

SESSION 5:
LABOUR LAW REFORMS IN INDIA: THE CODE ON WAGES, 2019

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Session 5: Labour Law Reforms in India: The Code on Wages, 2019

Objectives

- 1.To deliberate on labour related constitutional provisions and legislations.
- 2.To discuss the labour and employment challenges and the implementation of labour welfare schemes in the country.
- 3.To discuss the key features of the recent initiatives of codification of labour laws.
- 4.To provide an understanding of the context, overview and implications of Code on Wages, 2019
5. To analyse the implications of the wage code on the labour market

Outline

- Labour related Constitutional Provisions and Legislations
- Labour & Employment Challenges
- Policy Response on Codification of Labour Laws
- Evolution of Minimum Wage Policy
- Need and Context of Reform in Wage Policy
- Key Features of the Code on Wages, 2019
- Implications of the Code on the Labour Market

Labour Related Constitutional Provisions and Legislations

- ▶ The Constitution of India guarantees Fundamental Rights to every citizen including the right to life.
- ▶ According to Supreme Court of India, the right to livelihood is inherent in the right to life.
- ▶ Part IV of the Constitution of India contains DPSP which lay down goal posts and direction of State Policy.
- ▶ Articles 41, 42, 43 and 43A of the Constitution falling under Part IV pertain to labour and its welfare.
- ▶ In the context of India, as per the scheme of the Indian Constitution, labour being in the '*Concurrent list*' which means this exercise can be carried out both by the Central as well as various state governments.

India's Labour & Employment Challenge

- Indian policy makers face multi-faceted and massive labour and employment challenge.
- **First**, a very large proportion of people of working age (15+)- about 58% of Indians of the working age- are not in labour force.
- 3/5 of India's labour does not participate and contribute to the production of goods and services.
- The challenge is to increase work-force participation rate and/or provide for sustenance of households with no 'bread-winner'.

- **Second**, most Indian women-about 80%- of Indian women are not in the labour force.
- There are enormous social issues as well which hinders women's participation in labour force.
- The challenge is to educate and skill women, nudge them in gainful productive employment and take care of the nutrition and health needs of women not in workforce.

- **Third**, more than 30% of about 25 crore Indian youth (in the age group 15-24) are not in employment or in educational institutions or in training.
- The challenge is to get massive number (over 7.5 crore) of Indian youth to get into productive labour or educate and skill itself.

- **Fourth**, less than 1/4 jobs in India are salaried or wage-paid jobs.
- The challenge is to increase formalisation of economy to create more salaried and wage paid jobs.
- **Finally**, the nominal unemployment rate at about 7% is relatively higher than many other countries but the real problem is low wage of those who are employed.
- Indian workers earn pitifully low wages on an average.

Labour Welfare Schemes

- Ministry of Labour and Employment (MoLE) operated, in all, 29 schemes in 2018-19 and spent a total amount of Rs. 9291 crores.
- Two schemes- The Pradhan Mantri Rozgar Protsahan Yojana (PMRPY), with expenditure of Rs.3499 crores and government contribution to the Employees' Pension Scheme(EPS), 1995, with expenditure of Rs. 4900 crores, accounted for about 90% of the entire expenditure of the MoLE.

- The EPS budget is used to make Government's contribution of 1.16% of employee's salary.
- The PMRPY, started in August 2016, incentivises employers to generate new employment as the Government pays employer's contribution towards employee provident fund and employee pension scheme for the new employees recruited for a period of three years.
- Until September 2020, the Government had paid, in all, Rs. 8450 crores under the Programme.

- In the financial year 2019-20, the Govt. introduced two contributory new pension types of schemes meant for all unorganised sector workers (termed **Pradhan Mantri Shram Yogi Mandhan or PM-SYM**) and for small traders and farmers (termed **Pradhan Mantri Karma Yogi Mandhan or PMKYM**).
- For the financial year 2020-21, allocations of Rs. 500 crore and Rs. 160 crores have been kept for these two schemes respectively.
- **PM-SYM** provides for a monthly pension of Rs. 3000 to any unorganised sector worker in the age group of 18-40, on self-declaration basis, provided he/she makes a monthly contribution of an amount of which depends upon the age at which he/she joins.
- For a worker of 29 year of age, the monthly contribution fixed is Rs. 100 per month.

- Two major aspects of labour welfare- skills upgradation and unemployment insurance- are dealt with by two other Ministries- the MSDE and MoRD.
- The MGNREGA has provided a good safety valve for millions of migrant workers who returned to villages after Covid-19.
- Demand for work under MGNREGA shot up from the month of May 20, peaked in June 20 and then started tapering off.
- In April 20, a total of 1.28 crore households demanded work under MGNREGA, which went up to 3.62 crore in May 20 and to 4.40 crore in June 20.

- The demand for work came down to 2.42 crore in July and to 1.78 crore in August.
- These trends coincide very well with the overall trend of labour participation, employment and unemployment in the country.
- About 84% of those who demanded work got employment under MGNREGA during this difficult period.

Labour Law Reforms

- In 2014, the Govt. of India decided to consolidate 44 Labour Laws in 4 Codes
- Code on Wages(CoW)
- Social Security Code(SS)
- Code on Industrial Relations(IR)
- Code on Occupational Safety, Health and Working Conditions(OSH)

- The Labour Code on Wages, which was passed by the Parliament in 2019, is getting ready for implementation with the Draft Rules circulated by the Ministry of Labour in July 2020.
- This Code consolidates four dimensions of pay and allowances by bringing four laws- Minimum Wages Act 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965 and Equal Remuneration Act 1976- under a single Code.
- The other three Codes- The Occupational Safety, Health and Working Conditions Code, 2020 or Workplace Conditions Code, The Industrial Relations Code 2020 or Labour Disputes Code and the Code on Social Security 2020 or Social Security Code- were passed by the Parliament on 23 September 2020.
- The four Labour Codes consolidate 29 labour laws.

Code on Occupational Safety, Health and Working Conditions(OSH)

- To employ women in all establishments for all types of work. They can also work at night, i.e. beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent.
- To provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment.
- To make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months.
- Inter State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar

- An Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess
- To make provision of "common license" for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour
- To enable the courts to give a portion of monetary penalties up to fifty per cent to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death.
- To provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or pandemic or disaster.
- To make provision for *Social Security Fund* for the welfare of unorganised workers.

Code on Industrial Relations

- To define “workers” which includes the persons in supervisory capacity getting wages up to Rs 18,000 a month or an amount as may be notified by the Central Government from time to time.
- To provide for *fixed term employment* with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation.
- The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector.

- The commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in an industrial dispute after the receipt of the notice of strike or lock-out by the conciliation officer
- To *prohibit strikes and lock-outs* in all industrial establishments without giving notice of fourteen days

- To provide for the obligation on the part of industrial establishments pertaining to mine, factories and plantation having **three hundred or more workers** to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification
- To set up a *re-skilling fund for training* of retrenched workers with contribution of the employer of an amount equal to 15 days last drawn by the worker.

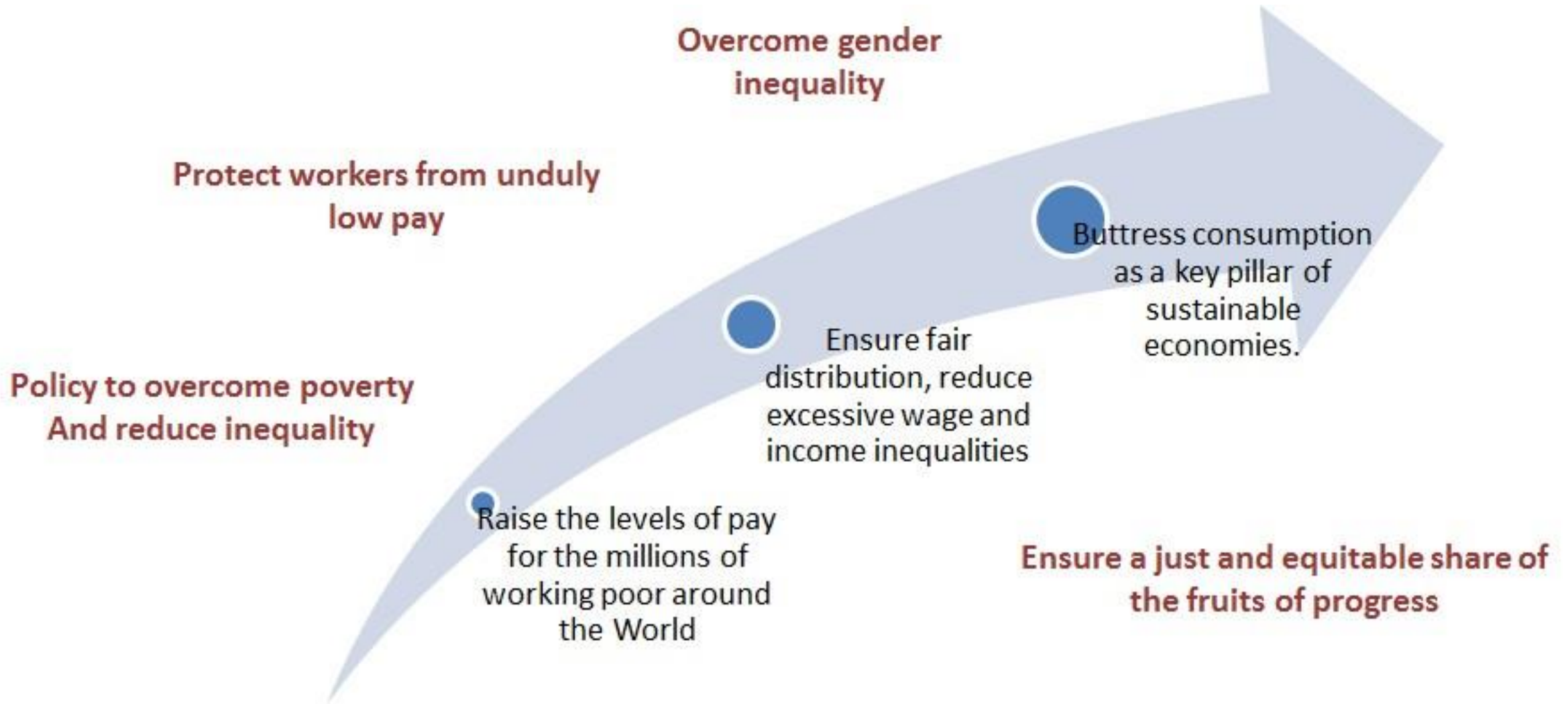
Social Security Code

- To extend social security to all employees and workers either in the organised or unorganised or any other sectors
- To provide for an establishment to be covered Employees' Provident Fund (EPF) and Employees State Insurance Corporation (ESIC) on voluntary basis even if the number of employees in that establishment is less than the threshold i.e. 20 and 10 respectively.
- To define various expressions used in the Bill such as, "career centre", "aggregator", "gig worker", "platform worker", "wage ceiling" , etc.

- To empower the Central Government to frame schemes for unorganised workers, gig workers and platform workers and the members of their families for providing benefits relating to Employees' State Insurance Corporation
- Provisions for maternity benefits such as prohibition from work during certain periods, provision of nursing breaks, crèche facility, claim for maternity benefits, etc.
- To empower the Central Government to frame schemes for the purposes of providing social security benefits to self-employed workers or any other class of persons

- To provide that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years
- To provide for establishment and maintenance of separate accounts under social security fund, for the welfare of unorganised workers, gig workers and platform workers

Importance and Need of a Wage Policy



Evolution of Minimum Wage Policy

- ▶ Minimum wage policy started as early as 1929 with the Royal Commission on Labour, culminating in the Payment of Wages Act, 1936;
- ▶ Minimum Wages Act, came into force in 1948 – set a framework for fixing minimum wages in certain employments – first developing country to adopt such a legislation;
- ▶ Absence of criteria in Minimum Wages Act 1948 to determine minimum wages has been filled by the Indian Labour Conference (ILC), 1957 & Supreme Court (SC) 1992 recommendations providing guidelines for this purpose.

- ▶ In 1988, Labour Ministers' Conference took the decision that minimum wages be linked to the Consumer Price Index(CPI) for Industrial Workers(IW) to address changes in cost of living over time.
- ▶ In 1996 National Floor Level Minimum Wage(FLMW)– a non-binding national minimum wage – implemented to address wage disparities in various schedule employments within/across states.
- ▶ The present National Floor Level Minimum Wage stands at INR 176 per day

Key Outcomes of Minimum Wage Policy

Most complex minimum wage system in the world;

- Too many wage rates – 429 scheduled employments & 1,915 scheduled job categories
- Limited Coverage – only 66% of wage workers covered
- **Low wages and wide variations in rates within and across provinces;**
- 37 wage fixing authorities
- Wages fixed arbitrarily and not updated at regular intervals
- Lack of technical capacity and non-functioning of institutional machinery
- Undue low wages – median wages being Rs. 115 per day (2011/12)

Key Outcomes of Minimum Wage Policy

Provincial wages (in some cases) set below the national floor;

- Minimum wage rates in some provinces set lower to poverty line
- 20% regular and 42% casual workers received wages less than national floor

● Multiplicity of authorities, lack of uniform definitions, high compliance requirements – enhances cost of doing business in India.

The Minimum Wage Debate

- ▶ Intense debate about a meaningful wage policy over the past decades has considered the introduction of a binding national minimum wage for all workers.
- ▶ In August 2019, Code on Wages enacted – consolidated four Acts & provides for a binding wage floor with the option to have regional minimum wages.
- ▶ India Wage Report (2018) – shows low pay & wage inequality remain a serious challenge to India's path to achieving decent working conditions & inclusive growth.
- ▶ An Expert Committee was constituted in 2018 to review wage fixation criteria and principles to move towards realising an adequate minimum wages for all workers.
- ▶ Economic Survey 2019, called for redesigning minimum wage system for inclusive growth.

Timeline of the Code on Wages Bill, 2019

Code on Wages Bill first introduced in Lok Sabha

Standing Committee submitted report; Bill lapsed with the dissolution of Lok Sabha

Bill passed by Rajya Sabha



August 10
2017

August 21
2017

December 18
2017

July 30,
2019

August 2
2019

Bill referred to the Parliamentary standing committee on Labour

A new bill named Code on Wages Bill, 2019 passed by Lok Sabha

Present Status of the Code on Wages, 2019

- Received presidential assent on 8th August 2019.
- Code is yet to be effective – draft rules yet to be finalised & notified.



असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 48] नई दिल्ली, बृहस्पतिवार, अगस्त 8, 2019/श्रावण 17, 1941 (शक)

No. 48] NEW DELHI, THURSDAY, AUGUST 8, 2019/SHRAVANA 17, 1941 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 8th August, 2019/Shravana 17, 1941 (Saka)

The following Act of Parliament received the assent of the President on the 8th August, 2019, and is hereby published for general information:—

THE CODE ON WAGES, 2019

No. 29 OF 2019

[8th August, 2019.]

Amalgamation of 4 Existing Acts

The Code on Wages seeks to – regulate wages & bonus payments in all employments – where any industry, trade, business, or manufacturing is carried out.

Code has 9 Chapters, 67 Sections & 26 definitions of constantly used terms

Intend to promote equity & labour welfare and sustainability of enterprises, thereby catalyzing economic growth and creation of employment opportunities

4 WAGES ACTS SUBSUMED INTO

The Equal Remuneration Act, 1976

The Minimum Wages Act, 1948

The Payment of Bonus Act, 1965

The Payment of Wages Act, 1936

CODE



Code on Wages: Key Reform Measures

Universalizes provision of minimum wages

Removes multiplicity of definitions and authorities

Ensures timely wages payment to all employees

**Main features
of the Code of
Wages Bill**



Changes the role of 'Inspector' to 'Facilitator' to guide and advise employers and workers

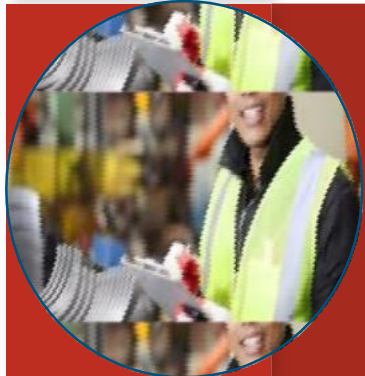
Ease of compliance will incentivize setting up of more enterprises thus more opportunities

Codeon Wages: Some Important Definitions



Establishments

Any place where any industry, trade, business, manufacture or occupation is carried on and include Government establishment



Workers

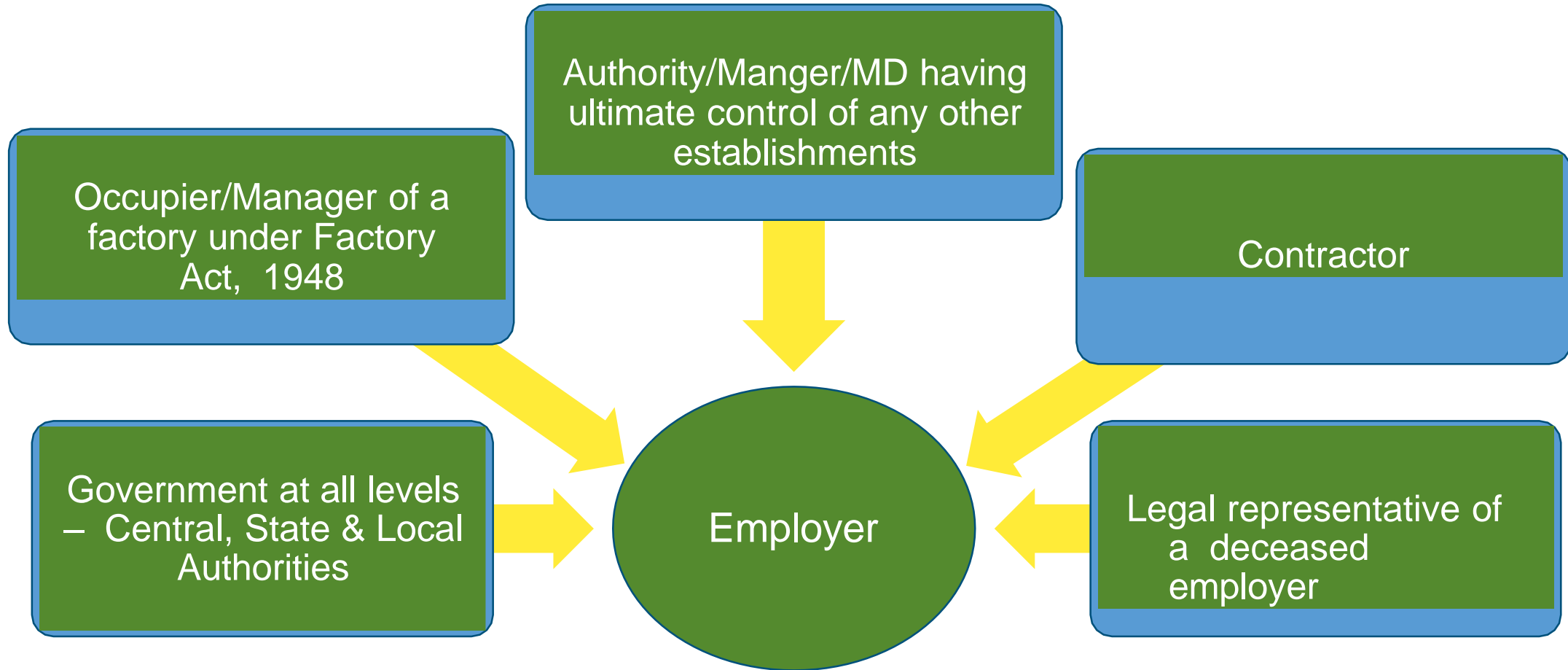
Any person (except an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward



Employee

Any person employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, **managerial, administrative,** technical or clerical work for hire or reward

Code on Wages: Some Important Definitions



Code on Wages: Some Important Definitions

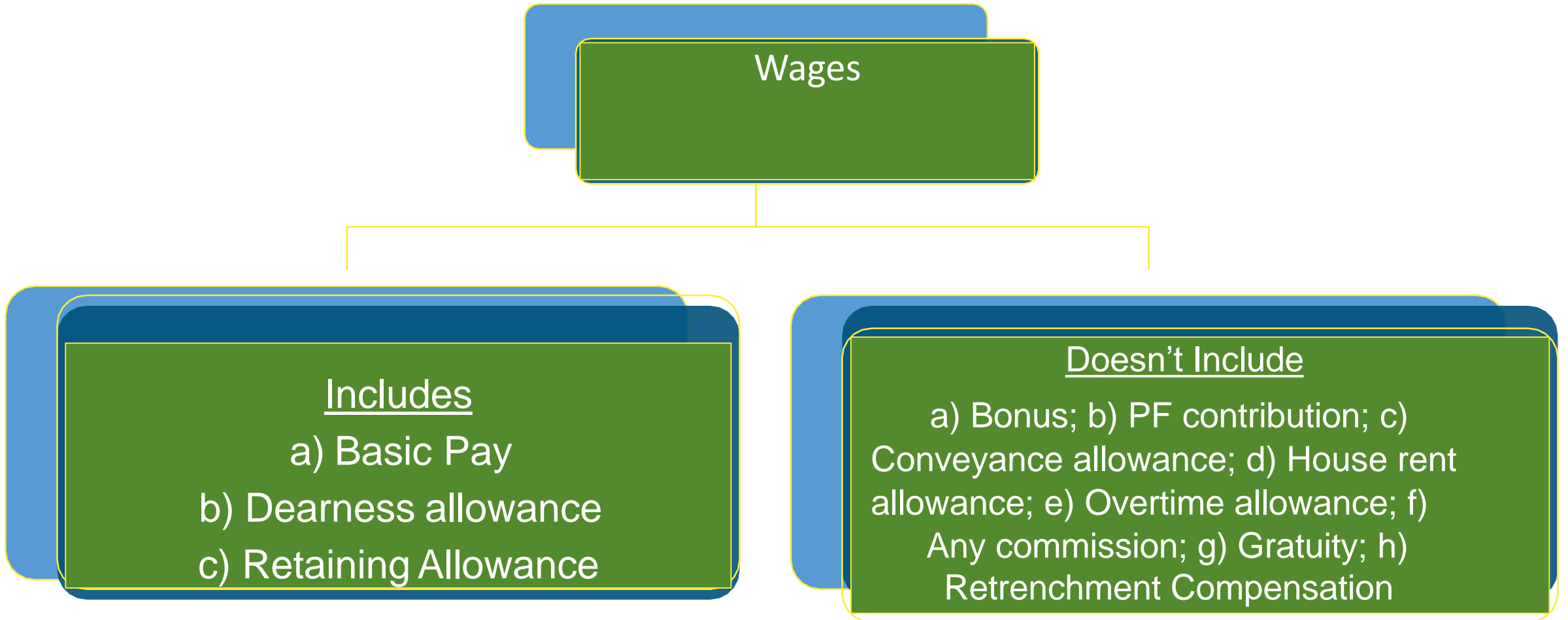
‘Contractor’ in relation to an establishment means a person who

- Undertakes to produce a given result for establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or
- Supplies contract labour for any work of establishment as mere human resource and includes a sub-contractor.

‘Contract labour’ means

- A worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-state migrant worker

Codeon Wages: Some Important Definitions



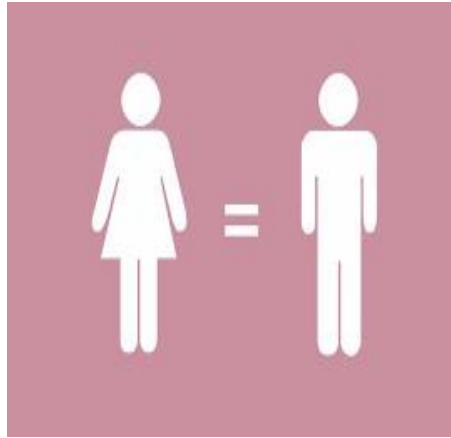
Code on Wages: Some Important Definitions

Appropriate Government

In relation to an establishment carried on under authority of Central Government – railways, mines, oil field, major ports, air transport, telecommunication, banking & insurance company or a corporation or other authority established by a Central Act or CPSUs/Autonomous bodies – the Central Govt.

In relation to any other establishment, the State Government

Promotes Gender Equality



Prohibition of Gender based discrimination among employees in establishments

In matters related to wages, recruitment of employees and conditions of work by the same employer in respect of same work or work

Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same when performed under similar working conditions

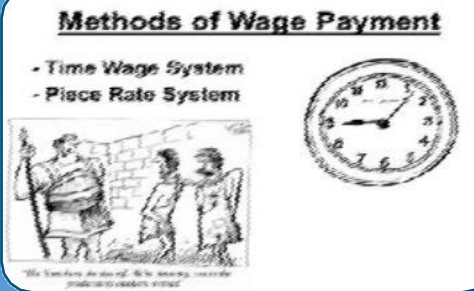
Dispute as to whether a work is of same or similar nature shall be decided by such authority as may be notified by appropriate Government.

Minimum Wages



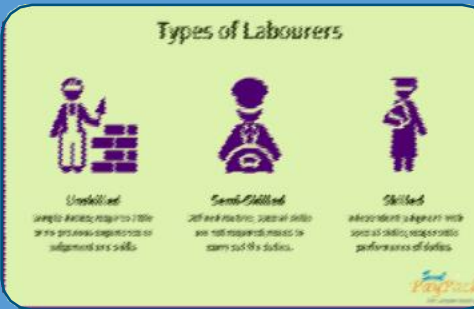
Universalization of Minimum Wage Application

- No employer shall pay to any employee wages less than minimum rate of wages notified by appropriate Government



Appropriate Government shall fix a minimum rate of wages

- For time work – as per wage periods – hourly, daily & monthly
- For piece work – minimum wages to be fixed on a time work basis



Factors to be considered in fixing minimum rate of wages

- Skills of workers (Unskilled-Semi-skilled-Skilled) or Geographical Area or Both
- Arduousness of work – Temperature/humidity; Hazardous & underground work

Components of Minimum Wages

Minimum wages fixed by the appropriate government may consists of following



A basic rate of wages & cost of living allowance at a rate to be adjusted, at such intervals & in such manner as appropriate Government may direct or

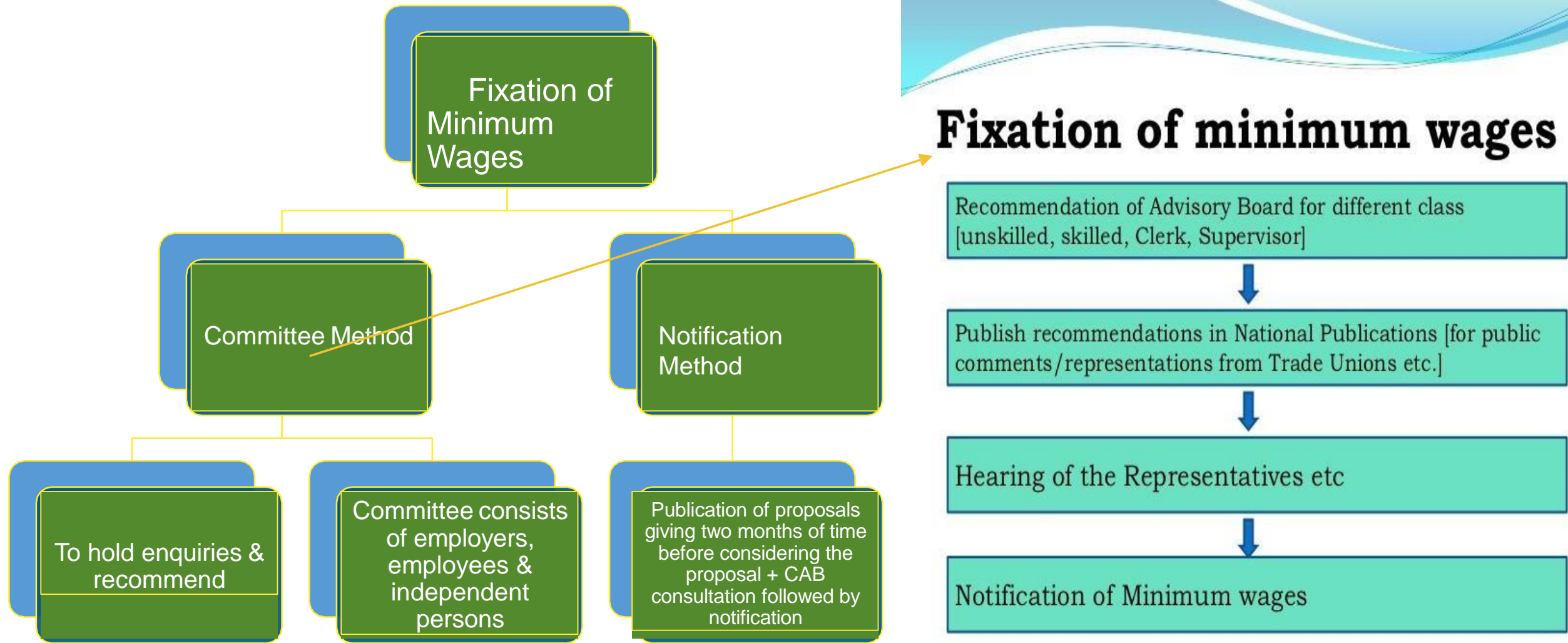


A basic rate of wages with or without the cost of living allowance, & cash value of concessions in respect of supplies of essential commodities at concession rates, where so authorized; or



An all-inclusive rate allowing for basic rate, cost of living allowance & cash value of concessions, if any

Procedure for Fixation of Minimum Wages



Appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years

Central Government shall fix a floor wage, taking into account minimum living standards of workers – such floor wage can be a single floor for the entire country or different floor wages for different geographical areas.

Statutory Floor Wage Introduced

*Before fixing the floor wage, the central government may obtain the **advice of the Central Advisory Board and may consult with state governments.***

*Minimum wage rates fixed by appropriate Government **shall not be less than floor wage** &*

*If minimum wage rates fixed by appropriate Government earlier is more than floor wage, then, **appropriate Government shall not reduce such minimum wage rates fixed by it***

WAGE LEVELS IN STATES

in ₹

HIGHEST PAY

States/UTs	in ₹
Delhi	538
A&N Islands	451
Karnataka	411
Lakshadweep	401
Chandigarh	376



LOWEST PAY

States	in ₹
Nagaland	115
Tamil Nadu	132
West Bengal	166
Tripura	170
Himachal Pradesh	171

₹176 National floor-level minimum wage

Implications of the Code on the Worker

- ▶ Universalizes legal right to get wages not less than minimum wages & timely payment of wages to all 'employees' across all sectors
- ▶ Introduces the concept of binding Floor Wage – state's can't fix wages below floor - help address low wages and regional disparity in minimum wages
- ▶ Reduces the existing number of minimum wages which will facilitate for effective enforcement and improved compliance – rationalization proposed in the Code will demand States to reduce their minimum wage rates – maximum 12 wage rates per state

Implications of the Code on the Worker

- ▶ Code provides one definition of wages unlike the various definitions that were found in previous Acts, subject to various interpretations
- ▶ Timely payment of wages to all, irrespective of wage ceiling, sectors/establishments
- ▶ Provides for wage settlement within 2 working days post removal, dismissal, and retrenchment
- ▶ 50 Crore Workers are going to be benefitted under the minimum wage code bill.

Implications of the Code o Employer

- Ease of doing business – reduction in compliance burden through simplification/rationalization/ amalgamation;
 - Uniform simple definition of wages, workers, employees, employers, establishments
 - Common definition of appropriate government
 - Reduction in number of Authorities
 - Reduction in number of boards
 - One register, one form and one return

Implications of the Code to Employer

- Hassle free compliance – unique online registration, submission of returns/records/obtaining licenses
- Transparency & accountability in enforcement
 - Web-based jurisdiction free inspection scheme
 - Prior Notice before the prosecution to be provided – opportunity to rectify across all codes
 - Decriminalization of the first offence (punishable with fine up to INR 50000) leading to reduction of hardship of the employer and no criminal proceedings) and provision for compounding of offences across all codes
 - Use of technology will lead to reduction in arbitrariness and improve transparency and accountability

- With this I come to an end of the session on Labour Law Reforms in India: The Code on Wages, 2019 and leave you with few questions which you will find easy.
- Thanks for watching the video.

Quiz Question

1. What are the objectives of Wage Policies?

- (a) Overcome poverty and inequality
- (b) Protect workers from unduly low pay
- (c) Overcome gender inequality
- (d) All of the above.

2. How many exiting Acts have been subsumed under the Code on Wages, 2019?

- (a) 4 Acts
- (b) 6 Acts
- (c) 8 Acts
- (d) 3 Acts

(3) What is the present level of National Floor Level Minimum Wage?

- (a) INR 178 per day
- (b) INR 176 per day
- (c) INR 199 per day
- (d) INR 375 per day

References

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Economic Survey 2018-19, Vol. 1, Chapter 11: Redesigning a Minimum Wage System in India for Inclusive Growth, p. 199-209, available at: <https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/echapter.pdf>



Thank you