CHAPTER 4

WAGE POLICY IN A WELFARE STATE
Until the 18th century, 'justice' meant enforcement of law and order. Liberty, equality, equitable sharing of the material goods of life, security and freedom from want, fear and frustration, have all become later, parts of justice. The concept thus gradually developed into one of 'social justice'.

Social justice is a broader concept than legal justice. Legal justice aims at imparting to the members of society what is legally due to them. Social justice relates more to moral rules which encourage the exercise of benevolence and mutual kindness conducive to harmonious social relations. It could be regarded as a means to

2. Ibid.
remove the imbalances in the social, economic and political life of the people. Since these three are intertwined, social justice involves progress in all these three fields.

Social scientists strive to achieve a social order based on the ideal of a just society. It is the embodiment of the hopes and aspirations of society. The state, in its attempt to secure social justice to its citizens, has therefore to work for improvement of their conditions. Building up of such an order in which the members feel a sense of security is a slow process. It needs a favourable social environment, a strong and impartial administration and a proper social attitude. This is because, social justice guarantees the right of the weaker and underprivileged persons to be protected by the State in their struggle for life. By the implementation of social justice, it is not intended to bring down the privileged sections, but to uplift the backward sections of society. In this effort the role of legal institutions is not to be neglected.


According to him, social justice is a balancing wheel between haves and have-nots.
Social justice in India

After so many years of bondage when India became independent, the first and foremost task of the freedom fighters was to build up a free and just society. This is visible in the objectives enshrined in the Preamble to our Constitution. Creation of a new socio-legal order in which justice - political, social and economic, is secured to all citizens was one among the objectives. This objective may be deemed to be the central core of our Constitution. Concepts of justice, liberty, equality and fraternity are integral parts of social justice.

The scheme of social justice is to be seen in the various provisions of the Constitution. Apart from the fundamental rights of the citizen, the Directive Principles of State Policy enjoin the State to secure social justice

4. See the Preamble to the Constitution of India.
5. "The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievements. Yet despite the permeation of the entire Constitution by the aim of national renaissance, the core of the commitment to the social revolution lies in Part III and IV ... ." Granville Austin, The Indian Constitution: Cornerstone of a Nation (1966), p.50.
by adequate means. The Directives under Part IV of the Constitution are non-justiciable. But all the three organs of the State are bound to apply the Directive Principles so as to satisfy the aspirations of the people for social justice.

Social justice, as in the case of any other justice, is to be evolved through the rule of law. The legislature makes the law, the executive implements it and the judiciary interprets it and tests its constitutional validity. All these exercises should aim at achieving social justice. Equality may be considered to be one of the integral parts of social justice. Equality may be subdivided into so many factions of which economic equality forms an important part. Social justice is possible only if there exists economic justice. Economic justice craves for economic equality. Therefore, social justice in the absence of economic justice will be an illusion.

6. Article 38 of the Constitution specifically provides: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life".

7. Referring to the Directive Principles of State Policy, Article 37 of the Constitution ordains that, "... it shall be the duty of the state to apply these principles in making laws".
Economic justice is a by-product of economic development, which depends to a great extent on industrial development. Therefore, industrial law plays an important role in making social justice a reality. A number of labour enactments have been passed. Mere legislation cannot improve the economic condition of labour. However, social legislation plays a significant role in attempting to prevent society from providing a wrong course or by helping it to select the most appropriate from the many courses that are proved to be right.\(^8\)

With the advent of the idea of the welfare state philosophy, radical changes occurred in the various concepts\(^9\) in the industrial field. Industrial law aims at securing social justice through social welfare legislation and the adjudicatory system. So much so, the Supreme Court observed in State of Bombay v. Hospital Mazdoor Sabha\(^10\)

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9. The concept of 'wages' is an example. In the common parlance 'wages' would only mean the return for work done. But today one speaks of various types of wages. The Committee on Fair Wages categorises wages into different levels like minimum wage, fair wage and living wage.

10. A.I.R.1960 S.C.610. Services of two workers of the J.J.Group of Hospitals were terminated. They challenged it on the ground that the termination was in contravention to some of the provisions of the Industrial Disputes Act 1947. The main question in the case was contd...
that industrial adjudication has to be aware of the socio-economic aspects.  

After the attainment of independence in India, a number of statutes were enacted by the Centre and the States in order to give effect to the principles of social justice.

The conditions existing in India such as inadequacy of wages, arbitrary deductions from wages, weak bargaining

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whether the hospital would be an industry within the meaning of that Act. While answering the question in the affirmative, the Supreme Court observed (at p.614) that the adjudicator need not place too much reliance on the conventional meaning of terms which may come up for consideration in the course of industrial adjudication.

11. "... industrial adjudication has necessarily to be aware of the current socio-economic thought around; it must recognise that in the modern welfare state healthy industrial relations are a matter of paramount importance and its essential function is to assist the state by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised states." Id., p.614 per Gagendragadkar, J.


13. Even during the nineteen thirties, textile mills followed a practice of unjust deduction of wages. Normally two days' wages were deducted for one day's absence. If an employee remained absent for fifteen days during the month in the month of February he lost not only the wages for the entire month, but lost two days' wages in the month of March as well. See K.N. Vaid, State and Labour in India (1956), p.91.
power of the workers and the need for unhindered industrial production by minimising work stoppages compelled the state to interfere in the field of industrial relations. The initial step taken by the State to secure economic justice was to pass legislation for regulating payment of wages. The attempt to regulate payment of wages can be traced back to 1925, when a private Bill - the Weekly Payment Bill - was brought before the Legislative Assembly at the Centre. The Bill was opposed by the employers and the provincial governments. It was subsequently withdrawn on the assurance by the Government of India that the question of prompt payment would be considered at the earliest opportunity.\(^\text{14}\) As promised, the Payment of Wages Act was passed in 1936, in accordance with the recommendations of the Royal Commission on Labour.\(^\text{15}\)

Later, a rise in prices and a deterioration of workers' economic condition forced the Government to take cognizance of the need to fix minimum wages. An Act\(^\text{16}\) requiring the appropriate Governments to fix the minimum rates of wages\(^\text{17}\) payable to employees working in the

\[\text{\small 14. Ibid.} \]
\[\text{\small 15. Id., p.93.} \]
\[\text{\small 16. The Minimum Wages Act 1948.} \]
\[\text{\small 17. For details see Chapter 7.} \]
scheduled employments was passed. Once the wages are fixed, the employers are bound to pay wages at that rate to the employees. These steps tend to promote justice to the workmen.

**Labour Policy in India**

The evolution of a labour policy in India dates back to the latter half of the 19th century. At the initial stages, labour legislation was primarily intended to benefit employers. It was not designed to protect the interest of employees.

The employers were organised at that time into strong associations known as chambers of commerce. The British Government was prone to protect the interest of employers of whom many were Britishers. Employer aiding legislation was the result of a self protection policy. Often the punishment prescribed against workers under various enactments were very harsh.

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18. For details see Chapter 6.


20. The Workmen's Breach of Contract Act 1859 provided the following penalties for the workmen who refused to work and tried to escape, namely, ordering refund of the advance taken, ordering them to work according to contract and in default, to undergo imprisonment for a period not exceeding three months. Another legislation, the Plantation Act 1862, authorised the planters even to hunt like wild beasts, the absconders.
Generally speaking, the labour policy of the government during those days did not provide relief to industrial workers. The prime motive of the industrialist was to make maximum profit. In this endeavour the employer exploited his employees to the maximum.

**Labour policy after the First World War**

The First World War had a tremendous impact on Indian labour. The war pushed up the cost of living. The wages, however, were low. This caused discontentment among workers. Political movements gave recognition to workers' organisations. All these factors jointly supported and catalysed trade union movement in India. Workers became impatient and intolerant. The number of mandays lost due to strikes increased tremendously. The attitude of employers was one of hostility towards employees' organisations. However, in 1926 the Trade Unions Act was passed. It gave legal status to trade unions.

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21. Rise in the cost of living, even after the war tempted the workers for agitation. Large scale strikes commenced to resist wage cuts and to secure increment in wages. See Mamoria and Doshi, *Labour Problems and Social Welfare in India* (1966), p.244.

22. Growth of communism and the protection afforded by that political movement to the workers is an example.


24. The mandays lost shot up from 7 million in 1921 to 31.6 million in 1928. For table showing the number of mandays lost, See Appendix I.
Several enactments were passed between 1920 and 1938, covering various aspects of labour. Unlike the earlier legislation protecting employers, these latter legislation cast duties and liabilities on employers. The legislation of 1859 and 1862 meant for the benefit of employers, were repealed under the changed conditions. Several other enactments intended to improve the conditions of labour were brought in after the introduction of provincial autonomy in 1937.

Labour policy after the Second World War

The Second World War marked a turning point in the course of industrial relations. Inflationary trends led to a sharp increase in the number of industrial disputes and consequential strikes. The main question involved in many such disputes was that of payment of dearness allowance.

25. See for example, Indian Mines Act 1923 (replaced by the Mines Act 1952); Workmen's Compensation Act 1923; Indian Merchant Shipping Act 1923; Indian Boilers Act 1923; Tea District Emigrant Act 1932; Children (Pledging of Labour) Act 1933; Indian Dock Labour Act 1934; Bengal Workmen's Protection Act 1935; Maternity Benefit Act (Madras) 1935; Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act 1936; Payment of Wages Act 1936 and C.P. Protection of Debtors' Act 1937.

26. The most important pieces of legislation were the Bombay Industrial Disputes Act 1938; Employment of Children Act 1938; Employers' Liability Act 1938; and Bombay Shop Establishment Act 1939.

27. See Table XXII in Chapter 10 and Appendix I, showing the number of disputes and causes for the disputes. The general index number of wholesale price increased from 245 in 1945-46 to 275 in 1946-47 and 307 in 1947-48. The wages did not show a proportionate rise. See Mamoria, op. cit., pp.246, 247.
Owing to the war conditions, the government could not afford to permit any strikes or other protest measures by workers. The maintenance of industrial peace therefore, turned out to be a major problem.

The Government of India, in this context, introduced the system of compulsory adjudication of industrial disputes. With a view to keeping production at the highest level, the government made strikes illegal in many essential businesses. These regulations kept the workers calm during the period.

These compulsory measures for settlement of industrial disputes found a place in the Industrial Disputes Act 1947. Wage determination and adjudication were no longer looked upon as private matters for settlement between


29. Id., R. 81 D (1) (d) defined essential business, as follows:

"'Essential business' means in relation to a wholesale establishment wholesale trade in essential articles in relation to a shop, retail trade in scheduled articles and in relation to a restaurant, the business of supplying means or refreshments for consumption in the premises".

30. Any industrial dispute existing or apprehended could be referred for adjudication under the Act. See, Industrial Disputes Act 1947, S.10.
the employer and employees. It could no longer be left to be regulated by the interplay of market or economic forces. Various agencies like conciliators, Tribunals and Courts helped or compelled the parties to reach a compromise or settlement. The object behind this compulsory measure seems to be to promote industrial peace and to prevent loss of mandays.  

New Phase towards a Welfare State

In 1945, the election manifesto of the Congress Party revealed that the State shall safeguard the interest of industrial workers and shall secure for them a minimum wage and a decent standard of living. This proclamation can be viewed as a basic formulation of a wage policy even before the independence of India. The workers were eager to get them implemented. This hope, coupled with the change in the political set up, resulted in labour unrest in the country. Industry is the key to economic

31. Government was also vested with power to prohibit strikes and lockouts on reference of a dispute for settlement or adjudication. Id., S.10 (3).
33. The over zealous feeling of independence in the minds of the workers as a sequel to the transfer of power to Indians, failure of the congress to fulfil their promises, influence of communism and misdirected labour leadership contributed to the increased labour unrest.
development of a country. A balanced industrial growth is impossible without an industrial policy. Industry in India covers public sector and private sector, with a large number of establishments extending over a variety of industrial activities. Therefore, a policy to cover the entire industry must be one with a proper goal to establish a reasonable relationship between the public and private enterprises and between different industries in the same or different regions.

Industrial Truce Resolution 1947

The exigencies of the Second World War forced the State to evince an interest in industry. Efforts were, therefore, made to formulate a policy of post-war industrial reconstruction and development. The attempts of the government, in this regard, resulted in the convening of a Tripartite Labour Conference in 1947. The conference succeeded in passing an Industrial Truce Resolution. 34

The Conference and the consequent Resolution brought about an amount of goodwill and harmony in the industrial field. But soon after, the Economic Programme Committee of

34. For relevant portions of the resolution, see Appendix II
the All India Congress published a report. The report suggested adoption of stringent measures like state ownership of new concerns in public utility and limitation of profits. This created a panic and uncertainty in the minds of investors and industrialists. A decline in production was the result. This situation compelled the government to come out with a definite industrial policy.

**Industrial Policy Resolution 1948**

Incorporating the spirit of the Industrial Truce Resolution as far as wage payments were concerned, the Government of India, announced its first Industrial Policy Resolution in 1948. The Resolution made a distinction between 'sweated' industries and 'organised' industries. The policy aimed at the establishment of a special social order.

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36. This distinction was mainly intended to afford statutory protection for the sweated labour and employees in the unorganised sector.

37. The chief objects of the policy were the establishment of social order wherein justice and equality of opportunity shall be secured to all the people, the provision of educational facilities and health services on a much wider scale and the promotion of a rapid rise in the standard of living of people by exploiting the contd...
The policy also aimed at establishing industrial peace with a view to maximising production. The need for the fullest co-operation and stable and friendly relations, between labour and management was felt. In the case of 'sweated' or unorganised sector, the Resolution recommended statutory protection. This recommendation culminated in the passing of the Minimum Wages Act 1948.\textsuperscript{38} The Resolution favoured the promotion of fair wage agreements between the employers and workers in the case of organised industrial sector. To further the governmental desire to attain industrial peace, the Government of India appointed a Committee on Fair Wages in 1948, to "... determine the principles on which fair wages should be based, and to suggest the lines on which these principles should be applied".\textsuperscript{39}

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latent resources of the country, the increase in production, both, agricultural and industrial, the offering of opportunities to all for employment in service of the community, the need for careful planning and integration of effort and necessity for the establishment of a National Planning Commission, determination of the extent of the state responsibility and the limits and regulation of private enterprise. For the main defects in the policy, see \textit{infra}, n.40.

38. For a detailed discussion, see Chapter 7.

The industrial policy proclaimed by the Government in 1948 was generally welcomed by the people. But it was found to be lacking in some respects. The Constitution of India guaranteeing certain fundamental rights and enunciating certain Directive Principles of State Policy came into force. Organised planning had proceeded, and the First Five Year Plan was completed. These developments necessitated a restatement of industrial policy.

A new policy was, therefore, adopted in 1956. The objectives sought to be achieved were:

1) acceleration of the rate of economic growth and the speeding up of industrialisation and, in particular, the development of heavy industries and machine-making industries;

2) expansion of public sector;

3) building up of a large and growing co-operative sector;

40. The main defects were:
   a) Lack of co-ordination between Centre and State regard to nationalisation of industries.
   b) Misdirected enthusiasm about the nationalisation of industries without adequate resources and systematic priorities retarded industrial progress.
   c) Lack of management expertise in public sector and state enterprise.
   d) Defects in control resulted in great hardships to contd...
4) increase in the opportunities for gainful employment and the improvement of living standards and working conditions for the mass of the people;

5) reduction of existing disparities in income and wealth;

6) prevention of private monopolies and the concentration of economic power in different fields in the hands of a small number of individuals, and

7) assumption by the State of a progressively predominant and direct responsibility for setting up new industrial undertakings for developing transport facilities, and for undertaking state trading on an increasing scale.\textsuperscript{41}

This Resolution also was not free from defects. There was nothing new in the Resolution to overcome the obstacles which hindered industrialisation. The objectives promulgated through the documents were beyond the bounds of practicability. The objective of reducing disparities in income and wealth was highly impractical.

All these policy proclamations reveal the Governmental efforts towards evolving a wage policy. Nevertheless, these measures have been futile, to some extent, at least at the implementation level. No doubt, today, the problems are varied and complex. Inevitably, they call for further action. The State can no longer afford to be a passive onlooker, especially in the industrial sector which presents a puzzling paradox in the relation between the employer and employees. An illuminating exposition of this dynamic role of the Welfare State cannot be made in better words than the following learned study. 42

"In the old laissez faire economy industrial relations was a matter between the employer and the employee only. But in modern times, the State is not merely a good samaritan, a regulator and an entrepreneur. The State is an umpire as well in the game of conflict of competing interests. The State is no longer a dumb observer on industrial relations. It has to keep a close watch over the shape of things to come". 43


43 Id., p.419.