a little further ahead an arm’s length out of reach. It pursuit belongs to the same category as “sparing the circle”\(^2\).

In Hindustan Time Ltd. V/S Their workman\(^3\) K.C. Das Gupta J. wistfully observed: "While the industrial adjudication will be happy to fix a wage structure which

\(^2\) The fair wages committee’s reports 1949.  
\(^3\) AIR 1963 S.C. 1332
would give the workmen generally a living wage, economic consideration make that only a dream for future, that is why the industrial tribunals in this country generally confine their horizon to the target of fixing a fair wage”.

In a latter case viz, All India Reserve Bank Employee Association V/S Reserve Bank of India⁴. In the same strain, Hidayatullah J. remarked.

“Our political aim is living wage” though in actual practice living wage has been an ideal which has eluded our efforts like an ever receding horizon and will so remain for some time to came. Our general wage structure has at best reached the lower levels of fair wage though some employer are paying higher wage then the general average”.

Chief Justice Subha Rao, In Hindustan Antibiotic Ltd. V/S Their Workman⁵, has however struck an optimistic rote their prosperity in the country would help to improve the conditions of labour and “the standard of life of the labour can be progressively raised

⁴(1965) II LLJ 175 (190) S.C.
⁵(1967) I-LLJ 114 (120) (S.C.)
from the state of minimum wage. Passing through need
found wage fair to living wage”.

Directive Principles enshrined in the constitution
make it the duty of the state to strive and secure living
wage for the working class. This however cannot be
achieved at one stroke for, the interests of the industry
and its survival is an important as the betterment of the
standard of living of the working class. All the same
unless there is a continuous and progressive trend
towards securing better living conditions for labour
which would necessarily in its turn cell for a
determination of progressive higher minimum wage. It is
only likely that the gole may never be reached.

It has been again remarked by the Supreme Court
in Workmen Vs Reptakes Brett and Co. Ltd⁶. that a
living wage has been promised to the workers under the
constitution. A ‘socialists’ framework to enable working
people a decent standard of life, has further been
promised by the 42nd amendment. The workers are
hopefully looking forward to achieve the said ideal. The
promises are piling up but the day of fulfillment is

⁶ 1992 SCC (L & S) 271
nowhere is sight. Industrial wage looked as whole has not yet risen higher than the leave the minimum wage.

In short, the living wage is a political ideal to be achieved and it means and includes salary, pay or remuneration for the work done, which is quite essential for providing necessaries of life, such as food cloth and shelter including maintenance of health, education, frugal comforts and certain means of recreation which are quite essential for the person to lead his life in society as human being. The concept of living wage may vary from country to country, place to place because it depends upon the price level of necessaries of life and it is determined by the socio-economic conditions of a particular country. Living wage, are without which working people cannot live and perform their duties as a citizen. It may be recalled that as regards living wage the committee observed that this concept has influenced the fixation of wages in all economically advanced countries and was very old and well established one7.

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(B) **Fair Wage:** Fair wage is a mean between the living wage & the minimum wage. Express Newspaper Ltd. V/S Union of India\(^8\) Das Gupta J. defined 'fair wage' "which may roughly be said to approximate to the need based minimum, in the sense of a wage which is adequate to cover the normal needs of the average employee regarded is a human being in a civilized society.

Hindustan Times Ltd. V/S their workman\(^9\) in the words of Hidayatullah. J 'Fair wage' lies between the minimum wage which must be paid in any event and the living wage which is the goal.

In Express Newspaper (P) Ltd. V/S Union of India\(^10\) Bhagwati described fair wage as a mean between the living wage and minimum wage. Marshall would consider the rate of wage prevailing in an occupation as 'fair' if it is about on level with the average payment for tasks in other trades which are of equal difficulties and disagreeable ness which require equally rare natural abilities and an equally expensive training.

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\(^8\) AIR 1950 S.C. 578
\(^9\) LLJ 108, (JIL) S.C.
\(^10\) (1961) LLJ (339) (S.C.)
In All India Reserve Bank of Employees 'Association V/S R.B.I. Ltd.\textsuperscript{11}. The court said that the Fair wage is thus related to fair workload and the earning capacity. It is a step lower than the living wage.

The concept of fair wage therefore, involves a rate sufficiently high to enable the worker to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage coming capacity of the class of establishment concerned.

A fair wage is thus related to the earning capacity and workload. It must however be realized that fair wage is only living wage by which is meant a wage which is sufficient to provide not only, the essentials above mentioned but a fair measure of frugal comfort wish an ability to provide for old age and evil days. Thus while the lower limit of fair wage must ability be minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will not depend not only of the economic position of the industry

\textsuperscript{11} (1965) II LLJ 175 (190) S.C.
but also on its future prospects. Between these two limits, the actual wage will depend on a consideration of certain factors viz:

i) Productivity of labour

ii) The prevailing rate of wage

iii) The level of national income and its distribution

and

iv) The place of industry in the economy of the country

In actual calculation of the fair wage, the Committee on Fair Wage observed that it was not possible to assign any definite weight to these factors. The Committee also recognized that the concepts of Fair Wage by it could not be viewed in any single sense since they would from time to time depending on the economics and social development in the country.¹²

**Minimum wages:** The term minimum wage has been understood in two different senses the first being an industrial minimum wage and second one a statutory

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minimum wage. An industrial minimum wage is sustenance wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. On the other hand a statutory minimum wage is a minimum wage which must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education medical requirements and amenities.

There is also a distinction between above subsistence or minimum wage and a statutory minimum wage. The former is a wage which would sufficient to cover the bare physical need of a worker and his family, that is a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare M.W., it has no right to exist. The statutory minimum wage, however, is the minimum which is prescribed by the statute and it may be higher than the bare substance or m.w. providing for some measure of education, medical requirement and amenities above F.W. committee's report.
The passing of the Minimum Wage Act, 1948 is a landmark in the history of labour legislation in the country which recognizes that the wages cannot be left to be determined entirely by market forces. The whole philosophy underlying the enactment of Minimum Wage Act is to prevent exploitation of labour through the payment of unduly low wages. The statutory minimum is the minimum which is prescribed by the relevant provision of the Minimum Wage Act 1948. The main object of the Act is to prevent 'sweated' labour as well as exploitation unorganized labour. If proceed on the basis that it is the duty of the state that at least Minimum Wages are paid to the employees irrespective of the capacity of the industry or the unit to pay the same.

In Kanta Devi and others V/S State of Haryana and others\textsuperscript{13} and Electric Construction and Employment Co. Ltd Vs State of Haryana and others the S.C. held that even if an industry creates a different category of workers outside the recognized categories of workers in respect of whom minimum wages are fixed under the

\textsuperscript{13} 1994 Scc (L & S) 1128 II.
M.W. Act, such as the category of learness created in the present cases, it will not be permitted to pay less than the minimum for the lowest level employee in that industry namely in unskilled workman. The basic idea is to avoid exploitation by the management by creating different category outside the recognized categories of workers.

In Sandeep Kumar and others V/s State of U.P\(^1\) where five persons were working as junior engineers in a project place under the control of executive officer, city board Ghaziabad engaged in the work of slum clearance. The project financed by the state of UP and World Bank fund. They were working on daily rate basis and on an average received Rs. 1000 per month. No other benefits were given even they did not get any payment for the holiday. However, similarly qualified engineers when employed for similar work on regular basis are paid a minimum grade pay of Rs. 1400. The Supreme Court held that there is no justification to discriminate between the two categories and directed pay Rs. 1400 per month instead of Rs. 1000.

\(^1\) 1993 Scc (L & S) 290
In Mahatma Rhule Agricultural University, Vs Nasik Zilla Sheth Kamgar union and other. Supreme court held that the status of permanency cannot be granted when there are not posts. There can be no justification in the state government not making available the required funds. The state administration cannot shrink its responsibility of ensuring proper education in schools and college on the plea of lack of resources. It is for the authorities running the administration to find out wages and means of securing funds for the purpose. There universities are imparting education; it is necessary for them to maintain the agricultural field and to carry on experiments. To maintain agricultural fields, they required daily wagers. As the daily wagers were required the state Govt. cannot say that they would not pay the daily wagers what is due to them.

In Ahmad Nagar Zilla Sheth Mazdoor Union V/s Dinkar Rao Kalyan Rao Jagdale, (connected with the above mentioned case) it has been held by the supreme
court there continuance every year of seasonal work obviously during the period when work was available, does not constitute a permanent status unless there exists posts and regularization is done. Under these circumstances the tribunal and the high court are not right in holding, that the respondents are entitled to be absorbed on regular basis as regular employees. Therefore, their orders were set aside. However, the supreme court made it clear that the appellant shall take the services of all the workmen existing as on date as and when the work is available and during the period of seasonal operation. As and when the vacancies arise, regularization of the employees should be made in order of their seniority and till the employees are regularized, they are not to be retrenched.

I State of Haryana Vs Tilakraj and others\(^\text{17}\) – where daily wages filed petition in the high court claiming that they were entitled to regularization in view of their long period of service put in by them and also claimed same salary as paid to regular employees since the nature of work done by them was similar. The petition was

\(^{17}\) 2003 Sec (L & S) 828
allowed by the high court with the following observation:

"The petitioners would be entitled to the relief, but again not the regular pay scale which their regular counter parts are receiving. The petitioners would be entitled to the minimum of the pay scale with D.A. alone".

In appeal the Supreme Court observed that the principle of equal pay for equal work is not always easy to apply. There are intierant difficulties in comprising and evaluating the work done by different person indifferent or organizations, or even in the same organization. This is a concept, which requires for its applicability complete and whole sale identity between group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

A scale of pay is attached to definite post and in case of a daily wager he holds no posts. The respondent workers cannot be held to hold any post to claim even any comparison with the regular and permanent staff
any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on par with the other group viz-a-viz am alleged discrimination. The impugned judgements of the high court is clearly indefensible hence set aside. However, the appellant state has to ensure that the minimum wages are prescribed for such workers and are paid to them.

As a matter of fact, minimum wage are fixed to provide necessaries of life which include food, clothes, shelter, education and medical care the concept of 'necessaries' is depend upon the standard of living of persons concerned in a particular area or region. It is there fore left to the government to prescribe minimum wages keeping in view various factors as indicated above sec. 3,4,5 authorise the appropriate government to fix the minimum rate of wages. In other words if the wages fixed by contract are found to below, authority is conferred on the app government to increase them so as to bring them to the level of what the said government
regards as the M.W. in the particular scheduled employment in the particular area concerned.  

**Statutory Meaning of Minimum Wage:**  

Wages: The Minimum Wages Act, defines wages under Sec. 2 (h) which reads as under:

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

i) The value of,

a) Any house accommodation, supply of light, water, medical attendance, or

b) Any other amenity or any service excluded by general and special order of the App. Govt.

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ii) Any contribution paid by the employer to any pension fund or provident fund or order any scheme of social insurance.

iii) Any travelling allowance or the value of any travelling concession.

iv) Any some paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

v) The gratuity payable on discharge

The analysis of this Section Indicate that the following essentials requirements are necessary for wage:

1) Wages include all remuneration paid to an employee including house rent allowance.

2) Wage must be payable of being expressed in term of money,

3) Wage become due when there is a contract between employer and employee. However the contract may be expressed and implied.
4) The term and conditions of contract must be fulfilled, or he must have done work assigned to him under such employment.

But the term wage does not include the value of:

A) Any house accommodation, supply of water, light and medical attendance, or

B) Any other amenity and service excluded by general and special order of the App. Gov. it does not include any contribution to pension fund or payment under scheme of social insurance travelling allowance, sum paid to defray special expenses or any gratuity payable on discharge.\(^{19}\)

The term “Wage” has a composite meaning which including all remuneration and other payments payable to an employee, which are not expressly excluded by the provision of the Act.\(^{20}\)

There are three kinds of wages minimum wage, fair wage & living wage. At the bottom of the ladder there is

\(^{19}\) Minimum of wages Act, 1948 U/S - 2 (H)

\(^{20}\) Ibid,
the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue in industry. Above this is the fair wage, which so the living wage must provide not merely the bare essentials of food, clothing and shelter but also a measure of frugal comfort, including education for the children, protection against ill health, requirement of essential social needs and a measure of insurance against the most important misfortunes, including old age. As regards fair wage, it involves a rate sufficiently high to enable the worker to provide a standard family with food, shelter, clothing, medical care and education of children. As regards the minimum wage, it has been understood in two different senses, the first being an industrial minimum wage which the employer of any industrial labour must pay in order to be allowed to continue an industry, the second being a statutory minimum wage, it provide not merely for the bare substance of life but also some measure of education, medical requirement and amenities.