

LAW SCHOOL NOTES

SUBJECT TITLE:

LABOUR LAW - II

PROCEDURAL GUIDELINES



Index

- Minimum Wages act
- Maternity Benefit act
- Law relating to Wages and Bonus
- Remuneration of Labour

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The Minimum Wages Act, 1948

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- i) Object of the Act.
- ii) Constitutionality of the Act.

i) Object.

- > passed for the welfare of labour.
- > provides for fixation of wages by central Govt. and S.G.
- > It protect ignorant, less organized and less privileged against exploitation by the capitalists.
- > Min. wages must ensure not only the mere physical need of the worker, but preserve his efficiency as worker.

ii) Constitutional Validity of the Act.

→ International Labour Conference, Geneva (1928)

↳ Draft convention on min. wages

→ Art. 43 :- securing living wage to worker

→ Constitutionality upheld in the case of

Bijay Cotton Mills v. State of Ajmer

AIR (1955) SC 33

→ Not violative of Art. 19(1)(g) of the constitution

→ Not violative of Art. 14

(N.M. Wadiq Charitable Hospital v. State of Maharashtra

↳ diff states at diff min (1986)

rates of wages

iii) Features of the Act

- (a) It provides for fixation of
 - a) minimum time rate of wages
 - b) minimum piece rate
 - c) overtime rate.
 - d) guaranteed time rate
- (b) This act requires payment of wages in cash.
- (c) This act empowers appropriate govt. to
 - a) to fix hours of work per day.
 - b) to provide weekly holiday
 - c) payment of overtime wages
- (d) It provides for appointment of Inspector and authorities to hear and decide claim arising out of this act
- (e) This act impose penalty for offences committed under this Act.

iv) Important definitions

- (a) Adolescent :- person b/w age of 14-18 yrs.
- (b) Adult :- person above 18 yrs.
- (c) Appropriate Govt

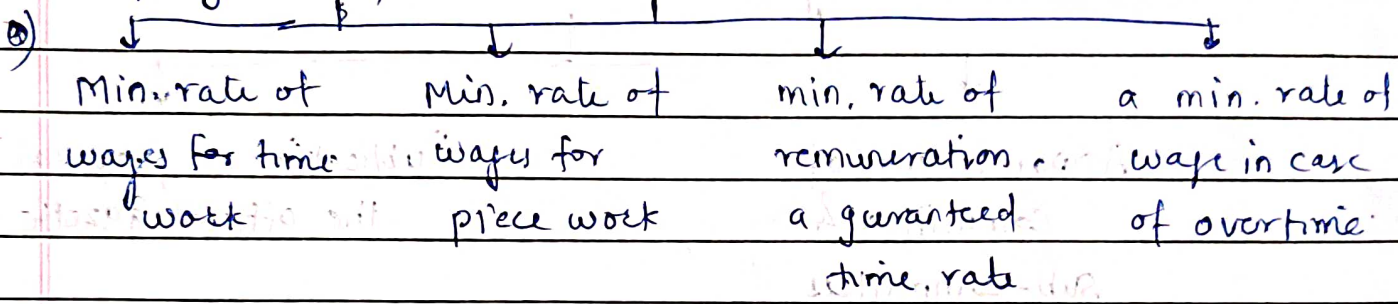
① Central Govt for any scheduled employment carried by act of Central Govt, Railway, Port, Oil field

② State Govt. for any other scheduled employment

Sec. 3 Fixation of min. rates of wages.

- > the minimum wages payable to the employees are to be fixed by the appropriate government.
- > Rate of wages shall be revised every 5 years.

* App. govt. may fix.



* During fixing or revising minimum rates of wages. U/W 3

Different minimum rates may be fixed for

- | | |
|---------------------------------|-----------------------|
| a) diff. scheduled employments. | such as |
| b) diff. class of worker. | a) by the hour. |
| c) different age group. | b) by the day. |
| d) diff. localities. | c) by the month. |
| | d) any larger period. |

Sec. 4 Minimum rate of wages.

It states that minimum wages fixed by appropriate govt. must consist of.

- a) Basic rate of wages & special allowance must be adjusted by app. govt. to match the cost of living of employees.

(b) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities must be computed by a competent authority.

* Sec. 5 :- Procedure for fixing and Revising minimum wages.

↓
Appointment of
Committee &
Sub-committees

↓
Publication of proposal in
the official Gazette

① Appointment of committees & sub-committees.

- To be done by appropriate govt
- that Committee will advise on the same.

→ Sec. 7 :- Advisory board form committee for fixation of min. rates of wages.

② Publication of proposal in official Gazette.

- Govt should publish the min. wage fixation proposal in the newspaper and inform the stake holders regarding the changes.
- Publication to be made before 2 months of implementation
- Stakeholders can ~~issue~~ raise issue or share their suggestion.
- Based on that, min. wage is published in official gazette.
- Advisory board can consult regarding revision of wages then Advisory board communicate to app. govt.

↓
It is converted into legislation.

* Advisory Board

→ Sec. 7 of the Act

→ App. govt. will appoint it

→ functions

- co-ordinating work of committee & sub-committee
- to give advise to app. govt in fixation & revision

* Central Advisory Board

→ Sec. 8

→ Obligatory upon C.G. to appoint. C.A.B.

→ Composition

- ↳ (a) persons nominated by C.G. representing employers and employees in equal number
- ↳ (b) Independent person not exceeding $\frac{1}{3}$ rd of total no. of members

* Committee functions of CAB

i). advising C.G. & S.G. in the matter of fixation & revision

ii). independent members not exceeding $\frac{1}{3}$ rd of total no. of members.

Sec. 13 :- Fixing hours of a normal working day

→ App. govt. may

a) fix working hour of normal day with one or more intervals.

b) provide a day of rest in seven days.

c) provide payment on day of rest.

Sec. 14 Overtime

Payment → payable for every hour of overtime or part of hour.

Sec. 15 Inspectors

- Appointment :- App. govt.
- by way of notifying in official gazette.
- App. govt. shall define local limit.

* Powers of Inspector.

- 1) Power to examine register, record of wages (sec. 14).
- 2) To examine any person on the premise.
- 3) Seize and take copies of register, record.
- 4) To exercise any power prescribe by act.

Sec. 20 Claims

- Appointment of authority to hear & decide claims
- Subject of claim.

- 1) Less payment than minimum wages rate.
- 2) Payment of remuneration on rest days.
- 3) claim of over time wages.

* Qualification of authority

- 1) any Comm. for Workmen Compensation Act
- 2) Labour Comm.
- 3) officer of S.G. not below of Labour Comm.
- 4) Judge of civil court.

1: 2 weeks

* Maternity Benefit Act, 1961.

- To be availed only by woman worker
- Benefit

- ① Cash Benefits
- ② Non-cash benefits

- Objective

i) To protect the motherhood.

- mother needs special care and attention along with child
- 26 weeks paid leave is granted (approx. 6 months) 5
- Earlier it was 3 months
- child care leave could be taken till the children attain 18 yrs of age.
- In one year - at most 2 months leave can be granted.

ii) To protect rights of infant

Base

- Constitution -> Art. 39 (e) & (f) -> DPSP
- State shall enact, direct its policy towards health and safety of workers.

iii) -> It provides assurance to female worker in respect of job in case of miscarriage or birth

* Preamble

An act to regulate employment of women worker in ~~some~~ ^{certain} specific establishment, during certain specific period before and after child birth. To provide maternity benefits and other benefit.

* Applicability. (S. 2).

- ① → To every establishment factory, industry, college, etc.
→ It may be govt. or pvt. undertaking.
- ② → It is applicable to every est. where some certain performances carried out
→ inequestrial (horse riding).
→ aerobatics
- ③ → It is applicable to every shop & establishment where 10 or more than 10 workers are working
- ④ → S.G. ~~is~~ empowered to extend appⁿ to any other est. however prior approval of C.G. is needed

* Who is Eligible for getting benefit.

- ① Woman worker who is working in the est. for min. 80 days in 12 months before date of her delivery.
- ② Woman who is earning less than ₹ 15,000/- (Employer's state Insurance act will apply)

* Employment of women is prohibited during certain event.

- ① Woman worker should not be employed during six weeks immediately before day of her delivery
- ② No work during 6 weeks before and after miscarriage
- ③ During whole period pregnancy while include standing labour work should not be given to women, such kind of work which harm the development of foetus must be avoided.

* What a woman employee should do?

- ① He should send a written notice to employer, that she is claiming maternity benefits.
she should intimate that M.P. be paid to her or her nominee.

(for cash benefits)

→ No curtailment in amount of wages. (Like Employee State Ins. Act)

* What cash benefits are given?

- ① Leave with average pay for 26 weeks for 2 surviving children

8 weeks before the delivery

18 weeks after the delivery. (no compulsion)

It may be taken in continuation.

- ② 8 weeks leave from date of miscarriage

- ③ 2 weeks leave in case of Tubectomy operation.

- ④ She may even get 4 weeks extra leave if she shows proof of her illness.

Advance payment of 6 ^{weeks} ~~months~~ leave can be demand.

She can also take payment of 6 weeks leave with 48 hrs of birth child.

May ask medical bonus of ₹ 3,500/- from employer.

* Non-cash benefits:

① Nursing breaks

- 2 nursing breaks for breast feeding in a day
- till child attains age of 15 months
- 15-20 min duration
- Time to reach home can be added in above time

② No discharge / dismissal during the time she availing M.B.

→ Any such discharge will be considered as unlawful.

③ In case of gross misconduct employer may communicate in her writing.

④ No deduction of wages if she is availing nursing breaks.

⑤ Before 10 weeks of delivery, she should be given only light work.

* Amendment - 2017

① Adoptive mother

→ will also be entitled for 12 weeks maternity leave

② Same provision for surrogate mother

③ After 26 weeks period leave is over, women worker may ask for work from home option (not mandatory provision) (depends on mutual understanding)

4501 to 101, 100000
(modified by 1947)

- ④ Canteen facility (41a5011 212)
 - compulsory where 50 or more workers are worker
 - women employee should be permitted to visit 4 times a day
 - up to 6 yrs. of age
- ⑤ To educate woman employee about benefits by way of seminar. (to create awareness)
(duty of employer)

* Penalty

- ① If any employer contravenes provisions of the Act
 - Imprisonment
 - 1) 3 months to one year
 - 2) fine :- not less than 2k extend to 5k

Law relating to wages and bonus

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① Theories of wages

- (a) Marginal productivity
- (b) Subsistence
- (c) Wage fund
- (d) Supply and demand
- (e) Residual claimant
- (f) standard of living

② Concept of Wages

i) minimum wage ii) fair wage iii) living wage iv) need-based min. wage

③ Component of wages

④ Constitutional provisions

⑤ Minimum Wages Act, 1948

- (a) Objective and constitutional validity of the Act.
- (b) procedure for fixation and revision of min. rates of wages
- Exemption & Exceptions.

⑥ Payment of Wages Act, 1936

- (a) Regulation of payment of wages
- (b) Authorized deduction

⑦ Payment of Bonus, Act

- (a) Bonus - Its historical background
- (b) Present position and exemptions
- (c) Amendment, 2007

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① Theories of Wages

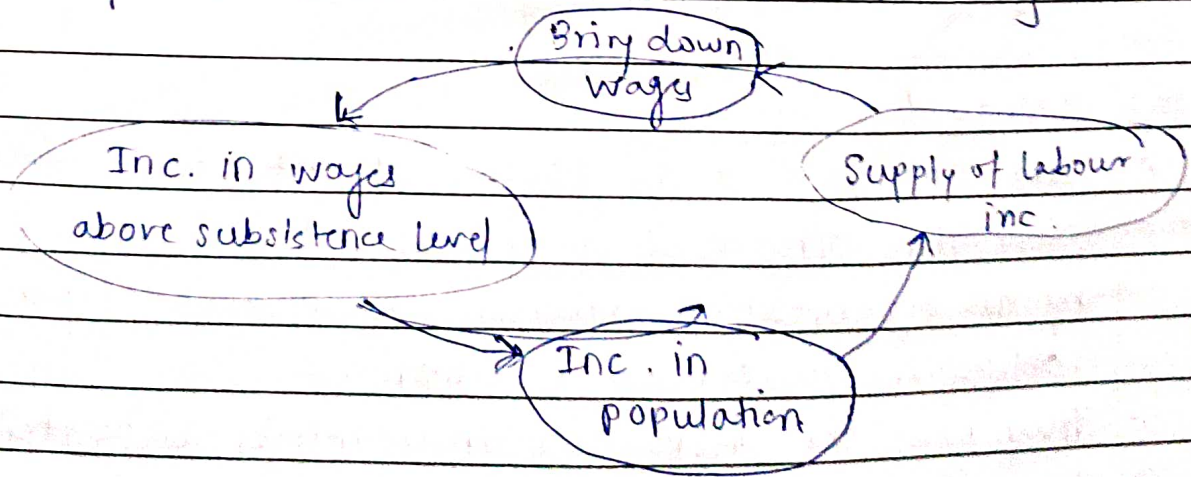
Wage is a reward for the services rendered or remuneration for the work done and it is as old as the society itself.

① Marginal productivity Theory :-

- It was propounded by Phillips Henry Wick & John Bates.
- Acc. to this theory, wages is determined based on the production contributed theory, wage is determined based on the production contributed by the last worker i.e. marginal worker
- His/her production is called 'marginal production'
- It suggests that workers paid based on the additional value they contribute to the production process.
- Higher-skilled or more productive workers are expected to receive higher wages

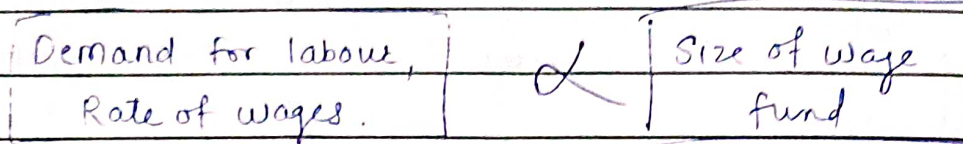
② Subsistence Theory (Iron law of Wages)

- > propounded by :- David Ricardo (1772-1823)
- > 'Acc. to this theory, "The labourers are paid to enable them to subsist and perpetuate the race without increase or diminution."
- > It should be sufficient to provide worker with basic necessities of life.
- > Relationship betⁿ Labour market & cost of living
- > Inc.



③ Wage Fund Theory
developed Adam Smith (1723-1790)

> Basic assumption :- That workers are paid wages out of pre-determined fund of wealth. This fund he called wages fund created as a result of saving



> Ricardo believed wages should be determined by dividing the total wage fund by the no. of workers, resulting in a natural wage rate.

(d) Supply and demand theory

Acc. to this theory

" Wages of workers are determined by the interaction between the supply of and demand for labor in a particular market "

> Wage levels are influenced by the relative scarcity or abundance of labour in the market

Wages \uparrow demand for exceeds available supply [shortage of skilled workers]
 Wages \downarrow supply of labour $>$ demand [abundance of workers]

(e) Residual claimant

> Defn It refers to the position of individuals or entities who have the ultimate claim on residual income or profits generated by an organization after all other debts, expenses and obligations have been fulfilled

> They bear the risk and uncertainties associated with business

> They are typically owners of the company
 like :- shareholders or partners

> Invest their capital and expect to receive portion of profit

> They are entitled to income as a reward for capital contribution & risk taking

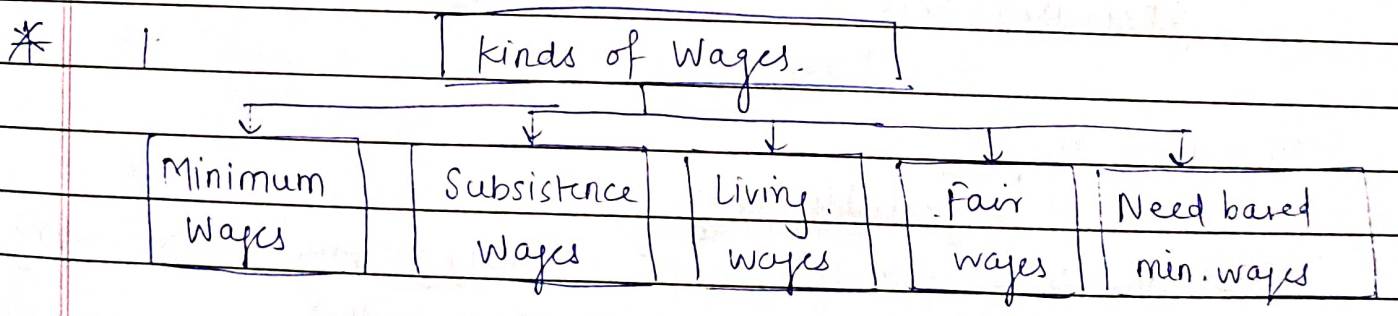
f) Standard of living theory

g) Bargaining theory of wages.

- > fixation of wages depends upon bargaining power of worker | T.U. and employer
- > If T.U. is stronger wages will be high

h) Behavioural theory of wage.

- > based on research studies and action programmes.
- > based on elements like
 - a) acceptance to a wage level.
 - b) prevalent internal wage structure.
 - c) salaries as motivators.



i) ~~Min~~ Subsistence Wages.

- > Wage that can only meet bare physical needs of a worker and his family

ii) Minimum Wages.

- > It refers to legally mandated lowest wage rate employer required to pay to employee.
- > It is set by government authorities
- > Intended to provide a baseline level of income for labour

- > It is irreducible level of wage paid to unskilled labor.
- > It must take into account 3 basic amenities of labor & his family. (food, clothing & shelter)
- > It varies from country to country.
- > It depends upon various factors.

iii) Living Wages

- developed by J. Haggins
- It should not only provide for food, clothing and shelter but for some frugal comfort of life, good education to children, some amusement and provision for sickness and old age including some measure of social security.

[Express Newspaper (P) Ltd v. U.O.I.]

- > It depends upon local economic factors.
- > It is often higher than min. wages.
- > It allows worker to meet basic needs without relying on govt. assistance.

iv) Fair Wages

- > It is an adjustable wage.
- > It depends upon industry's capacity to pay and prevailing rates of wages in the area of industry.
- > It lies between min. wages & living wages.
- > It reflects the value of workers contributions.
- > It allows worker to live decently & support families.

* Key Principles -

- 1) Equal pay for equal work.
- 2) Living Wage.
- 3) Compensation / Extra pay for skills & qualifications.
- 4) Market conditions.
- 5) Bargaining power.

* Components of Wages

- > Wages comprised of several components.
- > It may vary depending upon various factors.

Here are some components

① Base Salary / Wages

- It is the core component. → Regular payment of work
- depends upon job position, skill, experience, etc.

② Overtime Pay

- paid when employee work beyond standard working hours
- typically higher than regular hourly wage.

③ Bonuses

- Additional payment to employees → To reward employee
- It can be one time or recurring.
- It is based on predetermined criteria.

④ Commissions

- It is a form of variable pay based on a percentage or fixed amount of sales / transaction completed by employees
- This is common in sales or transaction by employees.

⑤ Allowances

- cover specific expenses or conditions associated with work.
- eg:- Housing allowance, transportation allowance, meal allow.

⑥ Benefits (apart from money)

- Health insurance, retirement plans, paid time off

⑦ Deductions

- Taxes, Insurance premiums, retirement fund contribution.

* Constitutional provision

① Art. 43 :- refer to living wage.

→ state shall make endeavour to secure it

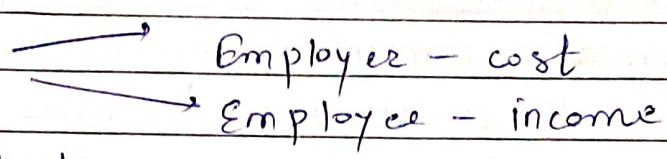
→ by suitable legislation or economic organization

② Art. 41 :- emphasize on right to work, right of fair wage and right to decent living.

③ Art. 39(d) and (e) :-

state that state shall ensure that workers receive a just and humane conditions of work and a living wage.

Remuneration for Labour

- ① Definition
- ② Importance
- ③ ↳ 2 Angles 
 - Employee - cost
 - Employee - income
- ③ Factors & Methods
 - (a) Unilateral → 1 person
 - (b) Bilateral → collective bargaining.
 - (c) Statutory fixation of wages → wages cannot be less than the
- ④ Factor →
 - 1) Time
 - 2) Place
 - 3) nature of employment
 - 4) Age
- ⑤ Conclusion

* Introduction

Remuneration of labour refers to the compensation or payment provided to individuals (workers/labour) in exchange for their work or services.

It includes various forms of financial awards, such as wages, salaries, bonuses, commissions, benefits and incentives.

The purpose of remuneration is to recognize and reward the efforts and contribution of employee, ensuring a fair and equitable relationship b/w employers and workers.

It means to attract, motivate and retain talented individuals with an organization.

Governments often regulate remuneration through labour laws, ensuring fair and equitable payments practices, protecting employee's rights and preventing exploitation or discrimination.

- ② Approaches to Remuneration of Labour.
Unilateral and Bilateral remuneration of labour are two approaches to determining and implementing remuneration.

① Unilateral Remuneration

- > It refers to a compensation agreement where the employer sets and determines the pay structure and levels without direct negotiation or involvement of the employees
- > It is common where there is no collective bargaining agreement or labour union representation.
- > Employer has the sole discretion.
- > It depends upon various factors

② Bilateral Remuneration

- > Also known as negotiated or collectively bargained remuneration
- > During fixation of wage or compensation, it involves mutual agreement b/w employer and employee representatives
- > Under this approach, the terms of conditions of work remuneration, including wages, salaries, benefits and working conditions, are determined through bargaining process
- > It is a formal process.

③ Statutory fixation of wages

- fixed by statutes > govt. sets mandated min. wages
- e.g. Min. Wages Act, 1948

* Factors affecting Remuneration of Labour

following factors affect remuneration of labour.

① Skill and Qualification :

- possessed by labour
- Higher level of expertise higher level of remuneration

② Experience

- amount of relevant work experience a person has accumulated

③ Industry and Sector

> Remuneration vary across different industries and sectors.

④ Geographical location.

> The cost of living and economic conditions in a specific geographic can influence remuneration

> Wages may be higher in regions with a high cost of living or in areas experiencing economic growth.

* Methods of Remuneration of Labour

- ① Wages
- ② Salaries
- ③ Commission.
- ④ Bonuses and Incentives.
- ⑤ Benefits and Perks.
- ⑥ Profit-sharing.
- ⑦ Stock Options and Equity.

* Importance of Remuneration of Labour

- ① It helps in attracting and retaining talent.
- ② It motivates the labour (adequate remuneration)
- ③ Adequate remuneration leads to higher levels of productivity.
- ④ It is essential for employees to maintain financial stability.
- ⑤ It promotes equity and fairness within an organization.
- ⑥

* Conclusion