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Role of Collective Bargaining and Adjudication on Determining Wage Policy & Resolving Disputes– A Doctrinal Study

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Abstract

Wage is not a matter of concern for only for laborers but also for the society. Being an economic variable, the wage is affecting as well as affected by consumption, inflation, investment decisions of people, employment and other factors of the society. Wage fixation and Bonus Payments are the two major issues in the Indian Industrial Sector. To prevent the industrial disputes, Collective Bargaining along with adjudication on determining wage policy and voluntary arbitration are the two major steps taken by the Indian Government. The conflicting issues of employer and the worker should be reconciled to attain the industrial peace in the industry. Collective Bargaining is the process of a negotiation between the employer (the firm) and the employee (the worker) to achieve a mutually agreeable point on the present or future employment conditions. After the introduction of Collective Bargaining in 1952, it gradually acquired importance and significance in the following years. On the other side, in case of adjudication, the decision regarding any wage/payment/bonus disputes are the responsibilities of a Judge, Magistrate, or any other legally-appointed or elected official .Since independence adjudication has become one of the main instruments for settlement of industrial disputes, betterment of

employment conditions, improvement in wage scales and standardization of different other statutory payments and allowances. Its objective is to reach a reasonable settlement of the controversy at hand .The High Courts and Supreme Court have also adjudicated upon such disputes. In this paper a comparative analysis has been made on the role of Collective Bargaining and Adjudication on Determining Wage Policy in India.

Key Words: *Collective Bargaining, Adjudication, Industrial Dispute, Wage Fixation, Negotiation*

1. Introduction

Fixation of wages is a recent phenomenon in India.There was no effective machinery until the Second World War for settlement of disputes for fixation of wages. After independence, industrial relations become a major issue and therewas phenomena increase in industrial dispute mostly over wages leading tosubstantial loss of production. Realizing that industrial peace was essential for progress on industrial as well aseconomic front, the central govt. convened in 1947 a tripartite conferenceconsisting of representatives of employers, labour and Government of India formulated Industrial Policy Resolution in 1948 where the Government of India hasmentioned two items which has bearing on wage, which are:-

i) Statutory fixation of Minimum Wages and

ii) Promotion of Fair Wages.

To achieve 1stobjective, the Minimum Wages Act, 1948 was passed to lay down certain norms and procedures for determination and fixation of wages by central and state govt.

To achieve 2ndobjective Government of India appointed in 1949, a tripartite committeeon fair wages to determine the principles on which fair wages should be fixed. As of now, India does not have a formal national wage policy, though the issue has been discussed several times. The government

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has direct and indirect control over wage levels, which has been exercised through different institutions.

These are

i) Statutory Wage Fixation
ii) Collective Bargaining
iii) Industrial Wage Boards
iv) Government appointed Pay Commissions
v) Adjudication by Courts & Tribunal

1.1. Collective Bargaining

Collective bargaining relates to those arrangements under which wages and conditions of employments are generally decided by agreements negotiated between the parties. Sidney Webb and Beatrice Webb coined the term collective bargaining.[1] Samuel Gompers exclaimed collective bargaining as important tool for collective bargaining for determining the terms and conditions of employment. Richardson considers collective bargaining as a process of negotiation where employer and work groups try to reach an agreement on the conditions of employment.[2]

During the early post-Independence years, efforts were made to develop the system of collective bargaining as an alternative to compulsory negotiation. But, the recessionary condition in the industry, the weak bargaining strength of union and the need to maintain industrial peace to implement the Five-Year Plans necessitated continuing the compulsory arbitration mechanism as the main plank of the industrial relations machinery.

Collective Bargaining was introduced in India for the first time in 1952 and it gradually acquired importance and significance in the following years. Most of the collective bargaining (agreements) has been at the plant level, though in important textile centers like Bombay and Ahmadabad, industry level agreements have been common.

[1] S. Webb and B. Webb, "Industrial Democracy", Seaham Divisional Labour Party, London (1920), p. 173.
[2] J.H. Richardson, "An introduction to the study of industrial relations", George Allen and Urwin, London (1961), p. 229.

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In a modern democratic society wages are determined by collective bargaining in contrast to individual bargaining by workmen. The bargaining in most of the industries is conducted through a Union (or a group of Unions acting together), along with representation from the employers.

In the matter of wage bargaining, unions are primarily concerned with

i) General level of wage rates
ii) Structure of wages rates (differential among occupations)
iii) Bonus, incentives and fringe benefits,
iv) Administration of wages

2. Industrial Wage Boards

Concept of wage board was first enunciated by Committee on Fair Wages on determination of minimum wages in country. Wage Boards in India are of two types

i) Statutory Wage Board
ii) Tripartite Wage Board

a) Statutory Wage Board means a body set up by law or with legal authorityto establish minimum wages and other standards of employment which arethen legally enforceable in the particular trade or industry to which board'sdecision relate.

b) Tripartite Wage Board means a voluntary negotiating body set up bydiscussions between organized employers, workers and govt. to regulatewages, working hours and related conditions of employment.

2.1. **Criticism of Wage Boards-** A major criticism of the Wage Boards is the delay in submitting the report to the government and in implementing the Board's recommendations. These delays result in worker dissatisfaction and agitation by Unions. Moreover, by the time the report is submitted, it is so late that the recommendations are outdated. Also there were problems in the implementation of the recommendations as they were non-statutory in

nature and the government can only give moral pressure to the parties concerned to accept it. For example in 1969, the unanimous recommendation of the Wage Board on coal mines was accepted by the government but the employers refused to implement the recommendations on the grounds of inability to pay. This precipitated a strike of coal miners.

The tripartite Wage Boards have come to be widely accepted in our country as a viable wage-setting mechanism and therefore the system may be more effective by removing the lacunae in the system.

3. Pay Commissions :-

The Wage Boards were set-up to deal with the pay structure in different industries outside the government whereas the pay structure of the government employees is based on the recommendations of the Pay Commission. So the ambit of the Pay commission is much wider as it covers all the employees in the government sector including the Public Sector employees. Whereas the workmen of the private sector have access to methods like Collective Bargaining, Conciliation, Adjudication or Arbitration, for settlement of disputes, for the government employees, the Pay Commission is the only effective method.

Pay Commissions are set-up at regular intervals by the government and functions non-statutorily in the sense that they submit their report to the government and it is up to the government to modify, reject or accept it.

The First Pay Commission was appointed by the Government of India under the Chairmanship of Justice Vardachariar to enquire into the conditions of serviceof Central Govt. employees. The Commission in its report said that in no case a man's pay should be less than the Living Wage.

The 2nd Pay Commission was appointed in Aug. 1957, and the commission submitted its report in 1959. It examined the norms for fixing a need basedminimum wage set up 15thsession of Indian Labour Conference and came to the conclusion that the daily diet of an average Indian male should be a little more than 2600 calories as against 2700 calories as suggested by

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Dr. Arkroyd. The money value corresponding to this calorie level worked out to Rs. 80 which was considered by the workmen's organizations as too conservative and unrealistic and they demanded Rs110 - 135 depending upon the region.

Govt. of India appointed the Third Pay Commissions in 1970's which submitted itsreport in April 1973. In this report commission express its support for asystem in which pay adjustments will occur automatically upon anupward movement in consumer price index. The Commission recommended a pay of Rs. 185 as minimum remuneration to a Class IV staff upon entry but this was contested by the Workmen's organizations and the Government later .revised this rate to Rs. 196.

After thirteen years, Government appointed the Fourth Central Pay Commission under chairmanship of Justice P.N.Singhal on July 26, 1983 to examine the structure of emoluments of all Central Govt. employees, including those of union territories, officers belong to All India service and armed forces personnel. Commission submitted its report on July 30, 1986 and made several recommendation like drastic reduction in pay scales, increasing the lowest level and highest level of pay, increasing HRA, increasing the scope for leave accumulation and it's encashment upon retirement. It also advocated a better work culture among the employees and recommended discontinuation of overtime allowance.

The Fifth Pay Commission (1992-1996) made certain recommendationregarding a)raising retirement age to 60 years b) hike in HRA c) an enhanced minimum and maximum salary d) abolition of OT e) drastic cut in holidays (from 17 to 3) along with a six-day working week. Since these recommendations generated a lot of controversy the Government decided not to implement this report and keep it in abeyance.

The Sixth Central Pay Commissions was established on 2006 and this committee submitted its report on March 2008. The Commission recommended linking pay with performance and suggested a scheme of revised pay bands, reduction of the total number of grades, continuance of the five-day week and only three national holidays. It also put forward

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novel ideas like staggered working hours, special leave for childcare, enhanced maternity leave and provision for setting-up of "working women's hostels".

4. Arbitration and Adjudication :-

The actual process of arbitration and adjudication is much the same. The primary difference between them is the person or entity that makes the decision in a legal dispute. In arbitration, the disputing parties agree on an impartial third party—an individual or a group—to hear both sides and resolve the issue. In adjudication, the decision is the responsibility of a judge, magistrate, or other legally-appointed or elected official.

Arbitration is often used as a way to settle contract disputes. Parties signing a contract often agree to the use of arbitration to decide if a contract has been breached or whether it can be terminated. By choosing arbitration to settle disputes, the parties agree not to pursue their complaints in a court of law. If arbitration is not chosen, the parties' only recourse is typically adjudication.Contracts usually include a clause that the parties agree to comply with the arbiter's decision, especially if it is a case of 'binding arbitration'. The Industrial Truce Resolution, 1962, emphasized voluntary arbitration and specified certain items which could be analyzed in critical way. These include complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen. Indian Labour Conference in 1962 held, "Whenever conciliation fails, arbitration will be the next normal step, except in cases where the employer feels that for some reasons he would prefer adjudication, such reasons being creation of new rights having wide repercussions or those involving large financial stakes."[3]

Mediation through an arbitration hearing is similar to a court hearing. Each party brings evidence and witnesses before the agreed-upon arbiter and makes his or her case. The arbiter weighs the evidence and draws a conclusion, either deciding for one of the parties or proposing a unique

[3]Government of India, Ministry of Labour, "Tripartite Conclusions, 1942- 1979", (1981).

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solution. After the "Arbitrator" has given his (or her) decision, usually it cannot be challenged in court unless the decision has violated the principle of natural justice.

Adjudication is the process of settling disputes compulsorily through the intervention of a third party appointed by the Govt. When wage disputes persist, government refers them for adjudication. The adjudicative process is governed by formal rules of evidence and procedure. Its objective is to reach a reasonable settlement of the controversy at hand. A decision is rendered by an impartial, passive fact finder, usually a judge, jury, or administrative tribunal.

The Industrial Disputes Act provides for a 3 tier adjudication system which is: - i) Labour Court ii) Industrial Tribunal & iii) National Tribunal

Since independence adjudication has been one of the main instruments for settlement of disputes, improvement in wage scales and standardization of wages andallowances. Though courts and tribunals were primarily intended to deal with settlementof industrial disputes, in practice, wage fixation has become an important element in their work and functioning. This is because of large number of disputes concerning of wages andallowances have been referred to such courts. The High Courts andSupreme Court have also adjudicated upon such disputes. The awards given by theseauthorities not only helped in formulation of a body of principles governing wagefixation but laid foundation for present wage structure in many of major industries.

5. **Collective Bargaining and Adjudication; the differences in application:**

The Supreme Court has held that though social and economic justice is the ultimate ideal of industrial dispute settlement, the immediate objective is to settle the dispute by constituting a wage structure which would be acceptable to both labour and capital and lead to genuine cooperation in the task of production. Therefore, to achieve this objective, industrial adjudication takes into account several principles such as, the principle of comparable wages, productivity in the trade or industry, the cost of living and the ability of the industry to pay. There is however one principle, also

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laid down by the Courts for which there is no exception. No industry has the right to exist if it is unable to pay the workmen at least the bare minimum wages. On the other hand through the system of collective bargaining the workmen are able to voice their demands regarding wages, hours of working and other conditions of employment.For the success of collective bargaining, the process should begin with proposals rather than demands and the parties should be willing to go with some compromises otherwise the whole process will be a failure.

According to the Supreme Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining. In an earlier judgment in Titagarh Jute Co. Ltd. v. SriramTiwari(1982), the Calcutta High Court clarified that this policy of the legislature is also implicit in the definition of 'industrial dispute',

"As trade unions developed in the country and Collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards of other disputes."

Supporters of adjudication contend that, though the process is coercive in nature, is superior to the collective bargaining. A dispute on principal of trial by combat can be settled by collective bargaining. Any strong union in the industry may take a weak case and can still win the case & vice versa. On the other hand, adjudication, though imperfect, introduces an element of law and justice in the procedure of industrial relations. The judicial standards available to the judges in the process of adjudication in the area of industrial disputes may be imperfect. But they are still better than the "might is right" principle which underlies collective bargaining. As theinstitution of adjudication grows, so will the industrial jurisprudence. So, we can say that the adjudication is based upon the coercive power of the state, but the institution of collective bargaining is fully on the coercive

power of the parties themselves. The authority of the state should be used to prevent any strong group of employers or workers from any ransom activities in the organization. The adoption of collective bargaining as one of the main instrument in the economic growth demands that in order to maintain the achieving targets on economic development, industrial peace should be maintained. So, adjudication should be adopted for the purpose of resolving industrial disputes. In India, adjudication does not suppress the collective bargaining. Adjudications acts as a supplement for the collective bargaining process. In spite of arguments of heavy expenses & delays are concerned, the adjudication mechanism can be improved and improving gradually.

One of the strong arguments against the adjudication procedure is that it leads to an authorization imposition of different terms and conditions of employment and suppresses the possibilities of self-governance in the organization/industries based on the democratic freedom of people to solve their problems through collective bargaining. It should be noted that people should have their own democratic right in the industry to settle their disputes by themselves without any intervention of third party. Another argument against adjudication relates to the absence of any absolute standards to resolve divergence interests and to judge the fairness which can results a healthy work environment. While a Civil Judge can locate the facts and apply them on the known land of law, the adjudicator of an industrial dispute does not have such laws or clear guidelines which can guide him in resolving differences of opinion relating to economic interests.An adjudicator is just a law-giver whereas the civil judge is an interpreter of law.Finally, adjudications can sometimes lead to vitiate industrial relations by creating a controversial atmosphere. Under this method, the labour unions can demand anything which is unreasonable in nature. Because they know, this demand will not require to be backed by any industrial or organizational strength to make it logically approved. If the demands are not fulfilled, they can be easily shifted to the courts of

adjudication. So, the adjudication can create any artificial atmosphere because in both end the parties are trying to evade the real issues as long as possible. This can create a huge stress on the legalism which may satisfy the legal parameters but may not solve the actual problem.

6. Conclusions

Broadly speaking the following factors affect the wage determination by collective bargaining process

i) Alternate choices & demands

ii) Institutional necessities e.g if ratification of an agreement requires a majority vote of employees, the character of the wage settlement would have to be such as would be acceptable to the majority.

iii) The right and capacity to strike

A review of the collective agreements undertaken by the Employer's Federation of India shows that the system of "Collective Bargaining" has been adopted in almost all industries. These agreements cover such subjects like recognition of mutual rights and responsibilities of the management and workers, system of wage payments, dearness allowance, bonus, incentive wage and fringe benefits. A few of these agreements also dealt with personal issues like recruitment, promotion and transfer.

Recently the concept of "Productivity Bargaining" has gained considerable importance in addition to conventional wage bargaining. In this system, the workmen agree to make changes in their working practices, which are expected to lead to more economical operation of the entire unit or industry. In return the employer promises to initiate measures (like wage raise, increased allowances, etc.), which aims to raise the workmen's standard of living.

The elements like leaving the parties free to settle their disputes in a freeway, assisting the parties by the provisions of different conciliation

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services, imposition of certain limitations and restrictions, establishing a number of statutory and non-statutory bodies to resolve the problems, etc. will help the industry to handle the situation in a more easy way. A court of enquiry may be set up by state or central government when it will be absolutely necessary for any purpose of industrial dispute. The adjudication award in industrial disputes often becomes highly subjective. It is the psychological bent, mental make–up and prejudices of the adjudicator that finally decide the outcome of an adjudication proceeding. It is also argued that the judges are essentially conservative in nature and detest making far-reaching departures from the *status quo*. This puts the workers at a disadvantageous position because their interests may often lie in challenging the existing economic order and distribution of surplus in an economy. In a democratic society, industrial democracy, implying collective and joint determination of the terms and conditions of employment and the settlement of their disputes by the parties themselves without any outside interference, is no less important than political democracy. It is contended that the parties should be free to work out their relations and sort out their problems by mutual discussions and negotiations.[4] Ultimately, the adjudicators may abandon their quest for a just basis for arriving at an award and look for such solutions which would be acceptable to the parties and would avoid work-stoppages. In many cases, the quest for a just solution may run counter to the quest for industrial peace. In India, despite the operation of compulsory adjudication for a period of more than half a century, the number of industrial disputes and man-days lost has not shown significant decline. So it can be concluded that adjudication creates an artificial atmosphere and lays excessive stress on legalism but may not solve the problem. It is now established that a clinical rather than a legalistic approach to industrial disputes is more effective in creating healthy industrial relations.

[4] http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf

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