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Labour regulations in India: Rationalising the laws governing wages

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Working Paper No. 346

Labour Regulations in India: Rationalising the Laws Governing Wages

Anwarul Hoda

Durgesh K. Rai

October 2017

INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS

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Abstract

In this paper, we undertake an evaluation of the laws governing wages in India, identify their shortcomings and offer suggestions for improvement. In doing so, we analyze the provisions in the relevant ILO Conventions and look at the laws and practice in selected developed and emerging countries, and in particular in five comparator countries, which have been successful in industrial development, viz., China, Japan, Malaysia, South Korea and Thailand. The study shows that the wage regulations in India do not measure up to the standards adopted in peer countries and in some respect fall short of the recommendations in ILO Conventions. Some of our laws are very complex and this makes enforcement difficult. The Code on Wages Bill, 2017, seeks to eliminate some of the deficiencies but others will remain outstanding.

Keywords: Labour Regulations, Wages, ILO Conventions, India

JEL classification: J31, J33, J38, J780, J880

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Labour Regulations in India: Rationalising the Laws Governing Wages

Anwarul Hoda[1] and Durgesh K. Rai[2]

1. Introduction

The law on wages is an important segment of labour regulations. Although an evaluation of wage laws in India does not evoke as much controversy as the area of industrial relations, it is still important to examine whether, in their design and implementation, a balance is maintained between the interests of employers and employees. In an era of globalisation, a country is likely to lag behind its peers in development if its labour laws depart from international norms and are out of step with practices in comparator countries. In a country with a fragile environment for investment in manufacturing, it is particularly necessary to ensure that labour laws, including laws in the wage segment, do not make the situation worse.

India needs to accelerate manufacturing to step up the GDP growth rate to eradicate poverty and raise the standard of level of its people. Manufacturing has to expand also to provide avenues for the absorption of the stream of millions of job-seekers who are joining the work force regularly. The labour law framework has to provide for flexibility in employment to take care of the need of employers to adapt to rapidly changing market conditions in a globalised world. At the same time, it has to provide a modicum of job security for workers, so that they are not confronted with a sudden loss of livelihood. Workers also need a social security system to enable them to deal with exigencies, such as illness, injury and old age. It is also necessary to ensure that wages and other working conditions are conducive to the smooth development of the economy. In this paper, we undertake an evaluation of the laws governing wages and identify shortcomings and anomalies and offer suggestions to rationalise them.

Section 2 deals with minimum wages, Section 3, equal remuneration, Section 4, payment of bonus, and Section 5, payment of wages. In each of these sections, we describe main features of the Indian law, analyse the relevant conventions of the ILO and describe the laws and practices in selected developed and emerging countries, and in particular, the five comparator countries in the region that have been successful in industrial development, viz., China, Japan, Malaysia, South Korea and Thailand, and in the light of these, evaluate Indian laws and practice. Section 6 concludes with a summary of recommendations on the reform that is needed.

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2. Minimum Wages

2.1 The Minimum Wages Act, 1948

The Minimum Wages Act, 1948, is a central Act, which provides for the fixing of minimum wages in the country. The following paragraphs describe the main features of the law and practice of fixing minimum wages in India.

In the Act, the jurisdictions of central and state governments have been clearly demarcated. The central government has been vested with the powers of the government under the Act in relation to the railways, mines, oilfields, major ports and in respect of any corporation established by a central Act. The state governments have these powers in their respective jurisdictions in respect of all other employments.

Coverage

The minimum wage system in India does not have universal coverage and follows what might be termed a positive list approach. The Minimum Wages Act, 1948, applied only to employments listed in the Schedule of the Act. Part I of the Schedule initially included a limited number of employments in manufacturing, plantation, construction, public motor transport and mining and under any local authority. Part II of the Schedule comprehensively covered employment in agriculture including livestock. However, Section 27 of the Act authorises state governments to add any employment to either part of the Schedule. State governments have been making additions to the list of scheduled employments and the coverage now is much wider than when the original law was enacted.

Once an employment has been added to the list of scheduled employment the appropriate government does not have the power to make any exemption. The Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, had sought to exempt the employees of the famine relief works from the application of labour laws. The Supreme Court struck down the constitutional validity of this legislation in respect of minimum wages, observing as follows:

"The constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act 1948 providing the minimum wage may not be paid to a workman employed in any famine relief work, cannot be sustained in the face of Article 23. Article 23 mandates that no person shall be required or permitted to provide labour or service to another on payment anything less than the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought or scarcity conditions or not, the Sate must pay, at least, minimum wage to such person on pain of violation of Article 23" (1983 AIR 328).

A provision that is unique in the Indian law is that state governments are authorised to refrain from fixing minimum wages in any scheduled employment in which the number of employees in state is less than 1000.

The Act allows fixing of rates in terms of time as well as pieces, known as the piece rate wage. Where it is fixed by time, it may be by the hour, day or month or for a longer period. Further, different rates may be fixed for adults, adolescents, and apprentices or different localities. When the minimum wage is fixed on the basis of piece rate, the government also fixes a guaranteed time rate for the purpose of securing a minimum rate of wages on a time work basis for workers receiving wages on a piece rate basis.

The Act allows different rates to be fixed for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices and (iv) different localities. That different rates are envisaged for different localities makes sense because the cost of living may be different in different areas. Fixing different rates for apprentices is in accordance with international practice and a different rate for adolescents may also seem justified. However, fixing of different rates for children is anomalous as the relevant Indian law now envisages a complete prohibition of employment of children. Different minimum wage rates for different employments is a practice seen in a few other countries as well but differing minimum wages for different classes within the same employment is not very common in international practice.

There is wide variation among states in the level of complexity in the minimum wage systems adopted by them. For one, the number of scheduled employments differs considerably from state to state. While individual states keep reviewing the number of schedule employments and making changes in it, according to the Labour Bureau Report (2015), as on December 31, 2013, Assam had the largest at105 scheduled employments and Mizoram the smallest at one. Further, in the minimum wages notifications, the level of differentiation varies among states. In some, the minimum wages are the same for all employments for different skill levels; in others, they vary from employment to employment. Some states distinguish only between the three or four basic skill levels, while in others, there is further differentiation among categories within each skill level. Some states, particularly the larger ones, have zonal variations to reflect the level of development and living standards. The practice in typical states is described further in the following paragraphs.

Gujarat is one of the states with a simple structure. There are three levels of minimum wages for skilled, semi-skilled and unskilled categories, which are the same for all scheduled employments. The notification specifies the jobs falling in each of the categories in various employments. There is a difference of about three per cent in the minimum wage fixed for Zone I and Zone II. Delhi has adopted the same model but has added another skill level for clerical staff, differentiated into non-matriculates, matriculates and graduates. Uttar Pradesh also follows basically the same model with variations for three scheduled employments, viz., bangles, beedi and carpet industries. Similarly, in Rajasthan, the minimum wages for skilled, semi-skilled and un-skilled categories are set at a uniform level for 51 scheduled industries. There are separate notifications fixing different wage rates for four scheduled employments, viz., bricks, sales promotion, domestic workers and government programmes for employment generation. West Bengal has notified minimum wage rates for various skill levels (in most cases for three levels and in some for four) in respect of 82 employments. In 72

employments, the wage rates have been fixed at the same level. In this state too, minimum wages have been fixed differently for Zone A and Zone B, with the gap at about 12 percent.

At the other end of the spectrum are states with a very complex minimum wages structure. In Karnataka, minimum wages have been fixed at many levels in each employment and separately for two or three zones. An important feature is that there is only a small difference in the minimum wage fixed for different skill categories. For instance, in the electronics industry, the monthly minimum wage in Zone A for highly skilled categories is Rs. 7785.80, for skilled it is Rs. 7262.80, for semi-skilled it is Rs. 7089.80 and unskilled it is Rs. 6831.80, a difference of about 12 per cent across the four levels of the skills. The maximum zonal difference comes to about nine percent.

In Andhra Pradesh, there is a high degree of differentiation among different jobs for which minimum wages have been notified. There is also no uniformity in the minimum wages for the same or similar work in different scheduled employments. In some employments (e.g. hotels), there are regional variations in the minimum wages with a gap generally of about nine per cent.

Maharashtra also has a highly complex minimum wages structure. Various scheduled employments have different levels of minimum wages with substantial variations. For instance, for Zone I, the wage rate for unskilled workers is Rs. 7566 for automobile repairing, Rs. 7082.3 for bakeries, Rs. 4580.8 for the cement industry, and Rs 10959 for the construction of roads. There are three zones and the maximum gap in the wages fixed for the three zones is 5-8 per cent.

In the central sphere, notifications by the Ministry of Labour and Employment uses a mix of employments (e.g., agriculture, stone mines, construction, and non-coal mines) and types of activity (e.g., sweeping and cleaning, watch and ward, and loading and unloading) to fix minimum wages. The minimum wages are fixed generally by skill levels but are also differentiated by the area – Area A for metropolitan cities, Area B other large cities and Area C for areas other than A and B.

A feature of the minimum wages notified by different states is the large gap between the highest and the lowest wages in the same employment in different jurisdictions. The Report on the Working of the Minimum Wages Act 1948 (Labour Bureau 2015) indicates that as of December 12, 2013, the minimum wage for agriculture was Rs. 55 per day in Puducherry (Yanam region) while it was Rs 311 for unskilled workers in all employments including agriculture in Delhi. Similarly, in public motor transport the minimum wage rate was Rs. 80 per day in Arunachal Pradesh and Rs. 358.04 in Tamil Nadu. In construction and maintenance, the minimum wage was Rs. 80 per day in Arunachal Pradesh while in Delhi it was Rs. 311 for all unskilled workers.

While we evaluate the system of minimum wages prevailing in India in a later section, it must be mentioned here that the central idea behind fixing minimum wages is to ensure that wages are not reduced to a level at which the worker is unable to meet essential needs. In

other words, statutory minimum wages are meant to safeguard workers from the dangers of competitive pressure leading to a "race to the bottom". In light of this, it would be enough if minimum wages are fixed for the lowest level, allowing the wages of workers at higher levels to be determined by market forces. The minimum wage system in India tends to fix the whole wage structure instead of taking care of wages at the lowest level.

Criteria for determining the level of minimum wages

The Act does not spell out the factors that must be taken into account for determining minimum wages although it does mention that variations in the cost of living index will be taken into account to determine the cost of living component, which may be given separately or merged into an all-inclusive rate. However, reports of various committees set up by the Government of India, resolutions passed in the sessions of the Indian Labour Conference and directions given by superior courts have provided guidance on other factors to be taken into consideration. A Tripartite Committee on Fair Wages appointed by the Central Advisory Council in November 1948 expressed the view that the minimum wage "must provide for not merely the bare sustenance of life, but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities". The 15th Session of the Labour Conference (1957) approved a resolution, which laid down five norms to determine minimum wage in a manner that ensures that the minimum human needs of the industrial worker are fulfilled. First, the standard family is to be taken to comprise three consumption units for one earner; second, the food requirement is to be based on a net daily intake of 2700 calories per unit; third, clothing requirement to be based on a family of four at the rate of 18 yards per person per annum making a total of 72 yards; fourth, for housing, the norm is to be the minimum rent charged by government for low income groups; and fifth, 20 per cent to be added for fuel, lighting and other miscellaneous expenditure. In 1991, the Supreme Court[3] expressed the view that for children's education, medical expenses, recreation, festivals, ceremonies and provision for old age, a further 25 per cent should be added in fixing minimum wages. On the other hand, the 30th session of the Labour Conference held in September, 1992, warned against the tendency to fix minimum wages at unrealistically high levels.

In the Code on Wages Bill, 2017, introduced in the Lok Sabha in August, 2017, it is proposed inter alia that the appropriate government may "fix factors by which the minimum wages … be multiplied for different types of work". For fixing these factors, the appropriate governments "shall take into account the skills required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors that the appropriate Government considers necessary". The idea seems to be to move towards further differentiation of minimum wage levels within the same employment.

[3] In Workmen vs. Reptakos Brett and Company Ltd (1992 AIR 504)), the Honourable Supreme Court, recalling the five norms for the fixation of minimum wages recommended by the Tripartite Committee of the Labour Conference -1957, added a sixth, observing as follows: "(vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25 % of the total minimum wage."

Wage fixing machinery

For fixing wages for various employments, two alternative procedures are prescribed – the committee method or the notification method: the appropriate government may either appoint committees to hold enquiries and advise it or it may publish its proposals and ask the stakeholders to furnish comments. The government notifies the fixed minimum wages after considering either the comments of stakeholders or the recommendations of the committee or committees. When the government fixes minimum wages after publishing its proposals and obtaining comments, it must also obtain the comments of the Advisory Board, which the appropriate government is mandated to appoint for the purpose of co-ordinating the work of committees and sub-committees and advising government generally on the matter of fixing wages. The central government may also appoint a Central Advisory Board for the purpose of co-ordinating the work of the advisory boards. These boards and the committees must consist of persons representing employees and employers in equal numbers and one-third of the members have to be independent persons.

Periodic adjustment of wages

The Act requires the government to review minimum wages at intervals not exceeding five years and revise them as appropriate. The Code on Wages Bill, 2017, also seeks to provide for review or revision of minimum wages at an interval of five years.

The Act provides for the cost of living allowance to be computed by the competent authority "at such intervals and in accordance with such directions as may be specified by the appropriate Government" .However, on the recommendation of the Labour Ministers' Conference in 1988, a mechanism has been evolved to protect wages against inflation by linking it to the consumer price index. A variable dearness allowance has been in position since 1991, being revised twice a year, in April and October. The Code on Wages Bill, 2017, does not propose any change in this.

National Wage Policy

The need for a national wage policy in the country has been felt in order to develop a uniform approach towards employment in government as well in the organised and informal sectors. These discussions evolved into a consideration of the question of fixing minimum wage at the national level. In these discussions, views have been expressed by stake holders on the difficulty in developing nation-wide uniform minimum wage rates on account of differences in the cost of living and the paying capacity from state to state and industry to industry. However, the Indian Labour Conference came out with the idea of regional minimum wages in November, 1985, and recommended that the central government should lay down guidelines for the fixation and periodical revision of regional minimum wages. Pursuant to this recommendation, the government issued guidelines in July 1987 for the setting up of regional minimum wages advisory committees. Subsequently, the role passed on to the Regional Labour Ministers' Conference, which made a number of recommendations, including reduction in disparities in minimum wages in different jurisdictions, setting up of

an inter-state co-ordination council and consultation among neighbouring states fixing or revising minimum wages.

On the persuasion of the Government of India, state governments have formed five regional minimum wages advisory committees (eastern, north-eastern, southern, northern and western regions) to try to bring about uniformity in minimum wages in scheduled employments.

National minimum wages

The concept of national minimum wage was examined by the First National Commission on Labour, which recommended strongly against its adoption in its report (1969), concluding that "a national minimum wage in the sense of a uniform monetary remuneration for the country as a whole is neither feasible nor desirable". The Commission argued further that "if one is fixed, the dangers are that there will be areas which will not afford the minimum if the minimum is worked out somewhat optimistically. And if calculations are allowed to be influenced by what a poorer region or industry can pay, the national minimum will not be worth enforcing". Taking cognizance of the differences in the consumption pattern of different regions as well as variations in regional prices, the Commission suggested that "in different homogenous regions in each state regional minima could be notified" (National Commission on Labour 2002).

The Government of India Study Group on Wages, Incomes and Prices also known as Bhoothlingam Committee took a different view. In its report submitted in 1978, it expressed the opinion that "in our view, the real minimum wage can only be the absolute national minimum, irrespective of sectors, region or States below which no employment would be permitted" (National Commission on Labour 2002).

In 1991, the National Commission on Rural Labour (NCRL) floated the concept of the national floor level minimum wages. Initially, the national floor was fixed at Rs.35 per day in 1996, but it has been revised from time to time and it is Rs.160 per day with effect from July 1, 2015. The national floor did not have statutory backing but state governments are expected to ensure that the minimum wage for various scheduled employments is not fixed below this level.

The recommendation in the Report of the National Commission on Labour (2002) is more in line with the view taken by the Bhootlingam Committee than by the first National Commission on Labour. It is noteworthy that in taking a view almost diametrically opposed to the one taken by the First Labour Commission the Second Labour Commission did not address the arguments given by the former. Paragraph 6.114 of the recommendations of the Second Labour Commission, which are relevant, is reproduced below:

"There should be a national minimum wage that the Central Government may notify. This minimum must be revised from time to time. It should, in addition, have a component of dearness allowance to be declared six monthly linked to the consumer price index and the minimum wage may be revised once in five years. This will be a wage below which no one

who is employed anywhere, in whatever occupation, can be paid. Each State/Union Territory should have the authority to fix minimum rates of wages, which shall not be, in any event, less than the national minimum wage when announced; where the state is large, it may, if it chooses, fix different minimum wages for different regions in the state but no such wage can be less than the national minimum wage. The Commission also recommends the abolition of the present system of notifying scheduled employments and of fixing/revising the minimum rates of wages periodically for each scheduled employment, since it feels that all workers in all employments should have the benefit of a minimum wage."

There were two main elements in this recommendation of the National Commission on Labour (2002): first, that there should be a national minimum wage and second, that the present system of notifying scheduled employments and fixing minimum wages for each scheduled employment separately should be given up. While there has been no follow up by successive governments of the important recommendation relating to the abolition of the system of scheduled employments, in the Code on Wages Bill, 2017, the government has picked up the idea of a nationally valid minimum wage. An important provision proposed in the Bill will enable the central government to fix a national minimum wage either for the whole country or for different states or different geographical areas. From the manner in which the Bill has been drafted, the intention appears to be to pursue the idea of a national floor with statutory backing.

Provision on overtime

Regarding overtime payment, Section 59 of the Factories Act, 1948, already stipulates that the worker will be entitled to twice the ordinary wage rate. This provision applies only to establishments that come under the definition of factories. Separately, Rule 25 of the Minimum Wages Rules provides that in the case of scheduled employments, overtime payments will be double the ordinary wage rate, thus extending the applicability of overtime wages at the rate of 200 per cent of ordinary wages to establishments other than factories. The ILO recommendation is for the overtime wage to be 125 per cent of the normal wage, but Indian law prescribes a considerably higher level.

Enforcement

The Act provides for penalties if an employer pays to any employee less than the minimum wage. The penalty includes a provision for imprisonment for a term up to six months or a fine of five hundred rupees or both. Claims of short payment are also dealt within the Act, which provides for compensation up to 10 times the amount of the shortfall.

Each state has the administrative machinery to enforce the Minimum Wages Act and, in the central sphere, enforcement is done by the Central Labour Commissioner. The annual reports on the working of the Minimum Wages Act, 1948, published by the Labour Bureau give an idea of the working of the enforcement machinery of the central and state governments by furnishing countrywide yearly data on the number of inspections made, irregularities

detected, prosecutions launched and claims preferred in the central sphere and in states and union territories.

A number of studies such as Deshingkar (2009), Rani and Belser (2012) and Srija (2014) have found weaknesses in the enforcement of the Minimum Wages Act in the country. Two ways of measuring compliance are the number of irregularities detected during workplace inspection and calculation of the share of workers earning less than the legal minimum wages. Table 1 below gives the trends in the number of irregularities under the Minimum Wages Act in major industrial states and in the central sector in India during the period 2001 to 2013. Except in Tamil Nadu, the numbers are high and sometimes rising. A report by the ILO (International Institute of Labour Studies (2013) has measured compliance in a number of developing countries by using the second method and found that in India the share of workers earning less than the legal minimum wage was slightly more than 60 per cent in the late 2000s. The corresponding figure was below 60 per cent for South Africa, 80 per cent for Brazil and above 80 per cent for Mexico. The report mentions that in developed countries, compliance is known to be high. Thus, India is behind the developed and some emerging countries in Latin America in compliance but is better than South Africa.

Table 1: Number of irregularities detected under the Minimum Wages Act in India

States/Central	**2001**	**2005**	**2011**	**2012**	**2013**
Andhra Pradesh	NR	13555	2177	11996	4363
Gujarat	79038	55774	47189	69131	NR
Karnataka	NR	22442	12433	6170	15780
Maharashtra	181085	-	39411	NR	37097
Tamil Nadu	NR	-	75	93	96
West Bengal	NR	7692	2307	3850	6892
CLC (Central Sector)	173285	56584	166415	162110	134070

Source: Labour Bureau, Report on the Working of Minimum Wages Act, various years

In the Code on Wages Bill, 2017, the Government is seeking far-reaching changes in the enforcement machinery for labour regulations, which is particularly relevant for an area like minimum wages in which lack of compliance seems to be widespread.

Three important provisions of the Code are particularly significant. First, “Facilitators” would be appointed to carry out inspections according to web-based inspection schedules, and, more importantly, “to supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this Code”. Clearly, the idea is to bring about an attitudinal change in the officers designated to carry out inspections in order to induce compliance, rather than to detect infractions, triggering prosecution. Second, inspection by enforcement authorities will no longer be on a surprise basis, without adequate notice, but the appropriate government will lay down an inspection scheme based on a web-based inspection schedule. Third, there is provision for graded penalty for contraventions and for the first offence, an employer is to be punished only with a fine and only the second and subsequent offences are punishable with imprisonment.

2.2 ILO Conventions and Recommendations

Article 1 of the ILO Minimum Wage Fixing Convention, 1970 (no. 131) requires in principle that the system of minimum wages should cover all group of wage earners but gives some leeway to ratifying members to leave out some employments from the coverage while Recommendation no. 135 encourages them to keep to a minimum the number and groups of wage earners not so covered. It is important to note that in keeping with ILO's logic of adopting procedural and not substantive norms, the Convention talks of a system of minimum wages and the consultative process by which the minimum wages should be fixed and adjusted from time to time and does not talk of the levels at which such wages should be fixed.

Article 3 of the same convention enumerates three elements that should determine minimum wages, namely, the needs of workers and their families, cost of living and social security benefits. It also recommends taking into consideration the general level of wages in the country, the relative standards of living of other social groups, the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4 of the convention requires consultations with representative organisations of employers and workers in the machinery to fix minimum wages, and, where no such organisations exist, with representatives of the employers and workers concerned. Independent persons are to be appointed on the basis of competence for representing the general interests of industry but after consultation with representatives of organisations of employers and workers.

ILO's Recommendation no. 135 makes some additional suggestions on the system of minimum wages to be adopted by developing country members of the ILO. Countries have the option to fix a single minimum wage of general application or have different minimum wages for groups of workers. They may also have different rates for different regions to allow for differences in the cost of living.

The ILO recommendations allow the process of fixing minimum wages to take different forms: they may be embodied in the statute at the outset or may be the result of decisions of wage boards, industrial or labour courts or tribunals, or the outcome of collective agreements. Minimum wages may also be determined by competent authorities after taking into account recommendations of other bodies or without such consultation. Independent persons are required to be suitably qualified persons with experience in the areas of industrial relations or economic or social planning.

The ILO recommendations give option to developing countries to revise the minimum wages either at regular intervals or whenever such review is considered appropriate in the light of variations in the cost of living. As regards enforcement, developing countries are exhorted to give publicity to the minimum wage provisions, employ a sufficient number of inspectors and provide for adequate penalties for infringement.

2.3 Minimum Wage Systems in Comparator Countries

Japan

The Minimum Wages Law (Law No. 137 of April 15, 1959) in Japan excludes undertakings employing only family members and domestic employees but otherwise provides for universal coverage. It requires minimum wages to be fixed after taking into consideration the cost of living, wages of similar workers and the capacity of industries to pay wages. Minimum wages are to be fixed by the hour, day, week or month but they may also be fixed on the basis of a piece rate.

Minimum wages are fixed either regionally for each of the 47 prefectures or on an industry wide basis. In the year 2016-2017, the minimum wage per hour in 47 prefectures was in the range of JPY 714 in Okinawa to JPY 932 in Tokyo (WageIndicator 2017a). From1986, industry wide minimum wages have been established in cases where the employers and workers concerned consider it necessary for the industry's wages to be higher than the regional minimum wages. Under industry specific minimum wage, there are two types: (i) regional specific industry minimum wage for each prefecture and (ii) nationwide specific minimum wage.

The Central Minimum Wage Council issues guidelines every year for increasing minimum wages to ensure consistency. While considering revision of minimum wages, the Regional Minimum Wage Council takes both central guidelines and local conditions into account.

The law envisages a fine not exceeding JPY 500,000 for employers held for paying less than the prescribed minimum wage.

Korea[4]

As stipulated in the Minimum Wages Act, 1986, minimum wages apply to all businesses or workplaces with one employee or more, except those that employ family members only. Domestic workers and seamen are also not covered. All employees are covered, whether citizens or aliens, irrespective of their employment status as casual, temporary or permanent workers.

For the determination of minimum wages, workers' living costs, wages of comparable workers, labour productivity and income distribution ratio are taken into consideration. To start the process, the labour minister makes a request to the Minimum Wage Commission, which then seeks the recommendations of the Technical Committees on Living Costs and Wage Level. Based on the inputs from these committees, the Commission determines the wage rate and sends its recommendations to the minister. The minister announces the rate and gives 10 days' time to workers and employers to file objections, if any. On receiving an objection, the minister may refer the matter back to the Commission for re-deliberation. Thereafter, the minister announces the finally fixed rate of minimum wage, which is a single

[4] Minimum Wage Commission, Republic of Korea

rate valid for the whole country.. In the year 2017, the minimum wage has been fixed at 6470 won per hour, having increased from 3480 won in 2007 (Trading Economics 2017).

If an employer fails to comply with the requirement to pay minimum wages, he becomes liable for punishment by imprisonment for up to 3 years or fine not exceeding 1 million won.

Malaysia

The Malaysian law on minimum wages is embodied in the National Wages Consultative Council Act, 2011, which establishes the council and entrusts it with the responsibility to make recommendations to the government on minimum wages orders "according to sectors, types of employment and regional areas". In actual practice, a single minimum wage rate is also fixed separately for the two main regions, namely the more industrially advanced Peninsular Malaysia and the less advanced areas of Sabah, Sarawak and Labuan. The minimum wage rates, in principle, have universal coverage and all employees are covered except domestic workers and apprentices undergoing training.

The Council has five members each from amongst public officers, employees, employers and others. Before making recommendations on the minimum wage rates, coverage and non-application of minimum wage rates, the Council is required by law to have consultations with the public. The government may accept the recommendations or return them to the Council with directions to review them and make fresh recommendations. If the government disagrees with the revised recommendations, it determines the minimum wages or any other matter on its own.

The last order issued on July 1, 2016, by the government, fixed single wage rates region wise, RM 1,000 per month or RM 4.81 per hour for Peninsular Malaysia and RM 920 or RM 4.42 per hour for Sabah, Sarawak and Labuan (Malay Mail Online 2017). The rates are for a six-day working week and are enhanced proportionately for working weeks of five or four days. For piece work, tonnage or trip basis, the requirement is that the monthly salary shall not be less than what has been fixed. In other words, the employer is mandated to make top up payments in order to meet the rates fixed by time.

The penalty for not paying minimum wage goes up to RM 10,000 for each employee. In the case of repeated offence, the penalty may go up to RM 25,000 or imprisonment for a term of up to five years.

Thailand

The Labour Protection Act, B.E. 2541 or 1998, as amended by the Labour Protection Act, B.E. 2551 or 2008, provides for fixing minimum wages by types of business, work or branch of occupation or for specific regions. The last revision of the statute has introduced the concept of "workmanship standard wage rate", which means the wage rate prescribed for "each career in accordance with the workmanship". Thus, two types of minimum wages are envisaged in the law: general minimum wage rate and wage rates by skill standards, which must not be less than the general minimum wage rate.

Before 2013, the minimum wage rate was set at the provincial level taking into account inter alia the cost of living, employers' capacity and the conditions of the economy in each of the 76 provinces. In January, 2013, a national minimum wage of 300 Baht per day was fixed for the entire country, but this was scrapped in December 2015. Another recent development has been that in March 2016, the wages committee approved a new schedule of minimum wages covering 20 skilled occupations in five industries, viz., electronics, automotive parts and spares, automobiles, gems and jewellery in addition to logistics. The wage rates in these occupations have been set at two levels, differentiated by the standard of skill and experience.

In 2017, the daily minimum wage rate has been fixed at four levels, namely 300, 305, 308 and 310 Baht for different regions (Thailand Board of Investment 2017).

The Labour Law has established a wages committee to advise the government "in relation to the policy and development on the (*sic*) wages and revenue" and more specifically to fix the minimum wage rates. The machinery for setting minimum wages comprises three key institutions, the National Wages Committee (NWC), the Provincial Sub-committee on Minimum Wages (PSMWs) and the Sub-committee on Technical Affairs and Review (STAR). The Permanent Secretary of the Ministry of Labour and Social Welfare is the chairman of the committee, which has four representatives of the government, and five each of employers and employees appointed by the cabinet as members, and an official of the Ministry of Labour and Social Welfare appointed by the Ministry as Secretary. PSMWs are tripartite committees, which send their recommendations to the NSW. On receipt of the recommendations, they are forwarded to STAR for technical review. After STAR's review, the NCW finalises its recommendations for approval by the Ministry of Labour and announcement in the Gazette.

Section 87 of the revised Act requires that in fixing the minimum wages, the Wage Committee (the NWC, PSMW or STAR) shall study and consider facts relating to the wage rate being currently received, the cost of living index, the rate of inflation, the subsistence standard, cost of production, the price of goods, business competitiveness, labour productivity, gross domestic product and economic and social conditions.

As in other comparator countries, non-compliance by employers with the minimum wages fixed by government attracts penalties. The penalty for not paying the stipulated minimum wage is a term of imprisonment not exceeding six months or a fine not exceeding 100,000 Baht, or both.

China

In China, minimum wages are governed by the Provisions on Minimum Wages, promulgated by the Ministry of Labour and Social Security in Order No. 21, which came into effect on March 1, 2004, after adoption at the 7th executive meeting of the ministry. The provisions are less like legislation and more like an executive order. The order applies to enterprises, private non-enterprise entities, individual industrial and commercial households with employees

“who have formed a labour relationship with the employing entities”. State organs, public institutions and social bodies with employees also fall under the purview of the order.

Minimum wages are fixed by the administrative department of labour and social security at the level of province, autonomous region or municipality directly under the control of the central government. Different administrative areas within a province, autonomous regions or municipalities directly under the control of the central government have been authorised to adopt different standards of minimum wages for their jurisdictions. Thus, there are multiple minimum wages in China valid for different administrative regions but no differentiation among employments. For the year 2016-17, minimum monthly wage has been fixed for different administrative areas within provinces. These rates vary from RMB 1020 in Huludaoto 2030 RMB in Shenzhen (WageIndicator 2017b).

The provisions require that in fixing or revising minimum wages, the factors to be taken into consideration must include the minimum cost of living for the employee and his/her dependants, urban residents’ consumption price index, social insurance premia, “public accumulation funds for housing paid by the employee themselves”, average wage, level of economic development and status of employment.

To formulate proposals for minimum wages, the administrative department of the province/autonomous region/municipality is mandated to consult with labour unions as well as the association of employers before submitting them to the Ministry of Labour and Social Security. On receipt of the proposals, the Ministry obtains the opinions of the China Labour Union and the China League of Enterprises. The Ministry may then provide advice for revising the programme, but if such advice is not provided within 14 days, it would be deemed that it has provided consent.

The provisions stipulate that the minimum wages must be reviewed if there is a change in related factors, but that they must be reviewed at least once every two years.

The order is somewhat mild on penalties. No imprisonment is provided for non-payment of minimum wages nor is there a stipulated penalty. But it is provided that if there is a shortfall in payment of minimum wages, the employer may be liable to pay compensation of up to five times the wages owed.

Other emerging and major developed countries

In the US, under the fair labour standards Act (FLSA), the general minimum wage rate payable to all covered workers is established by federal legislation. The states have the authority to fix minimum wage rates at the levels different from the federal rate. In 2016, 29 states and the District of Columbia had fixed minimum wages above the federal rate and 2 below the federal rate. Five states had no minimum wage requirement and the remaining 14 had minimum wage rate equal to the federal rate. Under the FSLA, an individual is generally covered by the higher of the state or federal minimum wage. In 2016, the federal minimum wage was US$7.25 per hour.

In the EU, 22 member states have universal and six have sectoral minimum wage regimes. In universal regimes, a general wage floor is set at the national level and in sectoral regimes, minimum wages are set for specific branches or occupational groups. All the three major economies in the EU, viz., Germany, France and the UK have adopted universal minimum wages regimes (Eurofound 2017).The single national minimum wage fixed for 2017 was Euro 8.84 per hour for Germany (WageIndicator 2017c), Euro 9.76 per hour for France (WageIndicator 2017d) and GBP 7.50 for the UK (WageIndicator 2017e).

As in the major developed countries of Europe, Brazil has a national minimum wage system applicable to all workers. For 2017, the national minimum wage in Brazil was fixed at BRL 937 per month (WageIndicator 2017f). On the other hand, South Africa has a very complex system of minimum wages, which are determined at the national, regional, occupational and are based on skill levels.

2.4 Evaluation of Indian Law and Practice on Minimum Wages

A coherent minimum wages system emerges from our study of the law and practice in the major developed and emerging countries. The central idea behind fixing minimum wages is to ensure that competitive pressures do not lead to wage rates being reduced to a level at which the worker is unable to meet essential needs. It is enough for minimum wages to be fixed for the lowest level, allowing the wages of workers at higher levels to be determined by market forces. In setting the minimum wage the cost of living of the area for which it is being set must be taken into account. Where there is uniformity in the levels of development and standards of living in a national jurisdiction minimum wages can be set nationally, but where there are differences in the levels of development minimum wages are set regionally.

Coverage

We find that India is unique in not extending the minimum wage law to all sectors of the economy. It empowers state governments to progressively enlarge the scope of application of the minimum wage law by adding employment categories to the two schedules to the Act. India can be said to be following a positive list approach for coverage whereas other countries follow a negative list approach whereby all sectors are deemed to be included unless specifically mentioned. Some countries have specifically excluded domestic or home workers or family enterprises or even seamen. Other countries mention particularly the exclusion of trainees and students below 18 years of age, voluntary service workers or apprentices, but the minimum wage applies to everyone not specifically excluded.

There is little justification for continuing the Indian approach to minimum wage being applicable only to scheduled employments and it is necessary to amend the law to eliminate this anomaly. We have seen that the Second Commission on Labour had recommended strongly the abolition of the present system of notifying scheduled employments since it felt that all workers should have the benefit of minimum wages. In our view, minimum wages should have universal coverage and, in principle, no employee should be excluded from its purview. This can be accomplished only if minimum wages are fixed by geographical area

and not for employments, sectors or occupational categories. This is the practice in leading developed and emerging countries.

While universal coverage in principle is the norm in developed and emerging countries, the Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (2014) brings out isolated cases of exclusions among the ILO member countries, including developed countries, in some cases. The main categories excluded are agricultural workers, public sector workers, young workers and apprentices, domestic workers and workers employed in family businesses. Among the emerging and major developed countries, the exclusions currently in force are of agricultural workers in the USA (from federal minimum wages) and in several provinces of Canada. In Thailand, public sector workers are excluded. Among emerging and developed countries Japan, South Korea and Malaysia exclude domestic workers from the scope of minimum wages. Apprentices and young workers are excluded from minimum wages in some ILO member countries (Chile and Ireland) but not in the major developed and emerging countries. In the UK, members of the employer's family residing in the family home of the employer are not entitled to minimum wage. Evidence is separately available of family businesses being outside the purview of the minimum wages law in South Korea and Japan (Minimum Wages Law, Law no. 137 of April 1959, Japan, and Minimum Wage Act, Act no. 3927, Dec 31, 1986, South Korea).

In India, there has been no need for specific exclusions because the system is based on fixation of minimum wages for scheduled employments. If for any category of wage earners, it is considered necessary not to apply minimum wages, the specific category may not be included in the list of scheduled employments. However, if the recommendation of universal coverage that we make is accepted, there has to be a very special justification for exclusion of any specific category. Family enterprises have been kept outside the purview of Child Labour (Prohibition and Regulation) Act, 1986, and a similar exclusion could be considered in the case of minimum wages. There is no case, however, for excluding domestic workers from minimum wages as this is a highly vulnerable category in the country and is in dire need of protection. In fact, a number of states have already included domestic workers in scheduled employments.

Should the minimum wage be fixed at the national, regional or state level?

We have seen that apart from the authority granted to the central government to fix minimum wages in respect of scheduled employments carried out by the central government, like the railways, ports, mines and oilfields and central government undertakings, it is really state governments that have authority to determine the minimum wage for all other employments within their territorial jurisdictions. Thus, different minimum wages exist in the 35 states and union territories, which constitute the Indian Union. We have seen that there was an earlier initiative from the central government to reduce the disparity in minimum wages in different regions and various states have been clubbed into five regions and advised to harmonise their minimum wage on a regional basis. There was also the idea of a national minimum floor wage (NFMW) and such a floor has been fixed and revised from time to time; states were advised on a non-mandatory basis to fix the minimum wage at or above the NFMW. Now,

the Code on Wages, 2017, has resurrected the Bhoothlingam Committee idea and the recommendation of the Second Labour Commission for a statutory national minimum wage although it also envisages that wages could be fixed by the central government on a regional basis or at the state level.

We are of the view that idea of a national minimum wage is fundamentally flawed. We need only to recall the reasons given by the first Labour Commission against the concept. The cost of living is the biggest single determinant of minimum wage and there is considerable variation in the cost of living in different geographical locations in the country. In urban centres, it is generally much higher than in states that are predominantly rural or at a lower level of development. We have seen that for the unskilled worker, the difference between the minimum wages notified by the state governments Delhi and Tamil Nadu is more than four times that in Arunachal Pradesh and the Yanam region of Puducherry. If NFMW has to be fixed, it may be too high for predominantly rural states or too low for predominantly urban and industrialised states. India is geographically too large and has too many pockets of highly developed or poorly developed regions for us to think in terms of an NFMW. It is best to leave the minimum wage to be determined for each state and union territory. As a matter of fact, there may be justification to fix a different minimum wage for that part of a state that is either more or less industrially developed than the rest of it . Section 2 (3) of the Minimum Wage Act already allows the fixation of rates for different localities. Equally, no purpose will be served by the central government fixing minimum wage at the regional level; this should be left to the discretion of states or union territories, which could also decide on the geographical area for which the fixed minimum wage should be valid. There could be cases in which the state could fix minimum wages at different levels for different districts if there are variations in the cost of living. India does not have the homogeneity in living standards that many developed countries have, and to fix minimum wage on a countrywide basis is unrealistic.

While there is little justification for fixing a nation-wide minimum wage valid for the country as a whole, there may be good reasons to have a national minimum wage policy. The concept of a national wage policy would imply that the elements of minimum wage would be spelt out and various state governments and the central government in the central sphere would translate these elements in terms of rupees per month, per day or per hour. In fact, five elements have already been spelt out by the 15th Session of the Labour Conference (1957) and a sixth element was added by the Supreme Court in 1991. These elements would need to be updated to take into account the evolution of public policy in such areas as food security, compulsory elementary education, health infrastructure and other areas. The evolving concept of poverty level will also need to be factored into the new definition.

Should different minimum wages be fixed for different classes of work in the same employment?

The idea of statutory minimum wages is to ensure that the lowest wage in employment is a wage that enables the workers to meet the requirements of calorie intake, clothing, housing, education of children, medical expenses, etc. The notion of compensating workers for higher

levels of physical and intellectual skills does not fit into the concept of minimum wage. The idea should be to ensure that the wage at the lowest level is such that even at that level, the worker receives adequate compensation to take care of the elements mentioned earlier. In fixing the minimum wage, the level of skills need not and should not be taken into consideration. The objective of fixing minimum wages should not be confused with the idea of wage structure for the entire work force, which should be left to market forces.

Ghose (1997) has taken a similar view as can be seen in the following quotation from his work:

"The simplest form of intervention would be the enforcement of a daily minimum wage for unskilled labour, irrespective of the job or the sector in which it is employed and irrespective of the age or the sex of the supplier of unskilled labour. There is no justifiable basis for specifying different minimum wages for different type of activities so long as they all employ unskilled casual labour. Of course, actual wages may have to be different because of differences in locations and/or in difficulties associated with work, but determination of these differentials can be left to market forces."

The provision in Section 3 (2) permitting different rates of minimum wage for different classes in the same scheduled employment needs to be changed. On the same basis, Article 6, subsections 5 and 6 of the Code on Wages Bill, 2017, which proposes that the rates of wages for different types of work should be fixed taking into account the skills required and the arduousness of work, will need to be thought through again. The minimum wage should not also be different for different employments. There should be one common minimum wage for all employments within the geographical area for which the minimum wage has been fixed. This is the general practice in most emerging and major developed economies and in comparator countries. There is one common minimum wage in the entire territory of South Korea and different minimum wages by prefecture in Japan, province or administrative region in China and for the more industrially advanced Peninsular Malaysia and the less advanced areas of Sabah, Sarawak and Labuan. In none of these countries is there a differentiation among employments for fixing minimum wage. This is also the practice in Germany and the UK. India needs to fall in line with the mainstream practice. If the situation demands, and there is reason for a particular industry to have a different minimum wage, as in Japan, this can also be done as an exception.

Overtime wages

We have seen that both Section 59 of the Factories Act, 1948, and Rule 25 of the Minimum Wages (Central) Rules, 1950, require payment for overtime to be made at 200 per cent of the ordinary wage while the ILO recommends only 125 per cent. If labour intensive industries have to provide room for greater employment in the country, they would have to become competitive internationally. This is necessary not only for becoming export competitive but also for staying import competitive in the situation of rapidly falling tariffs in the multilateral, and even more in the regional, context.

How to improve enforcement

Lack of compliance may be due to several factors, e.g., under-resourced inspectorate, lack of awareness and fixation of minimum wages at very high levels relative to the prevailing market rates, etc.. In India, all the above factors contribute to the lack of enforcement. However, there are two additional factors that compound the problem. First, the minimum wage system in India is highly complex with different rates applying to different employments and to various classes of employments. Second, there is the problem of widespread corruption.

The simplified minimum wages system that we recommend (universal minimum wages and single minimum wage for each geographical region) will contribute immensely to improving enforcement. As for the problem of corruption, it has to be recognised that efforts will have to be sustained over a long period before significant results become apparent. However, incremental results can be obtained by taking action to limit the use of discretion by the inspection agencies. The Code on Wages Bill, 2017, envisages the introduction of a scheme for inspections to be carried out on the basis of a web based inspection schedule and not on a surprise basis. Such a scheme will contribute greatly towards mitigation of corruption. The proposals in the Code for replacing inspectors by facilitators and for graded penalty are also very constructive initiatives to address this problem.

3. Equal Remuneration

3.1 The Equal Remuneration Act, 1976

Part IV of the Indian Constitution lays down the Directive Principles of policy to be followed by the state and Article 39 enunciates the principle of 'equal pay for equal work for both men and women'. In order to give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976 (referred to below as the Act).

Section 4 (1) of the Act, which is a key provision, prohibits wage disparity between men and women. It reads as follows:

"No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature."

The Code on Wages Bill, 2017 retains the language of the existing legislation on equal remuneration. Clause 3 of the Bill provides:

"There shall be no discrimination among the employees on the ground of the gender in the matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee".

Article 2 (h) of the Act elucidates the language of Article 4 as follows:

‘“same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.’

Section 5 of the Act, which is another key provision, prohibits discrimination between men and women workers while recruiting. The main provision is given below:

“On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment in such work is prohibited or restricted by or under any law for the time being in force.”

Thus, we find that the Equal Remuneration Act, 1976, prohibits gender discrimination in respect of wages as well access to employment opportunities. Since this paper is about wages and not about access to employment, in the analysis that follows, we focus on wage discrimination alone.

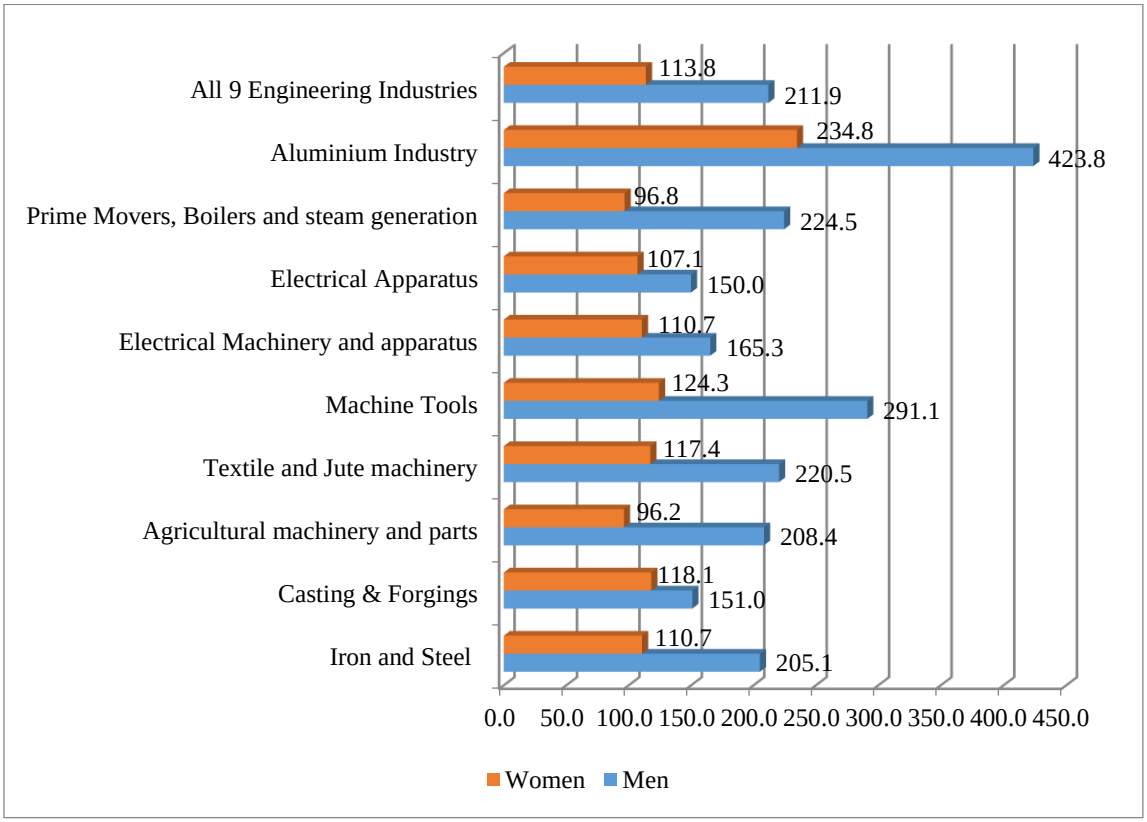
The Equal Remuneration Convention, 1951 (No. 100) of the ILO covers the subject of gender equality in wages. Article 2 of the Convention provides as follows:

“Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”

It is seen that the language used in the Indian legislation is at variance with the language of the ILO Convention.

Surveys show that a substantial gender gap prevails in wages in India. The Sixth Occupational Wage Survey by the Labour Bureau (2010) showed that the average daily wage rates of women workers were substantially lower than that of men workers in nine engineering industries in the country (Figure 1).

Figure 1: Average daily wage rates (Rs) of workers in engineering industries in India



Source: Labour Bureau (2010)

Another survey conducted by Fabo et al. (2014) brings out that in the Indian labour market, on average men earned Rs.259.8 per hour and the women Rs.190.5 per hour, 27 per cent less. The gender gap is pervasive in all sectors, being 34 per cent in IT, 32 per cent in manufacturing, 28 per cent in construction, 19 per cent in banking and finance, 40 per cent in healthcare, 18 per cent in education, 17 per cent in legal and market consultancy and 20 per cent in transport and logistics. As we shall see later, gender gap incidence is not due to shortcomings in the legal framework alone.

An NSSO data based study by Duraisamy and Duraisamy (2014) has also revealed the existence of a gender gap in wages in the country, with women's earning being just 65 per cent of men's in 2011-12. The same study found that the gender gap had been declining over the years, especially after the introduction of economic reforms in 1991-92. In 1983, women earned only about 48 per cent of wages of men but this ratio increased to 52 per cent in 1992-93, 55 per cent in 2003-04 and further to 65 per cent in 2011-12.

3.2 Legal Framework in Comparator Countries on Equal Remuneration

China

China has a special law on the protection of women's rights and interests. The law was adopted at the 5th session of the seventh National People's Congress on April 3, 1992, and

was amended at the 17th session of the 10th National People's Congress on August 28, 2005. Article 24 of the revised law reads as follows:

"Equal pay for equal work shall be applied to men and women alike.

Women shall be equal with men in the enjoyment of welfare benefits."

Japan

The Labour Standards Act (Act No. 49 of April 7, 1947) has a special provision spelling out the principle of equal wages for men and women. Article 4 of the Act is given below:

"An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman."

Malaysia

In contrast to the situation existing in other countries of the region, Malaysia does not have any specific legislation in position providing for gender equality. It must be acknowledged that prior to 2001, the position was even worse as the Malaysian Constitution also did not address the subject. However, in 2001, the Federal Constitution was amended to prohibit gender discrimination and Article 8(2) now provides as follows:

"Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law…"

A substantial body of opinion has developed in Malaysia for the enactment of a specific legislation on the subject but there has been no action by the federal government so far.

South Korea

South Korea has a special legislation (Act on Equal Employment and Support for Work-Family Reconciliation) to provide for gender equality in employment as well as to ensure equal opportunities and treatment in employment between men and women. It was enacted in 1987 and amended a number of times up to 2011.

Article 8 of the Act on wages, which is the main provision on gender parity, is reproduced below:

(1) An employer shall provide equal pay for work of equal value in the same business.

(2) The criteria for work of equal value shall be skills, efforts, responsibility and working conditions, etc., required to perform the work. And in setting the criteria, an employer shall listen to the opinions of the member representing the workers at the Labour-Management Council as prescribed in Article 25.

(3) A separate business established by an employer for the purpose of wage discrimination shall be considered the same business.

It would be seen that the provision on gender wage parity in Korean law parallels the provision in the relevant ILO Convention.

Thailand

Among the comparator countries considered here, Thailand has the clearest law providing for gender parity not only in respect of basic wages but all conditions of service. Section 53 of the Labour Protection Act, B.E. 2541 (1998) reads as follows:

"Where the work to be performed is of the same nature, quality and quantity, the basic pay, holiday pay and holiday overtime pay shall be fixed, pari passu, by the employer regardless of whether the employee is male or female".

3.3 Evaluation of India's standing on Wage Discrimination

We have seen that there is evidence of considerable gender gap in wages in the country in industry and other businesses. The question is how the gender gap can be redressed.

Finding an answer is not going to be easy. There is a wide measure of agreement that multiple contributory factors lead to discrimination. ILO (2008) itself has listed two sets of factors responsible for pay discrimination: the first relates to the characteristics of individuals and of the organisations in which they work, and the second is constituted by miscellaneous factors. In the first set, the ILO lists the educational level and the field of study, work experience and seniority in the organisation, number of working hours and the size of organisation and sector of activity. In the second are such factors as stereotypes and prejudices with regard to women's work, traditional job evaluation methods and the weaker bargaining power of female workers.

We have to recognise that a complexity of factors gives rise to the gender pay gap in virtually all countries. The ILO has estimated that in most countries, women's wages for work of equal value were on average between 70-90 per cent of men's. Further, in 2010, there was a gender wage gap of 17.6 per cent in the median full time earnings in OECD member countries. The ILO estimated that in the EU, women earn 17.5 per cent less than men during their lifetimes. Similarly, in 2009, in the USA, the ratio of women's to men's earnings was 89 per cent for the age group of 25-34 and 74 per cent for that of 45-54 (ILO 2011).

If there is great variation in wage discrimination among countries, it is due to not only the legal provisions and the rigour with which those provisions are enforced but also to the ethos in the country, its culture and awareness of various aspects of social justice. The World Economic Forum has evaluated the standing of various countries and the following Table shows where India stands vis-à-vis comparator countries in the region and major countries of the world.

Table 2: Wage equality survey

Country	Survey data	Normalised score	Rank in world
Malaysia	5.54	0.79	10
Thailand	5.41	0.77	16
United Kingdom	4.74	0.67	52
Japan	4.64	0.66	58
United States	4.47	0.65	66
China	4.54	0.65	70
Germany	4.14	0.59	95
India	4.01	0.57	103
Korea	3.67	0.52	125
France	3.32	0.47	134

Source: World Economic Forum, 2016

It is seen that India ranks low as far as gender discrimination in wages is concerned, although South Korea and France are even lower. It is interesting to note that Malaysia has the best position among the group of countries represented above although, as we have noted earlier, the country does not have a specific law prohibiting wage discrimination between men and women. A simple measure such as an amendment in the Equal Remuneration Act, 1976, by itself cannot be expected to change gender discrimination in wages in India. A concerted and purposive effort will be needed to ascertain the causes for such discrimination sector by sector and find remedies.

The above having been said, we have to take into consideration the fact that it is easier to assess whether the work done by two employees are equal in value than to determine whether they are the same or similar in nature. This is the reason why a number of commentators have recommended the replacement of the expression "same and similar" with the phrase "work of equal value". As argued by Sankaran (2007), "[t]his would permit disparate jobs to be assessed and evaluated for the value they add to the production process even if they are different from the jobs performed by another person". We are, therefore, in favour of an amendment in the Indian law to replace the phrase "same and similar" in Section 4(1) of the Equal Remuneration Act 1976 with the words "work of equal value" used in Article 2 of the Equal Remuneration Convention 1951 (No. 100) of the ILO.

It should be noted in passing here that, apart from gender discrimination in wages, a more serious issue of wage discrimination between contract and regular workers doing the same work has arisen by virtue of an increasing dichotomy between the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and its implementation in most states in the country. If left unattended, the issue could blow up into a major threat to industrial peace in the country. The issue has been dealt with by the authors in another paper (Hoda and Rai, 2015).

4. Payment of Bonus

4.1 The Payment of Bonus Act, 1965

Main provisions of the Act

The Payment of Bonus Act, 1965, was enacted to ensure that employees shared in the profits of employers.

The Act applies to every factory and every other establishment with twenty or more employees. In the Code on Wages Bill, 2017, it has been proposed that the provisions relating to bonus would apply to all establishments in which 20 or more persons are employed. Thus, the provisions on bonus would not apply to factories employing less than 20 employees as they do now. In the Act as originally enacted, every employee with a salary of Rs.1,600 per month was entitled to payment of bonus in accordance with its provisions. However, where the salary or wage exceeded Rs.750 per month, the bonus payable to employees was to be calculated as if the wage were Rs.750 per month. These amounts have been successively revised through amendments to the Act to take inflation into account and the salary threshold after the 2015 amendment is Rs.21,000 and the calculation ceiling is Rs.7,000. In the 2015 amendment, a complexity has been introduced by providing that the calculation ceiling would be Rs.7,000 or the minimum wage for a scheduled employment, whichever is more. The Act allows adjustment of discretionary or customary bonus against the compulsory bonus to be paid under its provisions.

Payment of bonus under the Act involves the concepts of "allocable surplus" and "available surplus" defined in the Act. The available surplus is calculated from gross profits after deduction of depreciation, development rebate or investment allowance if any, return on share capital, corporate tax, and provision for reserves. The allocable surplus is 67 per cent, in the case of a non-banking company, and sixty per cent in case of a banking company. A distinguishing feature of the legislation is that it makes it obligatory to pay a minimum bonus (initially 4 per cent of the wages, enhanced to 8.33 per cent in 1976), or one hundred rupees, whichever is higher, whether or not there is an "allocable surplus" in a particular accounting year. When the allocable surplus exceeds the amount of minimum bonus payable to employees, the employer is bound to pay to every employee amounts in proportion to the salary or wage earned by the employee in that year. However, there is also a maximum limit of 20 per cent of the wages on the payment of bonus. If the allocable surplus exceeds the amount of maximum bonus of 20 per cent, the excess (subject to a maximum of 20 per cent of the total wages) is carried forward for being 'set on' in the succeeding accounting year or for building a reserve that can be used for set on in future. The Act similarly provides for the bonus paid in a year in which there is no allocable surplus to be carried forward for being set off against the allocable surplus of the succeeding accounting year or any 'set on' reserves that may have been accumulated from past years. The Act allows the surpluses or deficits to be carried forward in cycles of four years and the accumulated balances, whether surplus or deficit, disappear every four years and a fresh cycle begins thereafter. Thus, if there is an

accumulated negative balance of minimum bonus paid in the past that has not been set off before the end of a cycle, the employer may have to bear that.

Background of the legislation

The law governing compulsory payment of bonus and envisaging payment of a minimum bonus emanated from efforts to resolve industrial disputes in the textiles industry just after independence in 1947. The industrial court, while adjudicating on the dispute for the payment of bonus for years 1948 and 1949, expressed the view that both labour and capital are entitled to a legitimate return out of the profits and devised a formula for computing bonus. The Labour Appellate Tribunal in the *Mill Owners Association v. Rashtriya Mill Mazdoor Sangh, Bombay, 1950,* refined the formula and stipulated that the surplus available for distribution is to be determined after debiting certain prior charges from gross profits, viz., (i) provision for depreciation, (ii) reservation for rehabilitation, (iii) return of six per cent on paid up capital and (iv) return on working capital at a rate lower than the one on paid up capital. A few years later the Supreme Court took an orthodox view, making the following observation:

"The claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage" (1955 AIR 170).

In 1955, a five-year bonus pact (known as Ahmedabad Pact), signed between the Mill Owner's Association, Ahmedabad, and Textiles Labour Association, Ahmedabad, was an important landmark. It provided for the first time for payment of minimum bonus irrespective of whether or not there is a profit, notwithstanding the observation of the Supreme Court mentioned above. It also provided for a ceiling on bonus as a proportion of salary, without regard to the size of profit.

The question of payment of bonus remained a live issue and was discussed at great length at the Tripartite Standing Labour Committee in March 1960. On the recommendations of the Committee, in 1961, the Government of India appointed a Bonus Commission, which submitted its report in 1964. It was the recommendations of the Bonus Commission that became the basis for the Payment of Bonus Act, 1965.

The Report of the Bonus Commission (1964) throws interesting light on the considerations that led it to make recommendations on a system of compulsory profit-sharing through bonus. While reviewing the systems prevailing at the time in the US and the UK, the Commission had noted that profit sharing systems were common in businesses but were not made mandatory through legislation. On the other hand, in some of the Latin American countries (Chile, Colombia, Ecuador, Peru and Venezuela), the law provided for profit sharing. The recommendation for a ceiling on bonus payment was made on the basis of a proposal by employers, who wanted to put a cap on open ended demands for bonus by employees in future. On the other hand, labour argued that if a ceiling were imposed, a minimum bonus should also be guaranteed. The Commission concluded as follows.

"…if there is a maximum so that however high the profits in a year the workers cannot be given more bonus than at certain rate expressed in terms of wages, it stands to reason that there should be a minimum also. Labour cannot be expected to accept as reasonable a formula which provides for a ceiling on bonus without also providing for a floor. An arrangement for minimum and maximum would have the added advantage of evening out bonus payments over the years and thus avoid the obvious disadvantages of widely fluctuating bonus, with years in which there may be no bonus at all and others in which the bonus would be very large. In some industries, there have been agreements providing a formula for bonus with a minimum and maximum and a set-off and set-on arrangement. If a reasonable minimum and maximum are fixed, linked with a system of set-off of deficiencies and set-on on excesses in the succeeding years, it would be a satisfactory arrangement both from the point of view of employers and labour."

Working of the Bonus Act

We have seen above that the payment of bonus under the Act is subject to a ceiling on wages and there is a calculation ceiling as well. The practice in the country has been not to revise these ceilings for long periods despite significant changes in the cost of living index. The last revision of these ceilings was made through the payment of bonus act (Amendment Act 2015), nine years after the previous revision became effective on April 1, 2006.Non-revision of the ceilings for long periods has affected the relevance of the Payment of Bonus Act as rising wages have made a large proportion of workers lose the benefit of bonus on account of the wage ceiling. According to data provided by the ASI, bonus as a share of wages has been on the decline (Table 3). It is likely that this decline has been caused substantially by the non-revision of the ceilings.

It may be mentioned here that in the Code on Wages Bill, 2017, it is proposed to empower the appropriate government to determine the wage ceiling for eligibility to bonus and calculation of bonus by notification. This will make it easier for government to revise the ceiling from time to time to take inflation into account, without seeking changes in the statute, which has been one of the causes for delay in updating the ceilings.

Table 3: Bonus as share of wages

	Wages/salaries	Bonus	Bonus as share of wage
2000-01	198.9	11.4	5.7
2001-02	207.5	11.4	5.5
2002-03	218.3	11.8	5.4
2003-04	233.7	12.6	5.4
2004-05	239.9	13.2	5.5
2005-06	255.9	14.1	5.5
2006-07	277.4	15.1	5.4
2007-08	317.5	17.8	5.6
2008-09	332.7	18.5	5.6
2009-10	372.8	20.2	5.4
2010-11	443.3	21.5	4.8
2011-12	501.5	23.9	4.8
2012-13	583.1	25.6	4.4

Source: Report on absenteeism, labour turnover, employment and labour cost, Annual Survey of Industries, various years

Surveys have also brought out the fact that voluntary payment of bonus to executives, who are likely to be outside the purview of the Payment of Bonus Act, is widespread in the country. These take the form of end-of-the-year bonus, festival bonus, performance bonus, profit-share bonus and other types of bonus, but there has been a decline in the payment of bonuses during the period 2008-2014. Profit share bonus and performance bonus are the most common forms of payments (Varkkey et al. 2015).

We have seen that in India, payment of bonus has been linked to profit although minimum payments are to be made even if there are no profits in a particular accounting year. We now consider the practice on sharing of profits and the related practice of payment of bonus without linkage with profits in comparator countries and other emerging and major developed countries.

4.2 Profit Sharing in Comparator Countries

In Japan, a substantial proportion of the employees' remuneration is in the form of bonuses, which are defined as lump sum payments paid at intervals of at least three months. These lump sum payments have a large discretionary component and are not necessarily linked to profits although they may be so linked in some firms. Bonus payments are prevalent in Japan's business practice but those based on profit-sharing are not widespread. A study by Kato & Morishima (2010) found that only about one in four Japanese publicly traded firms in Japan uses profit-sharing plans. Bonuses, whether or not linked to profits, attract lower social security payments and also entitle employing firms to a reduction in corporate tax.

Profit sharing is extensively practiced in South Korea, and the proportion of workplaces in which profit-sharing bonuses were given to all workers has been increasing in the 2000s and was as high as 89.2 per cent in 2009. In manufacturing industries, it was even higher at 94.4

per cent (Oh, 2014). Other forms of employee financial participation, such as employee-stock ownership (ESOP) and stock options, are less popular in South Korea. This is despite the fact that the Korean government gives tax concessions to both companies establishing an ESOP and employees purchasing ESOP shares.

Available literature does not yield detailed information on employee financial participation practices in the emerging economies of East and South East Asia, such as China, Thailand and Malaysia and on government incentives for promoting such participation. Although bonuses are increasingly being used as a part of the wage structure, there is a clear preference among employers to make bonus payments discretionary or link it to the performance review of the employees. Profit sharing or other forms of employee financial participation such as ESOPs and SOPs are not widespread in these countries, although some initiatives have been taken by enterprises to introduce them.

Profit sharing systems in major developed countries

Profit sharing with employees is a sub-set of the wider practice of employees' financial participation (EFP), which has grown significantly among OECD countries in recent times. Participation through share ownership is also a widely prevalent practice. Such participation may be individual or collective, the latter taking the form of employee stock ownership plans (ESOPs), in which shares are acquired through an intermediary agency and financed by a share of profits allocated to employees. A study undertaken by the Inter-University Centre for European Commission's DG MARKT (2014) lists out a number of benefits derived from EFP as brought out in theoretical and empirical literature over the past three decades. Such participation has been found to result in increased productivity, enhanced competitiveness, higher profitability and the creation of more jobs. EFP also strengthens corporate governance, binds companies to local communities and discourages relocation. Firms embrace EPF because of the benefits to enterprises and governments encourage it through tax incentives on account of its economy wide benefits.

There is a wide variety of modalities through which the governments of major industrialised economies encourage EFP.

In the context of the practice of profit-sharing through payment of bonus in India, it is necessary to mention that in 1967, France introduced a type of deferred profit-sharing plan that was compulsory for all companies with more than 100 employees (reduced to 50 in 1986). The legislation, which stipulates the detailed requirements in respect of the proportion of profits to be shared out, the length of time payments need to be deferred and the manner of allocation, makes France unique among European countries in requiring profit-sharing on a mandatory basis. (PEPPER IV Report, 2009).

Relevant practices in other emerging countries

In the Latin American countries, payment of salary for the 13th month as Christmas bonus is generally required by law. In Brazil, according to Law 4090/1962, employees have the right

to get a Christmas bonus every year equal to one month's salary. Half of the Christmas bonus must be paid by November 30, and the rest on or before December 20 (L&E Global 2017).

In Mexico, federal labour law (FLL) similarly provides for Christmas bonus of at least 15 days of employees' daily base salary, to be paid before December 20 each year. In addition, the FLL has a provision for profit sharing, which is fixed at 10 per cent of the company's gross pre-tax income (L&E Global 2017).

Indonesia's Ministry of Employment regulates the payment of bonus in the country known as Religious Festivity Allowance (Tunjangan Hari Raya, commonly known as THR). THR, which is equal to one month's salary, must be paid to all employees in conjunction with the religious holiday observed by the employee (Global Business Indonesia Guide 2017).

In South Africa, there is no requirement in law for payment of bonus. However, if an employer has been paying a 13th month cheque, there is an expectation that the payment would continue. If due to losses in a particular year, an employer is unable to pay the 13th month cheque, the practice is to inform employees in advance. If the employees are not informed in advance, there is the possibility of the employer being charged with unfair labour practice.

4.3 Evaluation of India's Payment of Bonus Act, 1965

We have seen that employee financial participation is a common business practice in developed countries and governments encourage such practice and the laws enable and incentivise ESOPs and SOPs in particular because of the belief, grounded in research, that the adoption of such practices improves the profitability, productivity and competitiveness of enterprises and helps create jobs. However, among the surveyed countries, there are no countries except France and Mexico where employers are required by law to compulsorily share profits with employees and there is no country in which employers are required to pay bonus even when there is no profit in a particular year.

Since the mandatory payment of bonus is not a live issue, one could take the view that the business community is reconciled to it. One of the reasons for this may be that the level of payment of bonus, which has been fixed in the statute [sections 2 (13) and 12], is not revised for long periods to take inflation into account, with the result the financial burden on employers is considerably diluted. Another reason could be that employers factor in the mandatory bonus payments while fixing wages so that they do not really have to pay any additional remuneration. Be that as it may, the fact remains that mandatory payment of bonus even when there is no allocable surplus (read profits) sets India apart from the mainstream and may be affecting our competitiveness in attracting investment, particularly in manufacturing. To require companies and other employers to grant bonus to employees even when there are profits is itself a departure from the principles of a market economy. And to have a law requiring them to pay bonus even when there is no profit is certain to vitiate the environment for investment in the country.

While the law relating to payment of minimum bonus even in the absence of allocable surplus requires to be changed, there are good reasons to continue with the law requiring payment of bonus when there is an allocable surplus. First, this enactment is the result of a long drawn out dispute between employers and employees and can be said to represent an acquired legal right for the unions. Second, the laws are not without precedent internationally, and two countries, France and Mexico, also have laws requiring sharing of profit with employees. It cannot be denied that voluntary schemes such as ESOPs and SOPs can benefit workers but these instruments benefit mainly executives and other employees in the higher pay categories. For categories of employees with lower pay, the only solution is compulsory sharing of profits.

One flaw in the working of the Payment of Bonus Act is that the wage ceiling and the calculation ceiling are not revised for long periods and inflation has been allowed to erode the benefit considerably. This deficiency is proposed to be eliminated in the Code on Wages Bill, 2017 by giving powers to the appropriate government to update the ceiling from time to time by notification.

5. Payment of Wages

5.1 The Payment of Wages Act, 1936

The Payment of Wages Act, 1936, (referred to below as the Act) was enacted in the British era in the light of reports received by the Government of India that there were unwarranted delays in the payment of wages to industrial workers. It was initially applicable to factories, railways, air transport, docks, inland vessels, construction works, maintenance of buildings, roads, bridges and canals as well as to workshops, waterworks and establishments relating to the generation, transmission and generation of electricity. There was also an enabling provision authorising the government to extend its operation to any establishment or class of establishment. The Act is applicable only to employees drawing wages up to the prescribed ceiling, which is revised from time to time to keep pace with inflation. The last revision was made in 2012, raising the limit to Rs.18,000 per month.

The Act mandates that in every establishment, the employer shall fix the period for payment of wages and that no wage period shall be more than one month. The key provision of the Act is the requirement that wages shall be paid before the seventh day of the month in establishments with less than 1000 workers and before the tenth day in other establishments.

Another central provision is the requirement that no deduction shall be made from wages except those authorised in Section 7 of the Act. This section authorises certain deductions, the important ones being the deduction of fines, deductions for absence from duty, deductions for damage to or loss of goods directly attributable to neglect by the worker concerned, deductions for house accommodation made available, deductions for other amenities made available by the employer, deductions for recovery of loans, deductions of income tax, deductions for provident fund subscription, deductions for payments to co-operative societies and deductions authorised by the worker for various purposes such as contribution to any

insurance scheme or contribution to the Prime Minister's Relief Fund. An overall limit of 50 per cent of wages applies generally to deductions, but in case deductions are being made for payment to co-operative societies, they may go up to 75 per cent.

Although the Act allows fines to be imposed on workers, it imposes a limitation in this regard. No fines may be imposed unless the employer has, with the previous approval of the government, notified the workers of the acts of omission or commission, which would render them liable to penalty and the worker has been given an opportunity for showing cause against the fine. Further, the fine must not exceed three per cent of the wages payable in the wage period.

A recent initiative by the central government is to bring in line the practice on payment of wages with the requirements of a cashless society. The amended Section 6 of the Payment of Wages Act, 1936 reads as follows:

"6. All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account."

Pursuant to the new provision, the central government has already issued a notification requiring payment of wages in airlines, railways, mines and oil sectors through banking channels. There are reports that several state governments, viz., Andhra Pradesh, Telangana, Kerala, Uttarakhand, Punjab and Haryana, have moved in the matter. Although the policy of compulsory payment of wages through banking channels has been envisaged for making progress towards a cashless society, it will also help in the enforcement of labour laws such as the Minimum Wages Act.

5.2 Legal Framework in Comparator Countries

There is great variation in specificity in the laws of comparator countries on the period and time of payment of wages and on the permissible deductions.

The regulation in China is very broadly worded. Article 50 of the Labour Law, adopted at the Eighth Meeting of the Standing Committee of the People's Congress on July 5, 1994, and promulgated by Order No. 28 of the President, requires simply that wages shall be paid monthly to labourers themselves in the form of cash, and "shall not be embezzled nor the payment thereof delayed without justification." There is no provision for fines on employees in the country.

In Japan, the Labour Standards Act (Act No 49 of April 7, 1947) requires payment of wages to be made at least once a month at a definite date, but this provision does not apply to special wages such as bonus. Permissible deductions are not listed but deductions are authorised as

provided by laws and regulations or in cases where there is a written agreement with a labour union organised by a majority of workers. There is also a provision on fines, referred to as sanctions against a worker. The amount deducted as a fine on a single occasion must not exceed 50 per cent of the daily average wage and the total amount in a single pay period must not be in excess of 10 per cent of the wages.

In Malaysia, Section 18 of the Employment Act, 1955, provides for the wage period not to exceed one month and Section 19 mandates that the payment of wages shall be made not later than the seventh day after the last day of the wage period. The law lists separate categories of deductions that can be lawfully made from the wages, without any authorisation from the employee or at their request in writing. There is a third category of deductions for which there must not only be a written request from the employee but also prior permission from a government authority (Director General). The total deductions in a month must not exceed 50 per cent of the wages for that month.

In South Korea, the law follows the pattern set by Japan. The Labour Standards Act (Law No.5309, Mar 13, 1997) provides for payment of wages at least once per month on a fixed day, except for extraordinary wages. Deductions may also be made if authorised by law or through collective agreements. The provision on fines (referred to as punitive deductions) parallels that in Japan: the fine must not exceed half the daily wage and the total of such fines during each period of wage payment must not be in excess of one-tenth of the wage during that period.

In Thailand, Section 70 of the Labour Protection Act, B.E. 2541 (1998) provides that where basic pay is calculated on a monthly, daily, or hourly basis or for any duration not more than one month or on the basis of output, payment shall be made at least once a month, unless otherwise agreed upon by the employer and employee. As regards deductions, there is greater specificity in that Section 76 of the Labour Protection Act limits the deductions to specific purposes such as income-tax, contribution to labour union, payment of debt to a savings account, compensation to employer due to wilful act or gross negligence of the employee, with the consent of employee or an employee contribution to the Employee Welfare Fund. There are strict upper limits on the amount of deduction: in each case – it should not exceed 10 per cent and, in the aggregate, one-fifth of the money the employee is entitled to receive in that month. Compensation is payable by the employee for loss caused by a wilful act or gross negligence, but is subject to consent by the employee as well as to the upper limit on deductions.

As noted above, the Indian law on wages are not applicable universally although there is an enabling provision to expand progressively the coverage of establishments. Furthermore, only the employees getting wages less than a ceiling (Rs.18,000 at present) are covered. The laws of comparator countries generally cover not only wages but a number of other aspects of labour and employment as well. Generally, all wage earners are covered although there are some specific exclusions. These countries follow a negative list approach while the general pattern in India, including in the Payment of Wages Act, 1936, is to follow a positive list approach.

The labour laws of China and Japan do not exclude any enterprise or class of enterprise from the applicability of labour laws in general or wage laws in particular. In South Korea, enterprises with five or less workers are excluded from the purview of Labour Standards Act and in Thailand, government enterprises are similarly excluded from the applicability of the Labour Protection Act. In Malaysia, the Employment Act applies only to West Malaysia and the definition of employee excludes those with a salary exceeding 1500 ringgits a month.

5.3 Evaluation of Indian Law on Payment of Wages

The international standards on payment of wages, as contained in The Protection of Wages Convention, 1949 (No. 95), are formulated in very broad terms. For instance, on the payment of wages, the Convention provides as follows:

"Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for payment of wages shall be prescribed by national laws and regulations or fixed by collective agreement or arbitration award".

Similarly, on another aspect, the Convention provision reads as follows:

"Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration awards".

Even though India has not signed or ratified the above Convention, its wage laws would seem to be in compliance with it. Indian wage laws seem to be also comparable with those in other important economies of the region. However, a flaw in the Payment of Wages Act, 1936, is the lack of universal application to all establishments. In the comparator countries, the general rule is universal coverage although there may be specified exclusions such as government enterprises in Thailand and establishments in the economically undeveloped regions of Malaysia.

In a basic law like the law relating to wages, the coverage needs to be universal. India needs to follow the example of advanced countries in the region and make the law on wages applicable in principle to all establishments. It is a matter of satisfaction that the Code on Wages Bill, 2017, proposes to do precisely this. Paragraph 4 (e) of the statement of objects and reasons reads as follows: "the provisions relating to timely payment of wages and authorised deduction from wages, which are presently applicable only in respect of employees drawing wages up to eighteen thousand rupees per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of such provisions to the Government establishments also".

6. Summary of Recommendations

The forgoing analysis has shown that wage regulations in India do not measure up to the standards adopted in peer countries and in some cases they even fall short of the recommendations in ILO conventions. The complexity of some of the laws makes

enforcement difficult. The Code on Wages Bill, 2017, will eliminate some of the shortcomings but some concerns remain outstanding. The following recommendations are made in order to address them.

Minimum Wages Act, 1948

- India is unique in not extending the minimum wage law to all sectors of the economy and in following a positive list approach in the coverage of establishments. There is little justification for continuing with the approach of minimum wages being applicable only to scheduled employments. As in other countries of the region that we have studied, the law should in principle be universal in application, although certain establishments could be excluded if there is reasonable justification to do so. The only exclusion that would seem to be justified is family enterprises as in the Child labour (Prohibition and Regulation) Act 1986.

- The notion of a single minimum wage nationally or even regionally is impractical and even irrational. The cost of living is the most important factor for fixing or revising minimum wage and there is considerable variation in the cost of living in parts of the country. It is best to leave minimum wages to be determined by the governments of each state and union territory, while continuing to allow them to fix different rates for different localities in their jurisdiction.

- There should be one common minimum wage within the geographical area for which the minimum wage has been fixed and there should be no differentiation among employments. The idea of fixing minimum wages should not be confused with the notion of determining a wage structure.

- In order to ensure that our manufacturing industries remain internationally competitive, the mandatory fixation in both Section 59 of the Factories Act, 1948, and Rule 25 of the Minimum Wages (Central) Rules, 1950, of overtime payment at 200 per cent of the ordinary wage needs to be reviewed and brought down to or near the ILO norm of 125 per cent.

The Equal Remuneration Act, 1976

- Despite legislation mandating gender non-discrimination in wages, such discrimination is pervasive to a larger or lesser extent in all countries due to a variety of factors including the ethos, culture and awareness of various aspects of social justice in the country. Gender pay gap arises from the educational level, work experience, seniority in the organisation, etc. A matter of concern is that India ranks low among nations as far as gender parity is concerned. To begin with, an amendment needs to be made to replace the phrase “same or similar” in Section4 (1) of the Equal Remuneration Act 1976 with the words “work of equal value” used in Article 2 of the Equal Remuneration Convention 1951 (no.100) of the ILO. In addition, it would be necessary to make a concerted and purposive effort to delve deep into the causes sector by sector and find remedies.

The Payment of Bonus Act, 1965

- Mandatory payment of bonus even when there is no allocable surplus (read profits) sets India apart from the mainstream, affecting adversely our competitiveness in attracting investment, particularly in manufacturing. The provision may have been in accordance with the ethos of the times when the Payment of Bonus Act was enacted in 1965. However, today in a globalised world, it is anachronistic and needs to be amended. Legislative provision in India requiring profit sharing is the result of long years of collective bargaining between the union and the industry. Although such a provision is not common in international practice, there are a number of countries such as France and Mexico in which such provisions exist. India is alone among leading developed and emerging countries to have a provision requiring payment of bonus even when there is a loss. This law needs to change.

The Payment of Wages Act, 1936

- A basic law like the law relating to wages needs to have universal coverage. India needs to follow the example of advanced countries in the region and make the law on wages applicable to all establishments. This has already been proposed in the Code on Wages Bill, 2017.

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