CHAPTER-III
CHAPTER - III

Directive Principles of State Policy and The Concept of Living Wage

In the preceding chapter, an attempt was made to examine the implications of 'labour' being on the 'Concurrent List' of the constitution and to deal with the respective powers of the Centre and States in enacting social labour legislations. The effect of inconsistent legislations and the method of reconciliation was also discussed.

The constitution, besides empowering the Parliament, the State legislatures, the Union and State executive governments, local bodies and other authorities to make laws, rules, regulations affecting labour, also specifies the goals and values to be secured. Part IV of the constitution enumerates the most important of these. It explicitly states, however, that they are not judicially enforceable. By and large, industrial legislations have been directed towards the implementation of these directives.

In this chapter an attempt is made to discuss the historical development and nature of these directives. An analytical study is also made. The judicial craftsmanship of the Supreme Court is also discussed in threadbare.

(1) Historical Background:

One of the most important and novel features of modern constitutions, is the inclusion of a Chapter on Directive Principles of State or social policy as an integral part of the constitution. They are deliberately included by the framers of the constitution to bring about, primarily, a desired socio-economic pattern of society into existence consequent on the change in the relationship between the State and its subjects as also in the change in the concept of the State and its functions and ends.
In the days of autocratic Governments the monarch was the Head of the State and subjects were to obey implicitly his commands. The king ruled and not the law. But with the advent of democracy, Principles of governance became necessary to regulate the power of the State and thus the rule of law substituted the aristocratic rule of the king. Amongst the several factors that led to the supremacy of the law, which in turn paved the way for the declaration of Fundamental Rights, over the supremacy of the king may be listed Locke's conception of the social contract wherein he excluded certain inalienable rights from the scope of rights relinquished in the social contract: John Milton's appeal in 'Aeropagatica' to the natural freedom of man as the basis of his claim to be ruled by law and not by the arbitrary whim of man, the insistence, in the course of the Puritan Revolution, on natural rights in support of Political freedom, social equality and universal suffrage: and Blackstone's, exposition of the laws of England the place of natural rights of man in it. Of these Locke's conception of the social contract based on his notion of human nature, exercised a powerful influence on the framers of the early American and French constitutions.

Constitutional enactments in respect of the inalienable rights of man first found its place in the Virginian Declaration of Rights of 1776 and similar enactments, in the same years, of Pennsylvania, Maryland, Delaware, New Jersey and North and South Carolina. This was followed by New York and New Georgia in 1777 and Massachusetts in 1780; the Declaration of Rights of Man and of the citizen adopted in 1789 by the French National Assembly and prefixed to the French constitutions of 1793 and 1795.

2 Ibid
In the nineteenth and twentieth centuries the recognition of the Fundamental Rights of man in the Constitutions became a general principle of the Constitutional law of civilized States. It became a part of the law of nearly all European States. The adoption, of a chapter of Fundamental Rights in the body of the Constitution thus marks the first conscious attempt to substitute in the place of the power relation between the sovereign State and its subjects the legal relation between State as a political association and the subjects as the member thereof. Personal security and political freedom were thus ensured with the enunciation of Fundamental Rights in the Constitution. K.C. Markandian observed:

"The inter-war experience, however, emphasised the truth that political institutions, notwithstanding the fact that they conform to an abstract democratic ideal, could not hope to survive for any substantial period, unless they were built upon political, economic and social realities in the country concerned, including its tradition and national character."

A view got currency that personal and political freedom would be impaired if not rendered purely nominal unless enjoyment was made practicable by a reasonable guarantee of social and economic freedom. It was felt that the precious rights of personal liberty and political freedom might become a share if not a mockery for those whom the existing social and economic order leaves starving, insecure in their livelihood, illiterate and deprived of their just share in the progress and well being of the society as a whole. As a result, in the new constitutional arrangements made after World War I, specific declaration of Constitutional principles regarding social and economic policy were made in the Constitutions of the various countries.

3. Id at 9.
In the post War period the incorporation of social and economic policies thus became a regular characteristic of the Constitutions recognising thereby that justice was to be secured not only in the political field for the individuals alone but also in the social and economic spheres for the social as a whole. Consequently the functions of the State increased and became positive in character. In the nineteenth century the creed of liberalism, political freedom and civil liberty of men was carried further by utilitarians like Mill, Spencer and Bentham through the individualistic doctrine of Laissez-faire. In the era of laissez-faire the functions of a democratic State was conceived of to be negative; it was a mere police State and its duties were to provide for security from internal disturbances and external aggression, to collect revenue and to dispense justice to the citizens. Given this security the subjects were left to evolve a suitable social and economic order for themselves. But this system while it promoted the interest if individuals, was detrimental to the welfare of the society as a whole. The State was, therefore, called upon to play a more positive role and assumed the role of a referee to resolve disputes between the individuals and the groups in almost every walk of life.

This task was not easy for the State. It was difficult indeed for not only was it difficult to define the form and substance of social and economic rights that need be guaranteed for a particular country but also there was the difficulty of ensuring them to the people of that country. The practice with regard to the enumeration of social and economic policies within the framework of the Constitution has thus not been uniform. It has varied from country to country depending upon its social and economic progress. In some countries the social and economic rights were mixed up with Fundamental Rights and in others they were kept separate, either as a separate chapter or as a separate section.
In India, before Independence, India was a British dependency. It neither had a Constitution nor any declaration of Fundamental Rights for her people. Since political freedom precedes economic and social freedom, the question of enunciation of economic and social objectives did not arise at all in the absence of declared Fundamental Rights. The Indian freedom fighters made some attempts since 1925 to persuade Britain to ensure and declare in some form or other a set of Fundamental Rights primarily and essentially with the objective of safe-guarding the interest of Indian people. The Commonwealth of India Bill, ordered by the House of Commons to be printed on December 17, 1925 (The Commonwealth of India Bill was prepared by Members and ex-members of Indian Legislatures of all political parties, by the elected Council of National Home Rule League, and two co-opted officers of the Women's Indian Association, and adopted at the National Convention) and presented to the House of Commons by Mr. Lansbury, purporting to confer upon Indian the status of self-governing Dominion except for certain reservations as regards Defence and Foreign Affairs, embodied for the first time an Article relating to the grant of Fundamental Rights to the people of India. Article 8 of the Bill, the substance of which approved by the Indian National Convention, enumerated some Fundamental Rights.

Recommendation for incorporating a chapter on Fundamental Rights ensuring not only personal and political rights but also social and economic rights for the people of India, was, however, made for the first time, by the All Parties Conference of 1928. A Committee was appointed by the Conference on 22nd February, 1928, to determine the principles of the constitution for India, under the chairmanship of Pandit Moti Lal Nehru which included an Article on Fundamental Rights in its report. This Article i.e., Article 4, in its XIX clauses, enumerated as many rights, but the ones relating to economic
and social matters and included in the suplementary Report were:

"Article 4 (V) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the State, and such right shall be enforceable as soon as due arrangements shall have been made by the competent authority.

Provided that adequate provision shall be made by the State for importing public instruction in primary schools to the children of members of minorities of considerable strength in the population through the medium of their own language and in such script as is in vogue among them.

Explanation:- This provision will not prevent the State from making the teaching of the language of the Commonwealth obligatory in the said schools.

(XV) Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to every one of all occupation. All agreements and measures tending to restrict or obstruct such freedom are illegal.

(XVII) Parliament shall make suitable laws for maintenance of health and fitness for work of all citizens, securing a living wage for every worker, the protection of motherhood, informative and unemployment and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants".

As the time advanced the demand for a declaration of Fundamental Rights in the future Constitution of India had gained force at the hands of political leaders, several individuals, organisations and Provincial Governments. They, in their memoranda and reports presented to the Indian Statutory Commission favoured inclusion of certain Fundamental Rights to the minorities in India. The Report of the Indian Central Committee (1928-29) also supported the inclusion of a declaration of Fundamental Rights in the proposed Government of India Act. These recommendations were however, rejected by the Indian Statutory Commission. Their opinion such provisions had been inserted in many Constitutions, notably in those of the European States which were formed after the world War I and experience had shown that there was no practical utility of these abstract declarations which were useless unless there existed the will and the means to make them effective.  

Subsequently in all the three sessions of the Indian Round Table Conference held in London, the subject of Fundamental Rights, designed to secure either to the community in general or to specified sections of the people of India, rights and immunities, was discussed at length and memoranda were also submitted by individuals and groups for the provision of a chapter on Fundamental Rights in the proposed Constitution of India. At the first session of the Indian Round Table Conference the subject of the grant of economic rights, independent of political rights, was put forward by the representatives of the Indian Labour Organisation to the Conference. Shri N.M. Joshi on behalf of the Indian Labour Organisation desired a declaration of Fundamental

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6 The First Session of the Indian Round Table Conference was held at London during the period from Nov 12, 1930 to January 19, 1931; the Second Session was held from September 7, 1931 to December 1, 1931 while the Third Session was held from Nov. 17, 1932 to December 24, 1932.
Rights for workers. He argued that though such a declaration would not have the force of legislation, nevertheless, it will serve a very useful moral purpose.

Later on the subject of Fundamental Rights was discussed at length at the meeting of Sub. Committee on Minorities. At the first meeting of the Sub. Committee on 23rd December 1930 Raja Narendra Nath pointed out the need to discuss the question of declaration of rights unassailable by the majority in the constitution of India. In the same meeting K.T. Paul along with Lt Col. Gidney spoke for the protection of the minority communities in India.\(^7\)

\textit{But a comprehensive and precise anunciation of a draft declaration of Fundamental Rights, social and economic in character, was presented by Shri B. Shiva Rao, another representative of the Labour Organisation of India, to the Round Table Conference at the Minorities Sub. Committee meeting of 23rd December 1930.}^8 Presenting the draft he said:

\begin{quote}
"We want to see in the new constitution a declaration of rights for labour and we have prepared here a draft declaration which in our opinion, would be useful to introduce into the new constitution"\(^9\)
\end{quote}

The declaration which catalogued ten rights, primarily for labour community of India, and read out by Shri Shiva Rao was as follows:

\begin{quote}
"Recognising that well-being, physical, moral and intellectual, of the workers of India is of supreme importance in assuring the peace,
\end{quote}

\begin{thebibliography}{9}
\bibitem{9}Ibid
\end{thebibliography}
progress and prosperity of the country and recalling the solemn obligations of India as a Member of the League of Nations, and of the International Labour Organisation to endeavour to secure, maintain fair and humane condition of labour for men, women and children, and collaborate in the international establishment of social justice, the Commonwealth declares the following principles to be adopted as fundamental principles of the constitution, as regulating the exercise of the legislative, executive and judicial powers within the Commonwealth.10

Shri B. Shiva Rao, presenting a comprehensive and precise draft of declaration of Fundamental Rights which catalogued ten rights, primarily for labour community of India, had emphasised the need of introduction of a declaration of such Fundamental Rights in the new constitution of India.

The Commonwealth recognising that the physical, moral and intellectual well-being of Indian workers is of supreme importance in assuring the peace, progress and prosperity, and recalling the obligations of India being a member of League of Nations and International Labour Organization to endeavour to secure, maintain fair and human conditions for labour, for men and women and to provide social justice, declares the following principles to be adopted as Fundamental Principles of the Constitution. These Fundamental Principles are to be adopted as regulating the legislative, executive and judicial powers:

(1) It is the duty of every citizen so to use his mental and bodily powers as to contribute to the welfare of the community, and correspondingly by it is the duty of the community to secure, so far as lies in its power, that every citizen shall be given the training and opportunities

10. Ibid.
necessary, to enable him to maintain by his work a decent standard of living;

(2) The Indian Parliament, shall make suitable laws for the maintenance of health and fitness of work of all citizens, the securing of a living wage for every worker and provision against the economic consequence of old age, infirmity and unemployment;

(3) The protection of motherhood and the rearing of the rising generation to physical, mental and social efficiency are of special concern to Commonwealth. Women, young persons and children, shall therefore, be protected against moral, spiritual or bodily injury and neglect and against exploitation and excessive unsuitable employment;

(4) The welfare of those who labour shall be under the protection of the Commonwealth and conditions of labour should be regulated, from time to time as may be necessary, with a view to their progressive improvement;

(5) The right of workers to express their opinions freely by speech, writing or other means, and to meet in peaceful assembly and to form associations for the consideration and furtherance of their interest, shall be granted by the Commonwealth. Laws regulating the exercise of this right shall not discriminate against any individual or class of citizens on the grounds religious faith, political opinion or social position;

(6) No breach of contract of service or abetment thereby shall be made a criminal offence;
(7) The Commonwealth shall co-operate with other nations in action to secure the realisation of the principle of social justice throughout the world;

(8) All citizens in the Commonwealth have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the State and such right shall be enforceable as soon as due arrangements shall have been made by competent authority;

(9) All citizens are equal before law and possess equal civic rights;

(10) All citizens have an equal right of access to and the use of public roads, public wells and all other places of public resort".

Suggesting the inclusion of the above rights in the new constitution
Shri B. Shiva Rao said:

"Sir, we are aware that a Declaration of Rights may not have any legal binding authority, but it seems to us to possess such moral force that would be very useful in the interests of labour to have such a Declaration of Rights in the new Constitution. I should like to point out that many of these provisions have been taken from the Nehru Report, and some of the others are from some of the new Constituions of Post-War Europe."

Shri N.M. Joshi, while moving an amendment for the addition of the word, 'economic' after the word 'religious' and in para 3 of the Report on Minorities, said on January 16, 1931 that the rights that he had advocated

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11. Ibid. at 34
were meant for safeguarding the economic life of the community, not the individual but the labour community. Shri N.M. Joshi's plea could not, however, find support either with the other members of the Indian delegation or the British mind, unused to a declaration of rights more especially for the safeguarding of economic rights of a community. Dr. Ambedkar also called attention to the necessity of including in the constitution sanctions for the enforcement of the Fundamental Rights, including a right of redress when they were violated.

Despite these efforts of the Indian delegates the attitude of British Government towards the grant of Fundamental Rights to the people of India remained unchanged and the demand was finally rejected in the first session of the Round Table conference.

During the second session of Indian Round Table Conference, the necessity of ensuring certain Fundamental Rights to different Indian communities in the future Constitution of India was again discussed. Several memoranda were submitted on behalf of different Indian communities and interest. A joint statement was circulated by Shri N.M. Joshi, Shri B. Shiva Rao and Shri V.V. Giri to the members of the Conference.

The subject of the Fundamental Rights came up for discussion once again at the third Round Table conference held during November-December, 1932. A separate memorandum was submitted by Sir Tej Banadur Sapru and Mr. M. R. Jayakar on December 27, 1932. The British Government admitted the importance of such rights but expressed doubts about their feasibility. Dr. Ambedkar advocated the inclusion in the instrument of instructions to the Governor General and Governors of any propositions relating to Fundamental Rights.

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13. Indian Round Table Conference proceedings Report (Third Session) at 66.
Rights which could not be enacted in the Constitution Act itself\textsuperscript{14}.

After the concluding session of the Indian Round Table conference a Report was presented by the Secretary of State for India to Parliament. The idea of enumerating such of those Fundamental Rights which could not be embodied in the Constitution Act itself in the instrument of instructions also found support in a memorandum submitted by Khan Bhadur Hafiz Hidayat Husain and Dr. Shafaat Ahmad Khan on December 27, 1932. The memorandum stressed the need for embodying Fundamental Rights in the constitution\textsuperscript{15}.

Finally, however, in the White Paper relating to the proposals for Indian Constitutional Reforms, no detailed declaration of Fundamental Rights was made. The White Paper which did not contain any mention of Fundamental Rights, more especially the economic and social ones, was the subject of criticism in a number of resolutions adopted on the White Paper and the witnesses before the Joint Committee on Indian Constitutional Reform not only insisted upon the declaration of Fundamental Rights in the future constitution of India but also presented a number of memoranda on the subject.

The Indian National Congress moved a comprehensive resolution on the declaration of Fundamental Rights at its 45th Session held at Karachi on March 29, 1931. This was subsequently modified in the All India Congress Committee meeting held at Bombay on August 6, 1931. The modified version of the resolution was finally adopted under the title 'Fundamental Rights and Duties And Economic Programme' at the 47th session of the Indian National Congress held at Calcutta on April 1, 1933.

\textsuperscript{14} I.R.T.C., proceedings Report (Third Session) at 66.
\textsuperscript{15} I.R.T.C. (Third Session)-Appendix Memorandum submitted on 27th December, 1932 at 195-196.
The special session of the National Trades Union Federation at its Calcutta session in April 1938 adopted the resolution. In this resolution it was said that the Constitution Act should contain a declaration of Fundamental rights guaranteeing the workers, inter alia, the freedom of speech, freedom of press, freedom of association, the right to strike, the right to work and provision against old age, etc.

Subsequently Shri Shiva Rao giving evidence before the Sub. Committee of the Joint Committee on Indian Constitutional Reform handed over a memorandum on behalf of the National Trades Union Federation, containing among the other things, a reiteration of the above demand. The Bengal Trades Union Federation in its memorandum handed in the Sub. Committee by Shri K.C. Roy Chowdhury also insisted on the same demand as discussed above.

Despite these resolutions, discussions and deliberations adopted by the Indian labour, political parties, the British attitude towards the grant of Fundamental Rights to Indian masses remained hostile. They considered these rights as nothing more than mere 'expressions of political ideal' mainly because of their non-justiciability. Amongst the memoranda submitted by individuals Prof. M. Venkatarangaiah's memorandum requires attention here. He wanted the incorporation of the two sets of rights in the constitution i.e. Civil rights on the one hand and Social and Economic rights on the other, the former being enforceable in the Courts of law and the latter not. He also gave reasons for the distinction between the two sets of rights, the difficulties involved in respect of non-justiciable rights and the utility of social and economic rights in the constitutional set up. This distinction of Prof. Venkatarangaiah thus anticipated the inclusion of non-justiciable economic and social rights in the framework of the constitution of India.
During 1940's there was a radical change in Indian politics. The Indian National Movement gathered momentum in the years 1941-42 and the British Government kept on negotiation with the Indian leaders on the issue of handing over political power to them. The plans for the future constitutional set up of free India were eventually being worked out vigorously. The Sapru Committee appointed for this purpose, issued a questionnair in 1945 to various associations, groups and individuals inviting their views on the desirability of inclusion of Fundamental Rights in the future constitution of India. Several organisations and individuals responded to the questionnair and some of them worked out the details of Fundamental Rights. The Sapru Committee in 1945 cosidered the suggestions received from various quarters on the subject of inclusion of Fundamental Rights and finally recommended that the declaration of Fundamental Rights was absolutely necessary for India for not only giving assurance and guarantees to the minorities but also for prescribing a standard of conduct for the legislatures, government and the Court. The Fundamental Rights Committee envisaged was to be of two classes, one justiciiable and the other non-Justiciiable-the former being enforceable in a Court of law but the latter not. The proposals of the Sapru Committee was a significant advancement on earlier proposals in atleast on particular respect and that was the distinction that it made in Fundamental Rights as justiciable and non-justiciable and recommending the inclusion of the latter also in the body of the constitution. But the object of the division and incorporation into the body of the constitution was not so much for paving the way for achieving economic and social democracy as for ensuring adequate protection for the minorities. The credit, therefore , in this regard goes to Late Sir B.N. Rau, who as the Constitutional Advisor to the government of India, suggested that the best way of embodying the assurances contained in paras (5), (6) and (8) of the resolution regarding aims and objects
moved by Pandit Jawahar Lal Nehru on December 13, 1946 was to split the two sets of assurances as Fundamental Principles of State Policy, the former relating to personal and political rights and enforceable in the Courts of law and the latter relating to social, economic and other matters and un-enforceable in the Courts.

Sir B.N. Rau made an elaborate study of the Fundamental Rights embodied in the constitutions of the more important countries of the world. In the constitution of the U.S.S.R. and the Weimer constitution of the German Reich, both classes of rights were mentioned together under the head 'Fundamental Rights' possibly because, using his own words, 'neither was intended to be enforced by legal action' but in the Irish constitution he found the distinction was clearly recognised though not, as he said, uniformly pursued.

Apart from the Irish constitution wherein the distinction between rights justiciable and non-justiciable was made, Sir B.N. Rau also found a similar distinction recognised by Dr. Lauterpacht in his 'International Bill of the Rights of Man'. The substantial provisions of the Bill were in two parts; Part I dealt with rights meant to be enforced by the ordinary Courts and Part II dealt with rights incapable of or unsuitable for such enforcement.

Sir B.N. Rau was much impressed by the distinction in Fundamental Rights as justiciable and non-justiciable in the Irish constitution and reinforced by Dr. Lauterpacht's recognition of the same. He (Sir B.N. Rau) suggested for adopting in the Indian constitution the Irish plan and separate the two classes of rights: Part A dealing with Fundamental Principles of State Policy and

17 I bid. at 51.
Part B with Fundamental Rights strictly so called. Illustrative of the scheme proposed, Sir B.N. Rau also placed before the members of the Constituent Assembly drafts of provisions, which by no means were exhaustive, to be included in parts A and B of the Chapter on Fundamental Rights.

In commending the above draft for the consideration of members of the Constituent Assembly and adoption in Indian Constitution, Sir B.N. Rau observed:

"It is obvious that none of the above provisions is suitable for enforcement by the Courts. They are really in the nature of moral precepts for the authorities of the State. Although it may be contended that the constitution is not the proper place for moral precepts, nevertheless constitutional declarations of policy of this kind are now becoming increasingly frequent. They have at least an educative value." ¹⁸

Sir B.N. Rao also indicated the various sources from which he had drawn for drafting the provisions in Part A. ¹⁹

The real difficulty before the Constituent Assembly was to implement the draft scheme of Sir B.N. Rau in the Constitution of India. This difficulty was very well expressed by Shri Somnath Lahiri (Bengal: General) a member of the Constituent Assembly, in the following manner.

He said:

"It is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a

¹⁸ Constitutional Precedents (Third Series) 1947, Fundamental Rights (II) at 22
¹⁹ Ibid.
provision that people should have the right to work, that is unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our Fundamental Rights, naturally it will have to be justiciable. Similarly, take the question of nationalization of land. If we want to say that land belongs to the people and to nobody else, that would be a social and Fundamental Right no doubt. But, nevertheless, it will also be justiciable right, if that is to be given effect to. Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights". 20

The Sapru Committee had also expressed similar view on this point. Another difficulty that laid before the Constituent Assembly was to define these rights with precision and correct interpretation.

Finding it difficult to come to a definite conclusion with regard to the inclusion of Fundamental Rights in the Constitution, Late Pandit Govind Vallabhb Pant moved a resolution in the Constituent Assembly on January 24, 1947, for the appointment of an Advisory Committee of 72 members to workout a practical solution to the problem. 21 The Advisory Committee was authorised to form Sub-Committee to facilitate its work. This resolution was adopted by the Constituent Assembly and initially fifty members were elected to the Advisory Committee. The first meeting of the Advisory Committee was held on February 27, 1947. On proposal by Shri Jaipal Singh and seconded by Sardar Harnam Singh, Sardar Vallabh Bhai Patel was unanimously elected chairman of the Advisory Committee. Subsequently five Sub-Committees were set up, one of which was the Fundamental Rights Sub-Committee. The

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20 CAD Vol III, at 403, 404
21 CAD Vol II at 328
Fundamental Rights Sub-Committee consisted initially of ten members, namely Acharya Kripalani, Shri M.R. Masani, Prof. K.T. Shah, Raj Kumari Amrit Kaur, Alladi Krishnaswami Ayyar, Shri K.M. Munshi, Sardar Harnam Singh, Maulana Abul Kalam Azad, Dr. B.R. Ambedkar and Jairamdas Daulatram. On a suggestion by Jairamdas Daulatram, it was agreed that the President of the Constituent Assembly could nominate additional members to the different communities, from time to time. The first meeting of the Sub-Committees on Fundamental Rights was held on February 27, 1947 at 4.30 p.m. and on being proposed by Shri K.M. Munshi and seconded by Sardar Harnam Singh, Acharya Kripalani was elected Chairman of the Committee. Due to divergent views of the members the Sub-Committees on the Fundamental Rights failed, to reach a final conclusion in this regard in its first meeting.

The second meeting of the Sub-Committee on Fundamental Rights was held on March 24, 1947, to consider the proposals, suggestions and memoranda on Fundamental Rights which were received from various public bodies, individuals and the members of the Sub-Committee itself. These included the notes on Fundamental Rights prepared by Sir Alladi Krishnaswami Ayyar, Shri K.M. Munshi, Prof. K.T. Shah, Dr. B.B. Ambedkar and Sardar Harnam Singh which contained proposals for the inclusion of such rights in the body of the constitution.

After examining the various draft on Fundamental Rights placed before it, the Sub-Committee finally resolved that a distinction between the rights which were enforceable in the courts of law and the rights which were in the nature of principles of social policy for guidance of the governments to regulate their legislative and executive functions was necessary before the Fundamental Rights were included in the future constitution of free India. The Sub-Committee first directed its attention towards the rights which were to

Thus the very first set of Directive Principles of Social Policy as framed by the Sub-Committee on Fundamental Rights on 30th March 1947 was as follows:

"The Principles of Social Policy set forth in this part are intended for the general guidance of the appropriate legislatures and Governments in India (hereinafter called collectively as the State). The application of these principles in legislation and administration shall be the care of the State and shall not be cognizable by any Court."

(1) The Union and every Unit thereof shall strive to promote the welfare of the whole 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.

(2) The Union and every unit thereof shall, in particular, direct their policy towards securing:

(i) that the citizens, men and women equally have the right to an adequate means of livelihood;

(ii) that the ownership and the control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of free competition shall not be allowed so to develop as to result in the connection of the ownership and control of essential commodities in a few individual to the common detriment.

22. Minutes of the Fundamental Rights Sub-Committee Meeting of March 30, 1947, President's collection.
(iv) that there shall be equal pay for equal work for both men and women.

(v) that the strength and health of workers men and women, and the tender age of children shall not be abused and that the citizens shall not be forced by economic necessity to enter the avocations unsuited to their age and strength;

(vi) That childhood and youth are protected against exploitation and against moral and material abandonment.

(3) The Union and every Unit thereof shall, within limits of their economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, sickness, disablement, and other cases of undeserved want (Lauterpacht's Article 13).

(4) The union and every unit thereof shall make provision for securing just and human conditions of work and for maternity relief for workers (Lauterpacht's Articles 14) with the addition of provision relating to maternity relief for workers.

(5) The Union and every unit thereof shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Article VII, clause (i) of Shri Munshi's draft. The substance of clause (2) of Shri Munshi's draft was included in item 3 above).

(6) The union and every unit thereof shall endeavour to secure for the citizens a uniform civil code.
(7) Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual co-operation with equal rights of husband and wife as a basis (Japanese Constitution, Article XXIV). Motherhood has a claim upon the protection and care of the State. (Weimer Constitution)"

On the next day, 31 March, 1947, the Fundamental Rights Sub Committee converted the preliminary portion of the above draft into Preamble to the Directive Principles of Social Policy with certain modifications.

Sir. B.N. Rau, on the basis of recommendation of the Sub Committee on Fundamental Rights prepared a draft of the report on April 3, 1947 which was to be submitted by the Sub-Committee to the Advisory Committee. The Annexure to the Draft Report Contained two chapters. The first chapter contained justiciable rights while the second, principles of Policy which formed the non justiciable rights. This draft was then sent to the members of the Sub Committee for their comments.

The Fundamental Rights Sub Committee considered the Draft Report prepared by Sir. B.N. Rau in its three consecutive meetings held on April 14, 15 and 16, 1947.

Most of the members of the Sub-Committee on Fundamental Rights were agreed on main principles incorporated in the Report. The Report of the Sub-Committee on Fundamental Rights was also sent to Minorities Sub-Committee for comments and suggestions if any addition to the list of Fundamental Rights, was desired. The Minority, Sub-Committee submitted an Interim Report to the Advisory Committee in which some suggestions were made. The Advisory Committee considered the report of the Sub-Committee on Fundamental Rights and the Report of Minorities Sub-Committee on April
21, and 22, 1947 and finally submitted its Interim Report to the President of Constituent Assembly on the next day. The Committee mainly directed its attention on justiciable Fundamental Rights and did not go into detailed discussions on non-enforceable rights.

The Advisory Committee in its subsequent meetings took for consideration of the recommendations the Sub-Committee on Fundamental Rights which were in relation to non justiciable rights entitled 'Fundamental Principles of Governance'. The Advisory Committee finally submitted its supplementary Report on Fundamental Rights to the President of the Constituent Assembly on August 25, 1947 in which it supported the inclusion of certain directives in the body of the constitution along with the justiceable rights. The Constituent Assembly adopted the supplementary Report of the Advisory Committee on August 30, 1947 and sent it to the Constitutional Advisor Sir B.N. Rau for being adopted in the Draft Constitution.

The 'Fundamental Rights including the Directive Principles of State Policy were finally drafted as Part III in Sir B.N. Rau's Draft Constitution of October 7, 1947. This Part was divided into three Chapters, The first chapter Consisted the 'Preamble' of Fundamental Principles of Governance' and the second chapter consisted 'Fundamental Rights' while chapter III contained the Directive Principles of State Policy.

Although Sir B.N. Rau, in his Draft Constitution of October 7, 1947 had incorporated the provisions relating to Fundamental Rights and Directive Principles of State Policy in a single part i.e. Part III yet he wanted these Directives to be retained merely as a 'guidance' for State action. In transforming these 'Directives' into Fundamental Principles of Governance of the Country, he foresaw the possibility of a conflict between the Directive Principles and
the Fundamental Rights. The latter, being justiciable under the Constitution, will, in effect, prevail over the former which are not justiciable. That is to say the private right will over ride the public weal.

As a result of his discussion in Washington with Justices Frankfurter and Hand of the U.S. Supreme Court and with Mr. John Hearne, the High Commissioner for Ireland in Ottawa, Sir B.N. Rau wrote a letter to the President of Constituent Assembly on 11th November, 1947 suggesting certain amendments. The object of these amendments was to make it clear that in a conflict between Fundamental Rights and the Directive Principles; the latter being general in nature should prevail over former; the individual right. On November 18, 1947 Sir B. N. Rao submitted a report to the President of the Constituent Assembly. But the proposal of Sir B.N. Rau, however, did not find its way into the body of the constitution although it was realised that in case of conflict between III and Part IV latter was to prevail over the former.

The Draft Constitution as prepared by the Drafting Committee was published on the 26th February 1948. Subsequently a number of criticism and suggestions were received and the Drafting Committee sitting again on the 23rd, 24th and 27th March 1948 considered these suggestions and recommended that certain amendments be made in the original draft. The original draft together with the amendments recommended by the Drafting Committee and certain other amendments received thereafter were considered on the 10th and 11th April by a Special Committee consisting for the most part of certain members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee and the final Draft of the Constitution was prepared.

The Indian Nation, therefore, marched to personal freedom and economic freedom and incorporated in two separate parts. This could be made possible on account of the ceaseless and relentless efforts and invaluable sacrifices made by the brave Indian masses under bold, courageous and selfless leadership of our national leaders like Moti Lal Nehru, Mahatma Gandhi and Tilak etc. The seeds sown in the 19th century saw their fruits in 1950 under the leadership of Jawahar Lal Nehru, Maulana Azad, Maulana Hasrat Mohani, Dr. Rajendra Prasad, Sardar Patel and a host of others with the help of a team of well British Trained Lawyers like Dr. Ambedkar, Alladi Krishna Swamy Ayyar, K.M. Munshi, Ananthasyaman Ayyangar and a highly intelligent, efficient constitutional Advisar Sir B.N. Rau.

The sixteen Directive Principles of State Policy assumed the form in which they appear as Articles 36 to 51 of the Constitution.

(2) Nature :-

Directive Principles embody the philosophy of Indian Constitution and contain a system of values. Some principles are borrowed from the liberal humanitarian traditions of the West and some are peculiar to and have grown out of the Indian environment. Some others represent an attempt to fuse the traditional and modern modes of life and thought.

These Principles are placed in Part IV of the Indian Constitution. Through these 'Directives' the framers of the Indian Constitution sought to incorporate certain basic principles which they considered essential to be followed by a Welfare State for its social and economic progress. Truly speaking, these directives are guide lines to the Parliament, the State legislatures, the union and the State executive Governments as also to local bodies and other authorities to formulate their legislative and administrative policies in such a manner that the social and economic interests of Indian
people are well protected. Although these directives are mostly in the nature of moral precepts and economic maxims without any binding force, yet the State is directed to give effect to these Principles through legislative measures. As evident, the provisions of Article 38 clearly define the obligation of the State to strive to promote a social and economic order in which social, economic and political justice prevail. This, in other words means that the State is to secure the Welfare of the citizens. It is noteworthy that the framers of the constitution were not satisfied with merely laying down these ideals but they enjoined a duty upon the State to direct its policy towards securing to the citizens, equality, the right of adequate means of livelihood, the equitable distribution of ownership and control of material resources of the Country so as to subserve the common good.

The constitutional validity and usefulness of the Directive Principles has always remained a controversial issue and opinions have often differed on this point. Some critics regard these directives an unnecessary appendages to a written constitution like ours because they are nothing more than mere political manifesto devoid of any constitutional value. Similar views were expressed by certain members of the Constituent Assembly while the directives were being considered in the House. These members were Mr. Naziruddin Ahmad, Mohboob Ali Baig Saheb Bahadur, Mr. Husain Imam, Mr. Karimuddin, Sarvshri Promtha Rjan Thakur, Biswanath Das, Som Nath Lahri and others. Mr. Naziruddin Ahmad, a Muslim member from West Bengal characterised these principles as a set of resolutions made on new year's day which are broken at the end of January. Mahboob Ali Baig Sahib Bahadur says:

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... my submission is that these Principles are out of place and contrary to the principles of Parliamentary democracy... They do not find a place in the constitution and on account of the fact that they cannot be enforced they are useless and they had better be deleted."

Some of the members like Mr. Husain Imam, Dr. S. Deshmukh and Shri Bishwanath Das expressed a doubt that in the absence of any specific provision making it obligatory for the State to give effect to these Principles, it was quite possible that none of these provisions might ever be realised.

Mr. Husain Imam observed:

"These directive principles, as they have been laid down are singulary inoperative. They merely say that if the people and the Government are good they will observe these directives. I do not think there is any need for having any ineffectual directives at all. It is only when you provide a law or fix a certain standard that you have to provide for those who are not up to that standard ... All the directive principles can be ignored by the State Governments and there is no remedy for it. Even the President of Union can not do anything to see that the directive principles are observed." 27.

He further observed:

"...these principles have been brought in just to silence criticism and to have a good sign-board that we have good intentions, without having any intention of following those directions." 28

28. ibid. at 492.
Dr. P.S. Deshmukh opposed the borrowing of these provisions from the Irish Constitution and incorporating them in Part IV of the Indian Constitution as they were vaguely worded, non justiciable and devoid of any binding force. He was of the opinion that Indian conditions were altogether different from those of Ireland and as such there was no point in adopting their fundamental rights in the Indian Constitution. He further argued that there was nothing comparable between the two countries. Ireland, after all, was a very small country with the population of only twenty nine lakhs while there were millions of people living in India. As such the Indian society needed to be governed by definite principles. The directives only provide absolute minimum that every modern government must avow. They are, therefore, hollow avowal of the minimum. In view of the enormous problems of this country there was no point in going to hold out some distant and indirect hopes without providing any effective means to realise them in practice.29

Those who supported the inclusion of Directives Principles in the Constitution of India were Prof Shibban Lal Saksena, Dr. Ambedkar, Sir Alladi Krishnaswami Ayyar, Sir Ananthasayanam Ayyangar, Pandit Jawher Lal Nehru and others. They pleaded that far from being mere platitude and pious wishes, these directives served a very useful purpose. Prof. Shibbanlal Saxena said:

"I, therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles ... This a very important chapter which lays down the principles which will govern the policy of the State and which, therefore, will ensure to the people of the country the realization of the great ideals laid down in the preamble".30

29. C.A.D. Vol. V at 369-70
Dr. Ambedkar described the nature of the Directive Principles in these words:

"The Directive Principles are like the Instruments of Instructions which were issued to the Governor General and to the Governors of the colonies and to those of India by the British Government under 1935 Act...What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instruction to the legislature and the executive ... Whoever captures powers will not be free to do what he likes with it. In the exercise it, he will have to respect these instrument of instructions which are called Directive Principles. He can not ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election time". 31

In regard to the policies contained in Parts III and IV of the Indian Constitution, Granville Austin says:

"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 achievement. ... the care of the commitment to the social revolution lies in Parts III and IV in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution". 32

Justifying the inclusion of the Directive Principles in the Indian Constitution Sir Alladi Krishnaswami Ayyar observed:

"The constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future parliament to evolve any economic order and undertake any legislation they choose in public interests. In this connection, the various Articles which are Directive Principles of Social Policy are not without significance and importance, while from the very nature they can not be justiciable or enforciable legal rights in a court of law; they are none the less, in the language of Article 29, fundamental in governance of the country and it is the duty of the State to apply these principles in making laws. It is ideal to suggest that any responsible Government or any legislature elected on the basis of universal suffrage can or will ignore these principles."

Sir Ananthasayanam Ayyangar, however, rightly guessed that the main cause of discontent and misunderstanding about the provisions contained in Part IV regarding the Directive Principles centred round the fact that the Fundamental Rights were categorised under two different heads - one justiciable while the other non-justiciable rights. The critics who were against the inclusion of Directive Principles in the constitution strongly argued that the distinction was arbitrary and therefore the use of the word 'directive' needed to be substituted by the word fundamental. (The members of the Constituent Assembly who shared this views were Mr. Karimuddin, Sarvshri Promtha Rajan Thakur, Biswanath Das, Somnath Lahri and others. Answering those critics Sir Ananthasayanam Ayyangar observed that it was necessary to

distinguish unjusticiable rights from those of justiciable ones. Illustrating the point further he argued that Article 36 of the Draft Constitution contained the provisions that the State shall introduce free and compulsory education within a period of ten years. Now supposing the State does not do so, could any court of law enforce it? Was it open to the courts to charge such government? Could the Ministry be dissolved on this ground and a new ministry installed? Therefore, 'in the nature of things, these are only directives, and can not be justiciable rights at all'. Under the circumstances there was no purpose in removing the word 'directive'. In his views these were the principles which the Government must keep in mind, whatever Government may be in power and they must be carried out. To quote in his own words:

"We have incorporated them in the constitution itself because we attach importance to them ... It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years election will take place, and then it is open to the electorate not to send the very same persons who are indifferent to public opinion. That is the real sanction, and not the sanction of any court of law."

Dr. Ambedkar in his address before the Constituent Assembly on Nov. 19, 1948 once again tried to resolve the misunderstanding among the members of the Constituent Assembly as regards the nature, significance of the Directive Principles in the following words:

"As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By Parliamentary democracy we

35. C.A.D. Vol. VII at 475
mean 'one man one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this constitution a political democracy is because we do not want to instal by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That ideal is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man one vote'. ... Having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act*36.

"The whole conception of the Fundamental Rights is the protection of individual liberty and freedom. That is a basic conception and to know where from it was derived you have to go back to European history from the latter days, of the 18th century; roughly speaking you may say from the days of the French Revolution which spread on to

the 19th century. That might be said to be the dominating idea of the
19th century and it was continued and it is a matter of fundamental
importance. Nevertheless, as the 19th century marched into the 20th
century and as the 20th century went ahead, other additional ideas
come into the field which are represented by our Directive Principles
of State Policy".\(^{37}\)

He further said:

"The Constitution lays down certain Directive Principles of State
Policy and after long discussion we agreed to them and they point out
the way we have got to travel. The Constitution also lays down
certain Fundamental Rights. Both are important. The Directive
Principles of State Policy represent a dynamic move towards a certain
objective. The Fundamental Rights represent something static, to
preserve certain rights which exists. Both again are right".\(^{38}\)

The critics who were against the inclusion of Directive Principles of
State Policy said that these directives are non justiciable, non obligatory on
the State and there is no remedy for it. Even the President of India can not do
any thing to see the directive Principles are not observed and implemented.

They opposed the borrowing of these provisions from the Irish
Constitution and incorporating them in the Indian Constitution because the
Indian conditions were different from those of Ireland. They argued that
Indian society needed to be governed by definite principles. The directives
only provide absolute minimum that every modern government must avow.

\(^{37}\) Observation made by Pandit Jawahar Lal Nehru while moving for consideration
Constitution (First Amendment) Bill in the Lok Sabha on 16th May, 1951 (Parlia-
mentary Debates), Part II.

\(^{38}\) Constitution (First Amendment) Bill moved by the Prime Minister on May 16, 1957
in the Lok Sabha. Lok Sabha Debates Part II, May 16, 1951 Col. 8820.
They are, therefore hollow avowal of the minimum and the social and economic objectives can not be achieved due to their non binding nature, the inclusion of these directives was undemocratic and also against the principle of Parliamentary democracy and as such needed to be deleted.

To sum up, the criticism against the inclusion of Directive Principles in the Constitution mainly ensued from the fact that such declarations would tend to remain a dead letter unless the Legislatures initiate effective measures for transformation of the social and economic structure of the country in accordance with them.

Those who were in favour of inclusion of Directive Principles in the Constitution of India pleaded that far from being mere platitudes and pious wishes, these directives served a very useful purpose. These directives are also useful in as much as they define a tendency and indicate the principles of new process of guarantee of social and economic rights which will be effective in future. They argued that the framers of the Constitution declared socio-economic justice as the goal in the Preamble of the Constitution and enumerated social and economic precepts under Directive Principles of State Policy to be implemented by the State to attain this end.

It is crystal clear that there was a mixed reaction as to the significance and utility of the Directive Principles in the Constituent Assembly. Some members favoured the incorporation of these principles in the body of the constitution while the others discarded them as useless precepts on account of their non-enforceability. A few of them, however, suggested that if at all these principles were to be incorporated in the constitution they could be Fundamental Principles. They contended that in fact there was no difference between the rights contained in the chapter on 'Directives' and those included
in Part III as Fundamental Rights' except for justiciability.

From the foregoing discussion of the Constituent Assembly Debate the following points emerge in respect of the various facets of the Directive Principles of State Policy:

(i) That the Directives are like Instruments of Instructions to the legislatures and the Executive and as such could be justified for inclusion in the Constitution on two grounds, namely, (a) wherever there was a grant of power and general terms for peace, order and good government, it was necessary that it should be accompanied by instructions regulating its exercise and (b) since the Draft Constitution as framed only provided a machinery for the government of the country and not a contrivance to install any particular party in power it was necessary to see that whosoever captured power would not be free to do what be liked with it but followed certain instructions.

(ii) That the Directives cannot or will not be ignored by any responsible government or any legislature elected on the basis of universal suffrage for the sanction behind them is not the Courts but the electorates.

(iii) That the Directives lay down the ideal of economic democracy which as a concept has no fixed or rigid form, varies from country to country depending upon its economic progress and even within a country changes from time to time on alteration in circumstances. In other words, the Directives wedded as it is to the ideal of economic and social democracy is dynamic in concept, a term, as pointed out earlier, was used by the Prime Minister in describing the nature of the Directive Principles.

(iv) That the language of the Directives laying down the economic democracy in turn should be in the form it was: otherwise it would

be lending rigidity to a thing which by nature was not fixed or rigid.

The whole scheme of Directive Principles of State Policy as placed in Part IV of the Constitution of India, indicate that the leaders of the freedom movement wanted not only political freedom but economic and social regeneration of the country for providing maximum social and economic justice to labour class. They wanted to remove poverty, economic disparity, ignorance, inequality of opportunity and to wipe every tear from every eye, and believe in maximum pleasure and minimum pain doctrine.

At this stage it is pertinent to evaluate the concept of wage and the changing concept of living wages.

3. Wage:

In determination of wages, Government, employers and workers have got specific and distinct roles in every industrial society. They may all have a common interest in increasing the total quantity of goods and services produced, from which wages, profits and revenues are obtained.

The labour class of the society has always been the victim of exploitation of the rich and elite class holding the reins of employment in their hands. Profit making has been the guiding motive of economic enterprise. This was accentuated by the Industrial Revolution which widened considerably the opportunities and scope for profit-making. In such context, naturally, there was much exploitation of wage earning classes. Subsistence, long working hours, employment of women and children were some of the devices adopted by entrepreneurs to derive maximum profit. Government of the day did not interfere as they were guided by and wedded to the economic policy of laissez-faire. This doctrine ruled the mind of the people and governed the economic policies of nation for a long time. It was believed that free play of self interest was conducive to maximum individual benefit. People believing in laissez-faire held that in economic matters the State had only to keep out of the ring
in order to ensure the best results. Private enterprise would do all that was needed.

The doctrine of laissez-faire was always essentially capitalist in outlook. It was conceived in the terms of a number of private employers, each possessing certain instruments of production and a certain capacity to employ labour.

In nineteenth century, the relation between employers and employees were usually governed by the economic principles of supply and demand and the employers thought that they were entitled to hire labour on their terms and to discuss the same at their choice, Subject to the specific terms of contract between them. The theory 'hire and fire' as well as the theory of 'supply and demand' was allowed free. In those circumstances there was no question of fixation even a minimum amount of wages. The working class was too weak to fight for the better labour condition and wages. Those who controlled industry had a feeling of camplacency until it was shattered by political and social upheavals early in the century and two World Wars. The government one by one, abandoned laissez-faire and started intervening in the economic and social order. Public opinion came to be mobilised and government policies came to be guided by more and more by social objectives and a doctrine of a welfare State came in the light. The social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form as the national economy progresses from stage to stage and as under the growing strength of Trade Union Movement, Collective bargaining enters in Labour arena and wage structure ceases to be purely an arithmetical problem.

In a developing country like India where the majority of the workers
live below the poverty line, have low wages, weak bargaining power, a planned economy in a welfare State which aims at providing social justice to the poor, depressed, helpless workers, preservation of industrial peace and contentment is of vital importance for an uninterrupted and accelerated growth of national economy. Wages form an important part in the whole labour-management relations, which can be maintained only if the labour is provided just share in the fruits of economic development.

Definition of wages: Etymologically the term 'wages' means an amount paid periodically, especially by the date, or week or the month or time during which the workman or servant is at employer's disposal. The New Encyclopaedia Britannica defines wages as "income derived from human labour including payments of workers on the basis of hours worked and the salaries of supervisory and professional workers, as well as the implicit wages earned by the self-employed (realised in the form of revenue from business or profession. The term wages may refer to a rate of pay per hour, day, week, month or price." The Lexicon Webster Dictionary defines wages as "money paid for labour or services usually according to specified intervals of work, as by the hour, day, week ... the share of national product received by labour for its work, as distinct from the share going to capital." In the language of law, 'wage' is the consideration for the work done by an employee for his employer paid periodically. The term 'wage' has been defined under the different statutes in different ways to achieve different objectives. Under Section 2 (rr) the definition of 'wages' is divided into three parts. The first part defines wages to mean "all remuneration capable of being expressed in

41 The Lexicon Webster Dictionary, Vol II, (The English Language Institute of America Inc)
42 Section 2 (rr) of the Industrial Disputes Act, 1947
terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or work done in such employment". This is the denotation of the term 'wages' or what it denotes. The second part is designed to include something more in what the term primarily denotes. The third part of the definition excludes certain payments such as bonus; contribution towards pension or provident funds or for any other benefit; gratuity payable on the termination of the service of a workman. The definitions of 'wages' which are given in the various other statutes are also divided into three parts.

The first part of the definitions of wages defined in the statutes almost is same in nature as defined under Industrial Disputes Act, 1947 except in the Workmen's Compensation Act, 1923. The first part of the definition

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43. (I) Section 2 (rr) of the Industrial Disputes Act, 1947 defines 'wages' as "all remuneration capable of being expressed in terms of money, which would if the terms of employment express or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
(iii) any travelling concession;
(iv) any commission payable on the promotion of sales or business or both:
but does not include-
(a) any bonus;
(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
(c) any gratuity payable on the termination of his service:"

(II) Section 2 (s) of the Payment of Gratuity Act 1972 defines 'wages' as "all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime
defined under section 2 (m) of the Workmen's Compensation Act, 1923 is comprehensive and includes a privilege or benefit which is capable of being estimated in money. The amount of over time can be estimated in money.

wages and any other allowance

(III) According to section 2 (m) of the Workmen’s Compensation Act, 1923 wages includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

(IV) According to section 2 (21) of the Payment of Bonus Act, 1965, salary or wage means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

(i) any other allowance which the employee is for the time being entitled to,
(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles,
(iii) any travelling concession,
(iv) any bonus (including incentive, production and attendance bonus),
(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force,
(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him,
(vii) any commission payable to the employee.

Explanation Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.
There is slight difference in the second part of the definitions. This part of the definitions gives extended connotation by including certain payments, allowances and amenities. The dearness allowance is included in all the definitions, but the money value of the concessions is not included in all the definitions.

(V) Section 2 (h) of the Minimum Wages Act, 1948 defines 'wages' as "All remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include-

(i) the value of-
(a) any house-accommodation, supply of light, water, medical attendance, or 
(b) any other amenity or any service excluded by general or special order of the appropriate Government;
(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
(iii) any travelling allowance or the value of any travelling concession;
(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
(v) any gratuity payable on discharge."

(VI) Section 2 (vi) of the Payment of Wages Act, 1936 defines 'wages' as "all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a court,
(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force."
definitions. It is included only in two definitions which are given under section 2(rr) of the Industrial Disputes Act and under section 2(m) of the Workmen's Compensation Act. The bonus is included in the definitions given under Workmen's Compensation Act, The Minimum Wages Act and the Employees State Insurance Act. The travelling allowance is included only in one definition given under Industrial Disputes Act. The arrears are included in three definitions given under the Payment of the wages Act, 1936 Industrial Disputes Act, and the Employees State Insurance Act.

But does not include-

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

(VII) According to Section 2 (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 "Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer.
The third part of the definitions excludes certain type of payments made by the employer in favour of employees. The gratuity is excluded in all the definitions. The arrears are excluded in the definitions given under the Workmen's Compensation Act, The Minumum Wages Act, The Employees Provident Fund and Miscellaneous Provisions. The travelling allowance is also excluded in all the definitions except the definition given under Industrial Disputes Act. The bonus is excluded in all the definitions except the definition given under the workmen's Compensation Act; The Minimum Wages Act; and the Employees State Insurance Act. The money value of the concessions is excluded in all the definitions except the workmen's Compensation Act and Industrial Disputes Act. (see table-I).

IVIII) Section 2 (22) of the Employees' State Insurance Act, 1948 defines "wages" as all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, expressed or implied, were fulfilled and includes any payment of an employee in respect of any period of authorised leave, lock out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include-

(a) any contribution paid by the employer to any pension fund or provident fund under this Act.
(b) any travelling allowance or the value of any travelling concession.
(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or
(d) any gratuity payable on discharge.
After analysing the definitions of 'wages' discussed above, it may be pointed that the definition of 'wages' given in a particular Act is given according to the purposes and objects of that Act. It is quite clear that there is no uniformity in the definitions. Only the first part of the definitions shows similarity. The second and third parts of the definitions are different in nature. This is so because different Acts are passed to achieve different aims objects. But nothing have done so far in this regard to laying down a uniform definition of the term 'wages'.

Since 1948 several terms referring to the wage levels has received the attention of the renowned economists, legislatures and courts. Among those terms some important terms are:

(i) Statutory minimum wage; (ii) the bare or basic wage; (iii) the minimum wage; (iv) the fair wage; (v) the living wage; (vi) the need based minimum wages etc.

The National Commission on Labour (1969) observed:

"The definition of 'wage' is quite exhaustive. The question whether a particular type of remuneration could form part of 'wages' as defined in the Act is primarily a question of fact as it would depend upon the circumstances of the case. For instance, free food and tiffin supplied to hotel workers by their employers has been held to be part of wages within the meaning of the definition. Whereas the term 'wage occurs in the Industrial Disputes Act, under the Payment of Bonus Act, the term used is salary or wages'. The term 'wages' is differently defined in various enactments like the Payment of Bonus Act, the
Workmen's Compensation Act, and the Payment of Wages Act. It has been suggested in the evidence before us that the definition of 'wages' under the Industrial Disputes Act should include the items now excluded. The Commission recommended that items like bonus, contribution to Provident Fund and other benefits and gratuity on termination of service where gratuity has become a term of service under an award or settlement, have all become regular elements of worker's remuneration and should, therefore, be included as part of a worker's wages.\textsuperscript{45}

Wages may be classified into three categories i.e. minimum wage, fair wage and living wage. In the ever expanding economy it would be difficult to define precisely as to which wage is minimum or fair or living wage. A wage which may be deemed to be a living wage today may only remain a fair wage tomorrow and just a minimum wage the day after.

In the present study the discussion is confined only to the concept of living wage.

4. Concept of Living wage: Article 43\textsuperscript{46} of the Constitution of India is concerned with the welfare of the workers in so far as it directs the State to secure living wage and suitable conditions of work to the workers, and to ensure them a decent standard of living and full enjoyment of leisure and social

\textsuperscript{45} Ibid
\textsuperscript{46} Article 43 "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to -promote cottage industries on an individual or co-operative basis in rural areas".
and cultural opportunities. The Article also contains a mandate for the promotion of the cottage industries in rural areas on an individual or cooperative basis.

The Article in respect of living wage to workers has also found place in the constitution of many other countries⁴⁷. It is true that the directive outlined in Article 43 of the Constitution contains an elaborate scheme for the attainment of the welfare of the workers. The framers of the Indian Constitution, however, preferred to frame this Article in general terms leaving it to the discretion of the Government to adopt adequate measures for the fulfilment of this objective.

The phraseology in the Indian Constitution is different. It directs the State to secure for its workers a 'living wage' and not the 'minimum wage' as provided in corresponding provisions of the other Constitutions. The reason for this deviation is perhaps the present economic conditions of India which hardly admit of securing for its workers a 'minimum wage' which implies a wage sufficient for the subsistence of the worker and his family. The framers were, therefore, rightly contented with the provision that the State should secure a 'living wage' which strictly connotes an adequate wage for the subsistence of workers alone. This is also in conformity with the objective set

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⁴⁷. Article 51 of the Constitution of Germany
Articles 118 and 119 of the Constitution of U.S.S.R
Article 136 of the Constitution of Brazil.
Articles 60 and 61 of the Constitution of Republic of Cuba.
out in Article 39(a)\(^4\) of the Constitution which in respect of State's policy directed towards securing to the citizen, men and women the right to an adequate means of livelihood.

It may, however, be pointed out that the concept of living wage is impossible to determine because the concept is expanding with the development and growth of national economy.

In our country, for certain reasons there is no statutory definition of living wage. The Committee on Fair Wages also recognised that the concepts laid down by it could not be viewed in any static sense; they would vary from time to time, depending on the economic and social development in the country. The principle that luxuries of today, become necessity of tomorrow was implicit in this recognition. These recommendations have exerted considerable influence on wage fixing authorities in formulating wage structures in various industries and industrial units.

In the absence of the precise and perfect definition of the living wage, the judiciary from time to time has given comprehensive definitions of living wages. In 1958, The Supreme Court in Express News Paper Limited Vs Union of India\(^5\) where the main issue was the validity of action taken by a Wage Board established under the Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1955, held that section 5(1)(a)(iii) of that Act was invalid as in conflict with Article 19(1)(g) of the constitution. The Court also held that the decision of the Wage Board was, under several provisions of the Act, ultra vires largely for procedural reasons. The Supreme Court at the outset examined the principles of wage fixation. In this context the court went

\(^4\) Article 39(a): The State shall in particular, direct its policy towards securing—
(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;

deeply into the concept of living wage, as developed through years and
developed by various authorities at the national and international levels and
held that the living wage should enable the male earner to provide for himself
and his family not merely the bare essential of food, clothing and shelter but
a measure of frugal comfort including education for children, protection
against ill-health, requirements of essential social needs and measure of
insurance against the more important misfortunes including old age.

50 (i) Justice Higgins of the Australian Commonwealth Court of Conciliation in
the Harvester case defined the living wage as "one appropriate for the
normal needs of the average employee, regarded as human being living in
a civilized community. The living wage must provide not merely for
absolute essentials such as food, shelter and clothing, but for a condition
of frugal comfort estimated by current human standards. It was a wage
sufficient to ensure the workmen, food, shelter, clothing, frugal comfort,
provision for evil days etc., as well as regard for special skill of an artisan
if he is one."

(ii) According to the South Australian Act of 1922, the living wage means a sum
sufficient for the normal and reasonable needs of the average employee living
in a locality where work under consideration is done or is to be done.

(iii) The Queensland Industrial Conciliation and Arbitration Act provides that the
basic wage paid to an adult male employee shall not be less than 'sufficient to
maintain a well conducted employee of average health, strength and compe­
tence and his wife and family of three children in a fair and average standard
of comfort, having regard to the conditions of living --- shall not be taken into
account'.

(iv) The Commission of the Bureau of Labour Statistic (USA 1919) analysed the
budget with reference to three concepts, viz. (a) the pauper and poverty level,
(b) the minimum of subsistence level, and (c) the minimum of health and
comfort level and adopted the last for the determination of living wage.

(v) The United Provinces Labour Enquiry Committee classified levels of living
standard in (a) the poverty level, (b) the minimum subsistence level, (c) the
subsistence plus level and (d) the comfort level and chose the subsistence plus
level as the basis of what it called the 'minimum living wage'.

(vi) The Bombay Textile Labour Enquiry Committee (1937) observed, "what we have
to attempt is not an exact measurement of a well defined concept --- can be
attached to term like the 'living wage standard' and it has necessarily to be
judged in the light of the circumstances of the particular time and country"
In Crown Aluminium works Vs. Their workmen owing to financial difficulties the employer was permitted by the Industrial Tribunal to lower some wages, hours of work, and amount of production bonus and to retrench some personnel. Tribunal fixed a basic wage, but gave the employer liberty to abolish two hours concessions and facility bonus. This change reduced basic wages below the subsistence level. On appeal the Labour Appellate Tribunal found that these concessions and the bonus had been enjoyed by the workmen for a long time, as of right and as part of their basic wages. Therefore they had become a term of the conditions of service. The Appellate Tribunal revised the wage structure for existing workmen by incorporating the concessions and bonus into their basic wages. By special leave the Supreme Court took the appeal from this Judgement of the Labour Appellate Tribunal. The Supreme Court while considering the vires of award given by an Industrial Tribunal even compared the wage position of Indian labour with that of English wage earners and Justified the fixing of wage structure in different industries in India so as to attain the principle objective of a welfare state to secure, "to all

(vii) The views of I L O , as expressed in its publication, ‘The Minimum wage Fixing Machinery’, were as follows " different Countries estimates have been made of living wage, but the estimates vary according to the point of view of the investigator Estimates may be classified into atleast three groups. (1) the amount necessary for mere subsistence, (2) the amount necessary for health and decency and (3) the amount necessary to provide a standard of comfort

(viii) The Committee on Fair Wages (1947-49) at pp 5-7 paras 6 and 7 observed that there is a general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against the more important misfortunes including old age

51 AIR 1958 SC 30
citizens justice social and economic”. The Court observed:

"To the attainment of this ideal the Indian constitution has given it place of pride and that is the basis of the new guiding principles of social welfare and common good”. \(^{52}\)

In Standard Vacuum Refining Co. of India Ltd Vs. Its workmen\(^{53}\) the workmen claimed a bonus for the year 1956, equivalent to nine months, total earnings, on the ground that the employers had admitted their capacity to pay and that the wage actually received was less than the living wage. The employers contended that they were paying a living wage and that no bonus was due. The employers replying mainly on the report of the Textile Committee, 1940 contended that if the living wage there found for 1940, i.e., Rs. 55/= was multiplied by 3.5 (due to a 35 percent rise in prices between 1940-1946) it gave Rs. 192.25 as the living wage for 1956, and they were paying their workmen more than that. The workmen relied on the recommendation of the Indian Labour Conference, 1957, to show that Rs. 209.70 approximated the need-based minimum wage, and that the average wage paid by the employers was less than that. The tribunal held that the wages paid were fair, but that there was still a gap between the actual wage and the living wage. It awarded a bonus equivalent to five months, basic wages. Both parties challenged this award. Their cross appeals came before the Supreme Court. The Supreme Court observed:

"--- the concept of a living wage is not a static concept; it is expanding and the number of its constituents and their respective contents are

\(^{52}\) Ibid
\(^{53}\) (1961) I L L J S C 227
bound to expand and wider with the development and growth of the national economy. That is why it will be impossible to attempt the task of determining the extent of the requirement of the said concept in the context of today in terms of rupees, annas and pies on the scanty material placed before us in the present proceeding. We apprehend that it would be unexpedient and unwise to make an effort to concretize the said concept in monetary terms with any degree of definiteness or precision even if a fuller enquiry is held. In need, it may be true to say that in an under-developed country it would be idle to describe any wage structure as containing the ideal of the living wage though in some cases wage paid by certain employers may appear to be higher than those paid by others. Therefore, looking at the problem of industrial wage as a whole, it would not be possible to predicate that our wage-structure has reached even the level of fair wage. It is possible that even so some employers may be paying a very high wage to their workmen and in such a case it would be necessary to examine whether the wages paid approximate to the standard of the living wage but in deciding this question the proper approach to adopt would be to consider whether the wage-structure in question even approximately meets the legitimate requirements of the components constituting the concept of living wage.

The Supreme Court upheld the Tribunal Award.

In Hindustan Times. Ltd. Vs. Their Workmen the Supreme Court observed that the fixation of wage structure is among the most difficult task that industrial adjudication has to tackle. On the one hand, not only the demands social justice but also the claims of national economy require that

54. Id at 228
55. (1963) 1 L.L. J. S.C. 108
attempt should be made to secure to workmen a fair share of the national income which they help produce. On the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the sources of the national income itself. On the one hand, better living conditions for workmen that can only be possible by giving them a 'Living Wage' will tend to increase the nation's wealth and income. On the other hand, unreasonable inroads on the profits of the capitalists might have a tendency to derive capital away from fruitful employment and even to effect prejudicially capital formation itself. The rise in the prices that often results from the rise of workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the country's international trade cannot also be always ignored. Thus numerous complex factors, some spring from social philosophy, give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of numerous factors remain static. While international movements in the cause of labour have for many years influenced thinking and sometimes even judicial thinking in such matters, in this Country, the emergence of an independent democratic India has influenced the matter even more profoundly. In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration industrial adjudication has set for itself certain standard in the matter of wage fixation. As the bottom of the ladder' there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage which may roughly be said to approximately to the need based minimum in the sense of a wage which is adequate to cover the normal needs of the average employee regarded as a human being in a civilized society. Above the fair wage is the living wage' which will maintain the workmen in the highest state of industrial efficiency, which will enable him to
provide his family with all 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.

In All India Reserve Bank Employees Association Vs. Reserve Bank of India the Supreme Court observed:

"The living wage concept is one or more step higher than fair wage. It has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essential but a fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept of living wage. It may be taken that 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 come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying much higher wages than the general average. There can be no doubt that in our march toward a truly fair wage in the first instance and ultimately the living wage we must first achieve the need base minimum..."
5. Judicial trends:

Article 43 has been invoked in several cases, particularly in the context of 'living wage'. The Supreme Court has made significant contribution in elaborating the concept (even though it might be incapable of precise description), particularly through the judgements of N.H. Bhagwati, Gajendragadkar and Hidayatullah J.J. in the various cases. The following "principles emerge from these cases:

(i) Securing of living wages to workers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public, a directive addressed to the State through Article 43.

(ii) Industrial adjudication, therefore, takes into account all relevant considerations and arrives at different categories of wage structures. These categories of wage structure are described as living wage, fair wage and minimum wage. 'Living wage' should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.

(iii) It is the statutory minimum wage which the State should strive to achieve having regard to the Directive Principles of State policy. The enactment of the Minimum wages Act, 1948, is such an attempt.

(iv) The employer cannot complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages.

(v) In the context of expanding national economy the content of living wage, fair wage and minimum wage are also apt to expand and vary, from industry to industry, region to region and from time to time.

In some cases the validity of certain provisions of the Minimum Wages Act, 1948 and the implementation of Directive Principles was discussed. In Bijoy Cotton Mills Vs. State of Ajmer where the Court had to consider the validity of sections 3, 4, 25 of the Minimum Wages Act, 1948, it was contended on behalf of the petitioner that these provisions interfered with the freedom of trade or business guaranteed under Article 19(1) (g) of the constitution and were unreasonable and even oppressive with regard to one particular class of employees. Rejecting this contention of the petitioners the Court upheld the validity of the said provisions of the Act. Mukherjee J. speaking for the Court observed:

"It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conclusive to the general
interest of the Public. This is one of the Directive Principles of State Policy embodied in Article 43 of our constitution".

The Supreme Court reiterated this view again in Edward Mills Vs. State of Ajmer\(^60\) and also in Unichoyi's Case\(^61\).

Again in National Carbon Campany (India) Ltd. Vs. M. N. Gar\(^62\) when it was argued on behalf of the company that the Tribunals in attempting to ensure living wages to workers were virtually enforcing the non-enforceable provision of Directive Principles (ie. Article 43) which being beyond their powers, was void. The High Court of Calcutta, however, rejected the argument of the Company and observed that it had no substance. The Tribunals were ordering the payment of 'living wage'to industrial workers not because they wanted to make the unenforceable provisions of Article 43 as enforceable but with a view to maintain Industrial harmony which is the object of the statute dealing with industrial cases.

In Y.A Mamarde Vs. Authority under Minimum wages Act\(^63\) an interesting argument is given by the learned counsel of the respondent (Employer). He contended that the Act. (Minimum wages Act, 1948) is only concerned with providing for minimim wages and if an employee is being paid more than minimum wages so provided, the Act does not operate and employer cannot be compelled to pay higher wages. The employees of the corporation are already being paid much higher wages than those fixed under the Act as minimum wages and therefore, there is no legal obligation on the employer to pay higher wages. The point strenuously convassed on behalf of

\(^{62}\) A.I.R. 1957 Cal. 500
\(^{63}\) 1972 Lab. I.C. S.C. 894 at 897-98.
The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez-faire and in recognition of the new principles of social welfare and common good.

Prior to our constitution this principles was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-constitution measure was the offspring of that movement. Under our present constitution to endeavour to secure to all workers(whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and condition of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principles of State Policy being conducive to the general interest of the Public and, therefore, to the healthy progress of the nation as a whole merely lays down the foundation for appropriate social structure in which the

64 Rule 25. "Extra wages for overtime. When a worker works in an employment for more than nine hours on any day or for more than fifty four hours in any week, he shall, in respect of overtime work, be entitled to wage-
(a) in the case of employment in agriculture, at one and a half time the ordinary rate of wages.
(b) in the case of any other scheduled employment, at double the ordinary rate of wages.
Explanation- The expression 'ordinary rate of wages' means the basic wage plus such allowances including the cash equivalent of the advantages accruing through the concessional sale to the person employed of foodgrains and other articles as the person employed is for the time being entitled to but does not include bonus ..."
labour will find its place of dignity legitimately due to it in lieu of its contribution to the progress of national economic prosperity. The Act has since its enactment been amended on several occasions apparently to make it more and more effective in achieving its object which has since secured more firm support from the constitution. The present Rules under section 30 of the Act it may be pointed out, were made in October, 1950 when State was under a duty to apply the Directive Principles in making laws. A Preamble though a key to open the mind of legislature, can not be used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubt or ambiguity that recourse may be had to the Preamble to ascertain the reason for the enactment in order to discover the true legislative intendment. By using the phrase double the ordinary rate of wages the rule-making authority have intended that the worker should be the recipient of double the remuneration which he, infact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act.

From the cases referred above, it can be concluded that the meaning of the word 'living wage' in context with Article 43 the constitution is stretched too far by the law-courts. It is respectively submitted that in view of the conditions obtaining in India it is hardly convincing that the framers of the constitution during 1940's could really think of interpreting the word 'living wage' to mean 'family wage' which includes a wage sufficient to the living of the worker and also his family. However, taking into consideration the industrial progress made by the country during the last two decades the courts are obviously justified in giving a liberal interpretation to the term 'living wage' so as to bring about the welfare of the labour and industrial workers.

The judicial interpretation of expression, 'living wage' in Article 43 by the Supreme Court in successive judgements has certainly given a content to
the concept. It is firstly clarified that the 'wage' has relation not only with the individual worker but also with his family; secondly, that it comprehends some decent and humane existence for the worker and his family, not mere subsistence; and thirdly that it is an elastic concept depending upon the state of economy of a particular region. There is suggestion by K.C. Markandan that the Constitution framers considered a 'living wage', as something lower than a 'minimum wage', and so in the context of the poor economic condition of India the use of the expression 'living wage' was deliberate as compared to the expression 'minimum wage' used in other constitutions and probably the wage for an individual worker alone was comprehended and not for his family. It is submitted that in the context of the prolonged discussion of the concept in several committee reports in pre-constitution India, such an inference is unwarranted. In any case, the Supreme Court has set our sight by judicial activism. It has been again remarked by the Supreme Court in Workmen Vs. Reptakos Brett and Co. Ltd. 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 fulfilment is nowhere in sight. Industrial wage-looked as a whole-has not yet risen higher than the level of minimum wage.

If the scientific and technological development in India, increase the national income, there can be no reason why the workmen should not be provided with the living wages which in turn will lead to increase in efficiency, production and improvement in national per capita income. Moreover, the State owe a duty towards them to enact legislation in terms of Directive Principles of State Policy assuring them the living wage.