

**Minutes of the meeting of the Central Advisory Board held under the Chairmanship of Hon'ble Minister Of State (IC) Labour & Employment on 22.2.2008 in Committee Room, 'C' Wing, 1<sup>st</sup> Floor, Shram Shakti Bhawan, New Delhi.**

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The first meeting of the Central Advisory Board, which was reconstituted vide Notification SO 1996 (E) dated 28<sup>th</sup> November, 2007 was held under the Chairmanship of Shri Oscar Fernandes Hon'ble Minister of State for Labour & Employment (IC). The agenda was to discuss the Amendment Proposals to the Minimum Wages Act, 1948. The list of participants is annexed.

Smt. Sudha Pillai, the Secretary to the Government of India, Ministry of Labour & Employment, in her inaugural address welcomed the Hon'ble Minister of State for Labour & Employment (IC) and Chairman of Central Advisory Board (CAB) and members of the newly reconstituted Central Advisory Board. Today, issue of fixation of wage is of paramount importance in our country where about 94 percent of total employment is in the informal sector. In this informal sector, wages cannot be left to be determined entirely by the interplay of market forces and intervention on the part of the Government is absolutely necessary. It is one of the most important labour legislations, whose effective implementation is crucial for the protection and promotion of the welfare and interest of largest segment of our work force. The Ministry of Labour and Employment is having a long pending issue relating to various amendment proposals to the Minimum Wages Act, 1948. As the Central Advisory Board has been reconstituted, it needs to deliberate so as to make the Minimum Wages Act, 1948 more effective and relevant. The Minister's guidance in proceedings will be warmly looked forward to by all of us.

Shri Oscar Fernandes, Hon'ble Labour and Employment Minister, as Chairman of newly constituted Central Advisory Board also welcomed its Members for its first meeting. He mentioned that the board has very important responsibility as already told by the Secretary, Labour and Employment. In the country, the workers in the unorganized sector have gone upto 94%. The condition of most of the people working in unorganized sector is not good. To think and take care of their interest is

the responsibility of the Government as well as this board. The Trade Unions like more and more workers to be covered in organized sector. On the other hand, the industry wants more and more workers to be in unorganized sector. In this era of world globalization, the interest of workers has to be protected. The Board has agenda relating to amendment proposals to the Minimum Wages Act, 1948 for consideration and discussion.

Initiating the discussion, Dr. Ashok Sahu, LEA welcomed the members of the Central Advisory Board. He apprised the members that the last meeting of the Central Advisory Board was held on 3<sup>rd</sup> June, 2005, which has already deliberated on different aspects of the amendments to the Minimum Wages Act. This is a long pending issue and assurances have been given to the Parliament for carrying out the amendments of the Act. The amendments have also been discussed in detail clause by clause in 40<sup>th</sup> Indian Labour Conference held on 9-10<sup>th</sup> December, 2005. On some points there was agreement and on some there was no consensus. All the present CAB members are therefore, requested to arrive at a consensus before the Government initiates for legislative action. National Common Minimum Programme states that Labour Laws can be changed but it should protect interest of workers and it should be consensus based. The agenda note giving the relevant Sections of the Act, Existing provision and proposed amendments alongwith the observations of previous CAB and in 40<sup>th</sup> ILC has already been circulated and made available to all the CAB Members.

Dr. Harcharan Singh, DDG stated that in previous CAB meeting, most of the proposals were agreed to but on some there was difference of opinion. Then it was taken to 40<sup>th</sup> Indian Labour Conference but still consensus could not be arrived on all the proposed amendments. Ultimately, it was decided to arrive at a consensus by Central Advisory Board, which is a statutory body, for taking final decision with respect to each and every amendment proposal. We may, therefore, take the amendment proposals item by item.

Dr. Harcharan Singh, DDG apprised that Item No. 1 to include "Other Employment" under scheduled employment is required because Minimum Wages

Act, 1948 applies only to those employment, which are mentioned in the schedule. Presently, the workers engaged in employment other than those mentioned in the schedule are not protected, under the Minimum Wages Act, 1948. The National Commission on Labour also recommended this proposal. The objective of this amendment is to cover and protect all workers under the Minimum Wages Act, 1948. The previous CAB was in agreement to this proposal, but ILC pointed towards examining its legal implications because it is not defined employment in schedule. Further, the ILO Convention regarding fixing of Minimum Wages could not be signed simply because all the workers are not covered under Minimum Wages Act, 1948. Then Legal Adviser was requested to comment on legal implications.

Before the agenda points could be taken up, members raised some points, which are as under:-

1. Shri K. Srinivas Rao from AITUC, stated that in 60 years of independence, only 18 board meetings have been held .The Board meeting is held only once, which is not enough. It was decided in the previous meeting to include Aanganwadi Workers in the Schedule. Thereafter meeting was not held and even Minutes of the meeting were not circulated. Sengupta Committee has also mentioned in their report about the sordid condition of unorganized sector worker. The Government policy and bureaucracy has to work in synchronization for the overall benefit of workers' community. He also suggested that Minimum Wages should be worked out on the basis of urban rather than rural consumer expenditure. Also it should be based on requirement of workers.

Hon'ble LEM stated that meetings should be held as per convention, which should be strictly followed. The records should be properly maintained and proceedings should also be placed on website.

2. Shri Jibon Roy from CITU stated that the proposal was discussed in ILC in 2005 which was more than 2 years back. Many structural changes have taken place since then. The organized sector is also tended to becoming more of unorganized nature as in the most of the major industries, more daily rated and contract

workers are being employed. The wage gulf between permanent and daily contractual worker is very high. There are new emerging trends in wage structure and they should be considered while fixing wages. He also stated that penalties can be imposed on employers who are errant but what will happen to State Governments who do not change the Minimum Wage structure for years together. The basis for fixation of minimum wages by appropriate Governments should be decided, whether it should be based on rural or urban expenditure. The broader aspect should be taken into account.

3. Shri B.C. Prabhakar from CIE stated that the ILC and the CAB has agreed on some agenda points but member of the newly constituted Board have no detailed information. (Subsequently, the minutes of earlier CAB meeting and 40<sup>th</sup> Session of ILC were circulated to all the members of new Central Advisory Board). He also stated that whatever Minimum Wages are prescribed, should be paid. The unemployment is increasing, especially youth unemployment. Minimum Wage fixing and implementation become more important. The amendment should not make the Act more stringent.
4. Shri Sujit Kumar Biswas form NFITU stated that different States have different amendments. There should be a standard, how far the States can change. State Government should not be given such liberty to change.
5. Shri Ashok Ghosh from UTUC suggested that to formulate Minimum Wages, first we should formulate a National Wage Policy and one National Minimum Wage should be fixed by the Central Government and should be implemented throughout the country. No one should be employed below the National Minimum Wage. The suggestion of 15<sup>th</sup> ILC should be followed for deciding quantum of National Minimum Wage. He also stated that there is a discrimination between male and female workers in bidi industry, brick field industry as well as amongst the migrant labours. Minimum Wage is protection to unorganized sector worker .The National Floor Level Minimum Wage of Rs 80 is not being implemented in the country.

6. Dr. Devendra Kumar stated that through State Amendments, the states remove the protection of minimum wage for particular industry. There is no justification of removing the social protection given to worker in that industry. And should not be left at the discretion of State Government. In Gujarat, the Government has decided that the Employment in Salt Pane industry should be deleted from the Schedule. It means that it is acceptable to the Gujarat Government that the workers in the Salt industry should be exploited by not paying minimum rates of wages. However, the Hon'ble LEM clarified that only Central Government's domain should be discussed in the meeting and states' domain should be left to states.
7. Shri Sankar Saha from UTUC (LS) suggested that scheduled employments should be increased to cover most of the workers. Minimum wages should be linked to Index Numbers to give justice to millions of workers. The 15<sup>th</sup> ILC criteria for wage fixing and the Hon'ble Supreme Court Judgement should be accepted and followed.
8. Shri Aditya Sahu from BMS stated that minutes and agenda notes of the meeting should be available in Hindi also. Hon'ble LEM assured that the next time all the proceedings would be sent in bilingual and would be available on website. The Board can again meet in two months to arrive at final conclusion towards amendment proposals. Thus, the Board proceeded with consideration of proposals, one by one.

### **Item 1.**

The Chairman of the Board welcomed this proposal of covering other employments not mentioned in the schedule under the Minimum Wages Act.

Shri Suresh Chandra, Legal Adviser stated, while examining the legal aspect about the addition of "other employment" not covered in the schedule, that if employment

is not specifically mentioned then the relevance of the Schedule will be lost. We have schedule in Part I for industrial sector and Part II for agriculture. But mentioning "other employment category" as such will be unreasonable.

Hon'ble LEM stated that this will be general saving clause which says whatever is not defined in the schedule will be covered under this clause.

Shri Michael Dias from CIE stated that it is not possible to achieve what is required for ILO convention from the existing law. We should change the definition of "employee" as stated in the Act, if we have to add "any other employment" category. In *Haryana Unrecognized Schools Association case 1996*, Supreme Court struck down applicability of Minimum Wages to teachers because they don't fit in definition of "employee". It has to be examined legally.

Shri Manjunatha Sartey, ALC from Karnataka stated that the State Government of Karnataka is first Government in the Country, which has added the Domestic servants as separate employment in the Schedule and fixed minimum wages for them. It is the most unorganized sector. So covering "other employments" is a good move.

Shri Devendra Kumar mentioned that minimum wages are provided to some workers who are specified in the schedule and not to others which is not fair. Also to make exhaustive list of workers, industries, skills is not feasible. If we wish to protect all workers, then this proposal is finest proposal. If we consider minimum wages as a necessary social requirement, then it should be given to everybody. It will revolutionize the concept of minimum wages in India. It will be the major change in the minimum wage structure in this country. Through this we will be protecting each and every worker in the country.

Mr. Umashankar Mishra stated that all workers should get minimum wages. More than 90% of the workforce is engaged in unorganized sector, which should be taken into the organized sector. First amendment is the most important. The proposed amendment to include workers engaged in activities other than the

scheduled one, is welcome. Legal implications should be examined. The nomenclature of other employment to be covered in schedule should be specific and clear.

Mr. S.K. Das stated that under the Minimum Wages Act, there is a provision that appropriate Government may refrain from fixing minimum wage in respect of any scheduled employment. There is a social responsibility on the part of the Government to fix minimum wage in respect of employment where more than 1000 workers are employed. The Government also should fix minimum wages in respect of other employment irrespective of 1000 or less than 1000 worker. The other employment being discussed should be named as "Employment not mentioned above" and included in schedule. With respect to legal implication, many provisions of labour laws are subject to judicial scrutiny. So, it should not deter us from doing good to the workers in general.

All the members agreed to this proposal for inclusion of nomenclature as "Employment not mentioned above" in the schedule.

**Item 2 :** All CAB Members agreed to reduce the period of review/revision of minimum wages from 5 years to 2 years unless the minimum wage has a component of VDA linked to CPI in which case it shall continue to be 5 years.

**Item 3:** The provision is related to industrial disputes with regard to payment of minimum wages before a tribunal under the ID Act, which is already stated in the Minimum Wages Act, 1948 and is proposed for amendment that the revised minimum rates of wages shall be payable during the pendency of wage dispute. Therefore, all CAB members agreed with the proposal, as approved by 40<sup>th</sup> ILC as well as earlier CAB.

**Item 4 :** After deliberations, all the members agreed to delete the provision relating to differential wages, as proposed in the amendments. The Chairman of the board suggested that youth should be provided more skills. As the adolescents also put as much work as an adult and should be entitled for minimum wages.

**Item 5:** All the members of the board agreed to add the proviso “ that all scheduled employment need not be individually represented in the Advisory Boards/ Committees/Sub-Committees”.

**Item 6:** Since there are practical difficulties in implementing the proposed amendments for payment of cash and kind, it was not accepted by all CAB members as decided by earlier CAB and so as to be consonance with the observation made in 40<sup>th</sup> ILC.

**Item 7:** The addition of employment cards besides wage books and wage slips by the employers through this amendment proposal was agreed. However, Members expressed that ESI Code No. and EPF A/c No. should also be mentioned on the wage book or employment card. It was also suggested that the workers should be given identify cards and a provision may be added.

**Item 8:** The observation of earlier CAB that “the labour officers of equivalent level in State Government” in the amendment proposal was agreed to by all CAB members. However, the amendment to include Assistant Labour Commissioner in the Central sphere was not observed to be appropriate.

The addition of a provision in section 20(1) so as to enable aggrieved employees or his heir, or a registered voluntary organization or a registered trade union of which the employee is a member to file a claim was agreed.

Hon’ble LEM requested the members to send their comments/suggestions in writing on amendment proposals within a month so that it can be discussed in the next meeting of the CAB to arrive at a final conclusion. The next meeting of CAB may be called sometime in April-May, 2008.

The meeting ended with the vote of thanks to the Chair.

## **List of Participants who attended the meeting of the Central Advisory Board held on 22.2.2008**

1. Shri. Oscar Fernandes, Minister of Labour and Employment	<b>Chairman</b>
2. Shri. Sujit Kumar Biswas	Member
3. Shri. K.Srinivas Rao	Member
4. Shri. Ashok Ghosh	Member
5. Shri. Jai Prakash Chajjad	Member
6. Shri. Sukhdev Prasad Mishra	Member
7. Shri. Uma Shankar Mishra	Member
8. Shri. Aditya Sahu	Member
9. Shri. Rajendra Sharma	Member
10. Shri. Jibon Roy	Member
11. Shri. Sankar Saha	Member
12. Shri. Kashinath Mishra	Member
13. Shri. A.D. Ramachandran	Member
14. Shri. Jitendra Gupta	Member
15. Shri. Amit Kumar Sen	Member
16. Dr. Devendra Kumar	Member
17. Dr. Trinath Behera	Member
18. Shri. Charanjit Singh	Member
19. Shri. Michael Dias	Member
20. Shri. K.K. Mittal	Member
21. Shri. S. Imtiazuddin	Member
22. Shri. Hurshad R. Shah	Member
23. Shri. S. Manjunatha Sartey	Member
24. Shri. E.V. Gangadharan	Member
25. Shri. T.M. Jawaharlal	Member
26. Shri. B.C. Prabhakar	Member

### **Special Invitee from Ministry of Labour and Employment**

1. Smt. Sudha Pillai	Secretary (L&E)
2. Dr. Ashok Sahu	Labour and Employment Adviser

3. Dr. Harcharan Singh	Deputy Director General
4. Shri. S.K. Srivastava	Joint Secretary
5. Shri. Suresh Chandra	Legal Adviser
6. Shri. B.K. Sanwariya	Welfare Commissioner
7. Shri. P.P. Sarkar	Deputy Chief Labour Commissioner (C)
8. Smt. Bhawna Singh	Deputy Director
9. Shri. Kishori Lal	Assistant Director
10. Shri. S.K. Das	Assistant Labour Commissioner (C)
11. Smt. Kamini Verma	Economic Officer