

Evolution of Minimum Wage Policy and Regulatory Framework: An Inter Country Perspective

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V.V. Giri National Labour Institute

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Preface

The issue of wages is perhaps the most vital issue for various categories of workers, especially those engaged in the informal and unorganized sector. In this context, formulation of an appropriate policy and rational criterion for determination of minimum wage assumes paramount importance. Though, the necessity and importance of regulation of minimum wage is seldom disputed, the method and criteria of its determination has always been a contentious issue. Various countries follow different practices, procedures and criteria in this regard, mainly based on their overall labour policy and labour market context. A comparative understanding of the evolution of minimum wage policy and legislation and that of the methods and criteria being followed in this regard by countries in various regions of the world can be of great interest and relevance for drawing appropriate policy lessons.

The researcher has given a fairly good account of labour market contexts of the countries selected under the study. Based on this, the study points out that in spite of various differences in labour market contexts, there are certain common features indicating the need for adopting appropriate legal measures for regulating minimum wages. Some of these features include: in almost all the countries nearly 2/3rd of the population is in the working age group; employment from the formal sector is rapidly shifting to informal sector; a substantial proportion of workforce is either unemployed or under-employed and in most of the countries a substantial proportion of the population lives below the poverty line; a substantial proportion of population in most of the countries constitutes the wage earners majority of whom belong to the unorganized or informal sector with no or very less bargaining power.

The study also gives a very vivid account of the minimum wage policies, legislative framework and multitude of practices, criteria/norms pertaining to determination of minimum wage and

compliance mechanism in countries selected under the study. Based on the review and comparative analysis of the above mentioned aspects, the study makes a number of recommendations. I hope, the study would be relevant and useful to all the stakeholders and would also help in initiating appropriate policy interventions by the government.



V.P. Yajurvedi
Director General

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Chapter 1

Introduction

1.1 CONTEXT

The real progress of a nation is judged not only by the material resources and wealth it possesses but by the quality of life of its people and a wholesome environment to enjoy long, healthy and creative lives. This *inter alia* depends upon the opportunity of employment / work to all those people who are in working age group and remuneration which they receive in return of work done by them. The remuneration or wages should be sufficient to meet the basic needs of the earning and non-earning members of the family. In a progressive and modern society the remuneration or wages which a person receives must be sufficient to take care of a modern working class family (Mishra, 2000). Wages have considerable significance for every worker. The question of wages is of equal importance to industrial as well as non industrial and rural as well as urban wage earner. The problem of wages looms large the worker is easily testified by the fact that majority of the disputes in which he takes part centre around the problem of wages. Unless the wages of the worker are sufficient, he cannot maintain his efficiency and the choice before him is either to leave the employment or allow his physique to wear out. Not only from the point of view of labour and industrial relations but from the point of view of industrial efficiency also wages play a very pivotal role (Seth, 1947).

As per general theory of wages propounded by classical economists, the determination of wages in a free market is simply a special case of the general theory of value. Wages are the price of labour and thus in the absence of control, they are determined like all prices by supply and demand (Hicks, 1932). In addition, there are many other theories of wages propounded by economists and sociologists such as: Subsistence Wage Theory; Wage Fund Theory; Marginal Productivity Theory; Bargaining Theory and Purchasing Power Theory etc. All these theories have relevance and validity in certain defined conditions and they serve to explain various aspects of the wage problem (ILO, 1964). Neo-classical economics views the labour market as in perfect competition, with wage being determined by the competition between demand for labour, and the supply of labour.

It would, therefore view any externally determined minimum wage, particularly if it is higher than the “market” determined wage as distorting the market, and hence leading to reduction in employment. This view of wage definitely does not hold for a less developed economy. Typically, a labour market in a third world economy is a situation where a small number of employers control employment and determine wages, with a labour surplus acting as a constant downward pressure on wage. The need for a minimum wage results from this structural imbalance between labour and capital. Among the main conclusions to be drawn that are of practical value for wage regulation is the conclusion that wages should be sufficient enough to enable a workman to lead a dignified human life without interrupting the continuity of production process.

The need for implementation of statutory minimum wage arises from the simple macroeconomic understanding that the implementation of statutory minimum wages will contribute to the stabilization of domestic demand, particularly since the low-pay sector invariably exhibits higher rates of consumption and low savings rate. Further, statutory minimum wages can provide an important protection against deflationary wage cuts in case of weakened strength of workers. With regard to the implication for income and distributive policy, a statutory minimum wage, by definition, prevents wages from falling below a certain level and creates a floor level of societal wage structure.

As far as the regulation of minimum wage through legislation is concerned, there are arguments both for and against the same. Those, in favour of regulation argue that enforcement of minimum wage allows workers and their family members to live a somewhat decent life without forcing them into debt, compromising one’s basic human rights – education, health, food, etc.; workers are more productive when they are entitled to better benefits. High turnovers in firms are caused by low wages, and long working hours, amongst other reasons. Thus, implementation of minimum wage may motivate workers; with the implementation of minimum wage, workers are better informed and have better bargaining powers; minimum wage helps in promoting pay equity and reducing wage gaps between women and men.

On the contrary, those who are against the same, argue that with the enforcement of minimum wage, employers may reduce the number of workers, employ more part-time workers as opposed to full-time workers. This may, especially impact low-skilled workers and particularly women (last hired, first fired), old people, and other vulnerable groups more

adversely; with the implementation of minimum wage, a manager of a firm with specified allocation would tend to hire less people as opposed to the era prior to the implementation which may result in creating unemployment; employers may take cost cutting measures to ensure that profit is maintained while adhering to the minimum wage policy. Such measures may include reduction in social security benefits; companies may also look for cheaper labour resources leading to further exploitation of workers and unemployment.

In spite of arguments on both the sides, there seems to be some sort of general consensus over the essentiality of regulation of minimum wages and at the first glance it appears to be quite easy to define the minimum wage as the wage floor applying to all wage earners and ensuring that they receive a minimum level of pay protection. However, in reality it is quite complicated to define the minimum wage (this is perhaps the reason that many of the countries including India have preferred to define 'Wage' instead of defining 'Minimum wage' even under the statute exclusively dealing with regulation of minimum wage) and its regulation has always been a contentious issue. Similarly, quantification of the minimum wage in terms of money has always been far from simple (Tulpule, 1979). Different countries follow different criteria, methods and procedure in this regard depending on the major underlying principles prevailing in those regions/countries.

As regards, conceptualization of minimum wage, the International Labour Organization describes the same as the lowest level of remuneration permitted.... which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions. Minimum wages fixed by collective agreements made by public authorities are included in this definition¹. China's New Wage and Hour Law (2004) defines the minimum wage standard as 'the least labour remuneration paid by the employer required by law on conditions that labourer has provided normal labour during the legal working hours or working hours agreed by labour contract'. However, it does not include: (a) payment owed on account of: overtime; (b) special allowances paid by reason of a particular work environment or condition (e.g. shift duties, working in mines, working at high altitudes etc); (c) statutory employee welfare benefits; (d) travel-related expenses; or (e) protective clothing or equipment². The report of the Fair Wage Committee (1949) constituted

1 Factsheet on Minimum Wage: Oregon Centre for Public Policy (2009)

2 Regulations on Minimum Wages §§3, 12, Understanding Labor and Employment Law in China pp.128-129; China's New Wage and Hour Laws May 2004 pp.2-3)

by Government of India defined the same as the one which provided not merely for the mere sustenance of life but for the preservation of efficiency of workers by providing some measure of education, medical requirements and amenities.

The Wage Rationalization Act (Republic Act No. 6727) 1989 of the Philippines, defines minimum wage rate to mean the lowest basic wage rates that an employer can pay his workers, as fixed by the Regional Tripartite Wages and Productivity Board constituted under the provisions of this Act and which shall not be lower than the applicable statutory minimum wage rates. Section 18(1) of the Minimum Wages (Indian Labour) Ordinance, 1927 of Sri Lanka defines the minimum rates of wages to mean the rates proper in cash or kind or both for an able-bodied unskilled male labourer above the age of sixteen years, for an able-bodied unskilled female labourer above the age of fifteen years, or for an able-bodied child of either sex for time-work. According to Federal Constitution of Mexico - (1917), the minimum wage to be received by a worker shall be that which is considered sufficient, according to the conditions of each region, to satisfy the normal needs of his living, education and honest pleasures, considering him as the head of the family.

However, as a result of interplay of various economic factors in the labour market such as supply of labour being in excess to its demand, lower levels of skills, lack of adequate bargaining power of the workers in the informal and unorganized sector and the motive of profit maximization on the part of the employers etc. quite often the wages tend to be much lower than the required level. As a result of which the state has to intervene for regulation of wages by way of fixation of minimum wage and its revision from time to time. In fact, out of various functions which the State and the law, especially the labour law has to perform, two of the most important functions are promotion of production and protection of the interest of workers (Livshitz & Nikitinsky, 1977). Indeed, out of the total 183 member states of ILO, till date almost 120 member states have already ratified Conventions of ILO dealing with minimum wage fixing machinery and with fixation of minimum wage (No.26, 1928 and No.131, 1970).

1.2 REVIEW OF LITERATURE

There are a number of studies, lot of literature and material as such on wages in general at the International and national level such as the classical work by Palekar, (1962), 'Problems of Wage Policy for

Economic Development', (which focuses on the Dilemmas of Wage Policy, the Empirical Setting of Wage Policy, Trends of Real Wages in India for the period 1950-1955; Wage Policy and Capital Formation and The Employment Aspect of Wage Policy with specific reference to India), Barbara Wootton (1964), 'The Social Foundations of Wage Policy', (which focuses on The Economists' Theory of Wages, Economic Curiosities of British Wage Structure, Methods of Wage Determination in Britain and Attitudes of Government and Trades Unions, Employers and Arbitrators in the British Context), Menon, (1969), 'Foundations of Wage Policy: With Special Reference to the Supreme Court's Contribution'. This work by Menon focuses on Evolution of Wage Policy in India and the contribution of Supreme Court of India towards evolution of wage policy. The work by Sandesara and Deshpande, 1970, which is based on more than two dozen of papers presented in the seminar organized by the Centre of Advanced Study in Economics of University of Bombay held during March, 1969 makes an in-depth analysis of Policy and Theoretical Aspects of Wages; Wage Determination; Specific Issues related to Wages such as Need-based Wage and Wage-Cost-Price-Productivity etc. in the Indian Context. It also focuses on Role of State in Minimum Wage Fixation in India.

Similarly, the pioneering work by Das Gupta (1976), 'A Theory of Wage Policy' which is largely focused on the theoretical aspect of the wage policy with lot of precision focuses on approaches in defining minimum wage, wage determination, criteria of a rational wage policy, concept of minimum subsistence and productivity and wages etc.

Attempts on some of the aspects of wages have also been made by some of the important commissions set up by Govt. of India such as, the first National Commission on Labour (1969), National Commission on Rural Labour (1991), and National Commission on Labour (2002). The attempts by these Commissions *inter alia* include the observations on quantification of minimum wage. Similarly, the fifteenth session of Indian Labour Conference (1957), laid down the criteria for fixation of minimum wage. Some important observations in this regard have also been made by Hon'ble Supreme Court of India in some of the leading cases decided by it, in particular in *Bijay Cotton Mills Ltd. v. The State of Ajmer* (1955); 1 SCR 752, 755; *Express Newspaper v. Union of India & Others* (1961); *Kamani Metals and Alloys, Ltd. v. Their workmen* (1967) and more specifically in *Workmen Reptakos Brett & Co. Ltd. v. Management* (1992). However, these pronouncements have not succeeded much in influencing and impacting the regulation of minimum wage in India.

In the recent past, a number of studies on minimum wages have been conducted in various country contexts focusing on its impact on labour market in general and its effect on employment and wage distribution in private and public sector, effect on youth/teenage employment, effect on poverty rates, effect on retail employment, effect on employment in fast food establishments etc. For example, the study by Gindling and Terrell (2007) makes an analysis of the effects of multiple minimum wages throughout the labour market in the context of Costa Rica. The study seeks to investigate the effects of legally notified minimum wage on employment and hours worked among workers covered by minimum wage legislation as well as those not covered by the legislation. Analyzing 1988-2000 micro data the study concludes that a 10% increase in minimum wages lowers employment in the covered sector by approximately 2% and decreases the average number of hours worked for those in the covered sector by about 0.6%. The study further reveals that despite the wide range of minimum wages, the largest impact on employment of covered sector workers is seen on lower half of the skill distribution. As regard the uncovered sector the study reveals that minimum wages do not impact hours worked in the uncovered sector in any significant manner.

Study by Lemos (2007) conducted in Brazilian context examines the effects on minimum wage on private and public sectors both, by using monthly data from the Brazilian household survey for the period 1982-2000. The study suggests that there is a strong compression effect in wage distribution for both private and public sector as a result of determination of minimum wage and increase in it from time to time. The study further reveals that minimum wage does not have any adverse effect in either sector at the aggregate level or for vulnerable groups such as teenagers, women and those with lower level of education. Finally, the study concludes that in the context of developing countries, the minimum wage policies play an important and potentially viable role as an anti-poverty instrument.

The study by Clain (2008) seeks to investigate the effects of living wage (the term used for minimum wage in U.S) legislation on U.S. poverty rates. The study reveals that living wage ordinances modestly reduce poverty rates. The study suggests that living wage legislation cannot be touted as an automatic cure - all in the struggle to eradicate poverty in any case as the magnitude of its effect is not large.

Sabia (2008) has tried to find out the effects of minimum wage increases on retail employment and hours in the context of U.S on the basis of the analysis of monthly data from 1979-2004, Current Population Survey. The

study suggests that a 10% increase in the minimum wage resulted in 1% decline in retail trade employment and usual weekly hours worked. The study further reveals that as a result of minimum wage increase larger negative employment and hours effects take place for the least experienced workers in the retail sector. The study assumes paramount importance in view of the fact that proponents of state and federal minimum wage increases had so far been arguing that minimum wage hikes have not adversely affected retail employment. In this context, the observation by Senator Edward M. Kennedy is worth quoting "*History clearly shows that raising the minimum wage has not had any negative impact on jobs, employment, or inflation. In the four years after the last minimum wage increase passed, the economy experienced its strongest growth in over three decades. More than 11 million new jobs were added, at a pace of 232,000 per month. There were 10 million new service industry jobs, including more than one and a half million retail jobs, of which nearly 600,000 were restaurant jobs*" (D-MA) (2005).

The study by Powers (2009), which is based on the survey of the Fast – food establishments in Illinois and Indiana (USA) conducted during a period of state –mandated minimum wage increases in Illinois reveals that while the entry level wages of establishments in Illinois rose substantially in response to the mandated increases, there was little evidence that Illinois establishments ameliorated wage increases by delaying scheduled raises or reducing fringe benefit offerings. The study further reveals that there was little evidence of 'labor-labor' substitution in favor of women, better educated, or teenaged workers, or increased worker tenure at the new wage, but weak evidence of increased food prices. In contrast, there were large declines in part time positions and workers' hours in Illinois relative to Indiana. However, establishments' responses were not proportionate to the strength of the minimum wage change.

The scholarly article by Deakin and Green (2009) published in special issue of British Journal of Industrial Relations traces the historical evolution of British Minimum Wage Legislation since the enactment of Trade Boards Act, 1909, which was a landmark in the development of minimum wage regulation in Britain and around the world. The authors in this article argue that though the powers of the trade boards constituted under the Trade Boards Act, 1909 were limited but these boards had immediate and tangible effects in terms of raising living standards and over time they paved the way for the system of state support for collective wage determination. The wages councils, as the trade boards then became, were vested with statutory powers to regulate all aspects of wages, hours and

holidays in the affected trades. By 1945, approximately one in four of all workers, some 4.5 million, were covered by statutory regulation. In 1980s their powers were reduced under the influence of deregulatory labour market policies, prior to their abolition in 1993. The authors observe that the British national minimum wage which was introduced in 1998 despite its common perception is not a universal national minimum of the kind which Webbs and Fabian writers argued for a century ago.

Another scholarly work on the historical aspect of British national minimum wage legislation has been done by Blackburn (2007) published in *'Historical Studies in Industrial Relations'*. In this article the author focuses on causes, extent and character of low pay in Britain. The efforts of various economic and social historians were so far focused and confined to sweating in certain trades in specific times and places. However, this particular piece of literature adopts a historical and economy wide approach. The article demonstrates at length how revelations of wide spread sweated labour persuaded a Liberal Government to introduce a limited form of minimum pay legislation in the form of 1909 Trade Boards Act. It explores why, despite repeated shifts in the attitude of supporters and opponents alike, trade boards and their subsequent counterparts, wages councils survived, albeit in a modified form, until 1994, following legislation in the previous year.

The article assesses the merits and short comings of wages councils and the attitudes of the state, the labour movement and employers towards them and their abolition. The article also further examines why Britain rejected demands for a national minimum wage after the Second World War. Finally, it reviews the recent arguments that led to the enactment of national minimum wage legislation and poses a question whether, on its own, such legislation would be sufficient to eradicate Britain's historical tradition of being a low-paying economy. The article is organized chronologically so that the empirical and theoretical literature of particular periods can be easily explored and accessed.

Sivakumar (2010) and Sankaran (2011), have dealt with the issue of minimum wages in the context of India with specific reference to the policy of government of India for payment of wages under Mahatma Gandhi National Rural Employment Guarantee Act which permits and allows the government for paying lesser wages than notified under Minimum Wages Act (1948), in situations where the wages notified under Minimum Wages Act are more than the wages to be paid under Mahatma Gandhi National

Rural Employment Guarantee Act. Sivakumar in this regard poses the question, whether the workers in India's largest public works programme, the Mahatma Gandhi National Rural Employment Guarantee Scheme be paid less than the statutory minimum wage. Sankaran, in this regards observes that while for several decades now there has been an unresolved debate about the feasibility of having a national minimum wage, the National Rural Employment Guarantee Act with its provision for a country-wide wage rate has placed the possibility to do so squarely on the agenda. The NREGA wage rate must logically be a need based national minimum wage under the Minimum Wages Act. Declaring a need-based minimum wage rate under NREGA which is linked to the schedule of rates allows for sufficient flexibility to account for regional / geographical variation. Finally, both of them argue that payment of wages less than the wages notified under the Minimum Wages Act (1948), is against constitutional provisions and the spirit of Mahatma Gandhi National Rural Employment Guarantee Scheme Act itself.

Ohashi's (2011), recent work on the minimum wage system in Japan provides an overview of history of minimum wage system in Japan and also makes a cross country comparative analysis of the mechanisms whereby the minimum wages are set with the focus on United States and some of the countries in Europe like Belgium, UK, France, Spain, Germany, Italy, Austria, Denmark Norway and Sweden. The paper also discusses the effects of minimum wage on employment. Finally, the author makes out a case for varying minimum wages by type of worker in view of the emerging diversified employment arrangements.

Manonmani (2012), on the basis of the analysis of the data from Annual Survey of Industries (ASI) published by Central Statistical Organisation (CSO), Government of India, covering the period from 1998-99 to 2007-08 suggests that nationwide linkages of wages with productivity may be the best option for neutralization of a rise in the cost of living. As regards granting wage increases, the study suggests that the productivity of capital and total factor productivity may be taken into account along with labour productivity, so that the same is not inflationary in nature.

A review of the above cited literature reveals that there have been a number of studies on various aspects of wage policy, effects of minimum wages on labour market in general and on employment in private and public sectors (in the context of developing countries such as Brazil), on poverty, on employment and hours of work in retail sector and on employment in fast food establishments etc. Similarly, another

important aspect of minimum wage studied so far includes historical aspect of minimum wage legislation especially, in the context of Britain. However, some of the vital aspects related to minimum wages such as; the comparative analysis of historical evolution of minimum wage policy, existing mechanism, criteria and method for determination of minimum wage in a cross country perspective have not yet received the required attention except Ohashi's recent work (2011), which remains confined to only the mechanisms for determination of minimum wage and that too only with reference to Japan, US and some of the countries from Europe and a large number of regions in the world remain untouched.

It is in the light of this background and context, it would be interesting to have a comparative picture of policy and regulation of minimum wages in select countries to draw appropriate lessons for future policy formulation in this regard. No such comparative and detailed analysis of the policy and regulation of minimum wage with a focus on countries from Asia has been attempted in the recent past. Last such attempt was made by ILO in 1956, which focused its attention on the problems of wage policy in Asian countries. The major aspects covered by the study undertaken by ILO focused on: The Objectives of Wage Policy; Existing Systems of Wage Regulation; Problems of Minimum Wage Policy and Wage Policy and Economic Development (ILO, 1956). Another such attempt was also made by ILO, which studied the government wage policy formulation in seven developing countries. The countries covered by the ILO included: Cote d'Ivoire; Nigeria, China, Pakistan, Singapore, Colombia and Peru. The period covered by these countries study published by ILO covered the period till 1984-85 (ILO, 1989).

In this background, the present study mainly focuses the select countries from Asia, (the world's largest continent, with a home to more than 60% of the world's population and comprising of 44 countries ranging from some of the least developed to highly developed countries). Majority of the population in most of these countries comprises of wage earners with some countries having abysmally low levels of wages. In addition, the study also covers within its ambit United Kingdom from Europe, Sweden from Scandinavia, and South Africa and Nigeria from Africa for the purpose of capturing cross region comparative picture.

1.3 AREA AND SCOPE OF THE STUDY

The study mainly focuses on tracing the evolution of regulation of minimum wage at an international and inter country level and making

a comparative analysis of the methods and criteria for legal regulation of minimum wages in select countries representing various levels of development. The selected countries include: China, India, Japan, Bangladesh, Philippines, South Korea and Sri Lanka from Asia, South Africa and Nigeria from Africa, United Kingdom from Europe and Sweden from Scandinavia. The selection of countries has been made by way of following the purposive sampling method. However, the major criteria for the purpose of selection of the countries include the prevailing labour and employment scenario and level of economic development of the countries selected.

1.4 OBJECTIVES OF THE STUDY

The broad objective of the study is to trace the evolution of policy and legislation relating to minimum wage at the international and inter country level with a view to develop an understanding of the major issues and considerations involved in the process of determination of minimum wage and to suggest appropriate policy recommendations based on such understanding. The specific objectives of the study are as follows:

- i) To trace the evolution of minimum wage policy and legislation at international and inter country level
- ii) To examine the conceptual domain of minimum wage in the countries selected under the study
- iii) To make a comparative analysis of the methods for determination of minimum wage in the countries selected under the study
- iv) To make a comparative analysis of the criteria/norms and considerations for determination of minimum wage
- v) Based on the analysis of such policies and practices to make appropriate policy recommendations

1.5 METHODOLOGY AND DATA SOURCE

The study is mainly based on review of the existing literature and the available legal text on the subject. Use of internet is also one of the important sources for collecting the required and relevant information for the purpose of the study.

Chapter 2

Minimum Wage Regulation: A Historical Perspective

2.1 IMPORTANCE OF REGULATION OF MINIMUM WAGE

The minimum wage policy is a vital policy tool that provides a floor to wages. This floor reduces downward pressure on wages, and it also creates a rebound ripple effect that raises all wages in the bottom to deciles of the wage spectrum. Furthermore, it compresses wages at the bottom of the wage spectrum, thereby helping reduce inequality. Most importantly, an appropriately designed minimum wage can help connect wages and productivity growth, which is critical for building a sustainable demand generation process.

The determination of wages, particularly a statutory minimum wage, is a political and institutional process, reflecting decisions and choices of social and political institutions, as to how labour is to be valued. The determination of a statutory minimum wage is closely connected to political and economic notions of 'just' and 'fair' pay. The labour market is embedded in its social and economic environment; the actors within the labour market operate according to rules and norms that have been generated over the long term and do not necessarily immediately accommodate to new patterns of behaviour. Wages generally tend to reflect on the one hand traditional social relations in some sectors while it reflects the capitalist notion of being just another cost of business - like rent, electricity or raw materials on the other. However, wages are not only the price of a factor of production but also the means by which people are able to sustain themselves and their families. There is a constant tension between 'wages as a living' and 'wages as a price'. Moreover, wages are also part of the process through which social identities are constructed and reproduced.

2.2 GENERAL HISTORY OF REGULATION OF MINIMUM WAGE

The idea of minimum wage is tied to the concept of equity in income distribution. It is a way of accomplishing a fair allocation of income by reorganizing and establishing the wage structure through legislation. The

first minimum wage law on record dates back to Hammurabi's code in 2000 B.C. The minimum wage rules of the Hammurabi's code provided "if any one hires a day labourer, he shall pay him from the New year until the fifth month (April to August, when days are long and the work hard) six Gerahs in money per day; from the sixth month to the end of the year he shall give him five Gerahs per day" (Leod, 2010) Subsequently, the minimum wage regulation was developed in New Zealand (1896) followed by Australia (1899)³. Initially it was used in these countries as part of the procedure for the prevention and settlement of industrial disputes. Under the New Zealand Industrial Conciliation and Arbitration Act of 1894, the Court of Arbitration was empowered to settle industrial disputes by issuing awards fixing minimum wages that could be made binding for all workers in the industry in the district where the dispute had taken place. Soon afterwards the system of fixing minimum wages through arbitration awards spread to a number of Australian jurisdictions. At about the same time there were also experiments with using minimum wage regulation to eliminate "sweating" that is, the payment of exceptionally low wages. The most important development in this regard was the adoption in 1896 by the Australian state of Victoria of legislation establishing a system of wages boards. Originally, only six trades were covered but the application of the law was gradually extended. By 1911, all the states in Australia except Western Australia had systems of wages boards. Protection against unduly low wages in New Zealand and Australia also took the form of direct legislative action. Thus, minimum wages were fixed in New Zealand for unorganized factory workers by the Employment of Boys and Girls without Payment Prevention Act of 1899 and for shop assistants by the Shops and Offices Act of 1904. Similar legislation was also introduced in a number of Australian states and later in Britain in 1909 (Starr, 1981).

In 1912, Massachusetts became the first U.S. state to adopt a minimum wage law although its coverage was limited to women and children. During the Great Depression, the need for wage reform became more urgent as many American workers saw their standard of living deteriorate. Franklin D. Roosevelt took up the cause during the 1936 Presidential Campaign and rode to the White House on a wave of popular support for reform. On the campaign trail, a young girl handed over a note to one of Franklin Roosevelt's aides asking for help: "I wish you could do something to help us girls," it read. "Up to a few months ago we were getting our minimum

³ For a more detailed account of the early origins of minimum wage fixing, See ILO : Minimum Wage Fixing Machinery: An International Study of Legislation and Practice Studies and Reports, Series D.No. 17 (Geneva, 1927)

pay of \$11 a week...Today the 200 of us girls have been cut down to \$4 and \$5 a week". During this period, a substantial proportion of U.S. workers felt that they were required to work for too many hours at very meager wages. Roosevelt rode back into office in part on a promise to seek a constitutional way of protecting workers; in 1923, the U.S Supreme Court had struck down a Washington, D.C., minimum-wage law, observing that it impeded a worker's right to set his own price for his labor. The first federal minimum-wage law, the Fair Labor Standards Act, passed in 1938, provided for 25-Cent-per-hour wage floor and a 44-hour work week ceiling for most employees. (It also banned child labor) Outside of Social Security, said Roosevelt, the law was "the most far-sighted program for the benefit of workers ever adopted." Wages must ensure a "minimum standard of living necessary for health, efficiency and general well-being," the act stipulated, "without substantially curtailing employment."

As the main objective of minimum wage regulation was the elimination of '**sweating**', that is the payment of exceptionally low wages, its application was usually restricted to a limited number of particularly low-paying sectors or to selected categories of workers, such as home-workers, women, children and indigenous workers judged to be particularly vulnerable. A number of developing countries also carried out experiments with minimum wage regulation to protect categories of workers judged to be particularly vulnerable. For instance, Argentina introduced the Home Work Act in 1918 with a view to protecting low paid home-workers and Sri Lanka's Minimum Wage Ordinance was promulgated in 1927.

However, with the exception of a few countries, minimum wage fixing remained a rarely used and limited instrument of government policy in both industrialized and developing countries before the Second World War. Towards the end of the economic depression of the 1930s and after the Second World War, the number of countries adopting minimum wage regulation grew rapidly. There was also a trend towards extending wage protection to more and more groups of workers and in many cases it was made more universal.

The early developments of minimum wage regulation and subsequent expansion since the 1920s are well reflected in a series of International Labour Conventions on minimum wage regulation by the International Labour Organisation (ILO): Minimum Wage Fixing Machinery Convention (No. 26) 1928, the Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99) 1951, and the Minimum Wage Fixing Convention (No. 131) 1970.

In spite of impressive development of the minimum wage system in many countries, however, it should be noted that as with industrial relations, both the exact nature and the scope of minimum wage protection reflect the particular historical and institutional development of the country concerned. Some countries in Asia, for example China, India, Indonesia, Japan and Thailand have decentralized minimum wage systems, while others like South Korea and Vietnam have a single minimum wage for the entire country. Cambodia has minimum wage fixing machinery only for the country's garment and textile sector.

As mentioned above, initially the minimum wage regulation had been adopted by more and more industrialized and developing countries as a major social policy tool in order to protect low-skilled workers by establishing a minimum wage floor under which no payment should be made. But the usefulness of a minimum wage is now under question by policy-makers and economists, as both developing and developed countries have faced a serious under-employment and unemployment crisis since the 1980s. The standard argument against the minimum wage system is based on the assumption that a minimum wage above a certain level will cause unemployment and therefore inadvertently work against poverty reduction. In the specific context of informalization in developing economies, a minimum wage system in the formal sector has been blamed for crowding out formal sector jobs into the informal sector.

2.3 HISTORY OF REGULATION OF MINIMUM WAGE IN SELECTED COUNTRIES

2.3.1 China

In China, the State Council's Department of Labour Administration promulgated the Minimum Wages Regulations in 1993. The regulations provide the details of a minimum wage system, and stipulate that employers must guarantee wages no less than the minimum local wage standards. The State Council's Department of Labour Administration controls the macro aspect of the system while the implementing rules are formulated by the people's government of a province, an autonomous region or a municipality.

The State Council's Department of Labour Administration remarked that after implementation of the reform and open-door policies in 1978, China witnessed the coexistence of different forms of economic operations, including the state-owned, collective, private, individual business and

foreign-invested business. Since the early-1990s, the number of wage disputes in particular from the private sector increased rapidly. As a result, the central government established the minimum wage system which aims to guarantee the basic living standards of a worker and his family, protect the workers' interests, and promote fair competition amongst enterprises. (Ms. Eva LIU & Mr. Jackie WU, 1999, p-13)

2.3.2 India

India was one of the first developing countries to introduce a minimum wage policy and the enactment of the Minimum Wage legislation was the result of both internal and external factors. Internal factors included the increase in the number of factories and wage earners during the first half of the 20th century, as well as growing number of industrial unrests and strikes of workers who rebelled against their 'starvation wages'. The initiative with regard to regulation of minimum wage in India started with the resolution placed by Shri. K.G.R. Choudhary in 1920 for setting up Boards for determination of minimum wages in each industry. The most significant external factor was the adoption by the ILO in 1928 of Article 1 of Convention No.26 and Recommendation No.30 relating to wage fixing machinery in trades or parts of trades. On the recommendation of the Standing Labour Committee and Indian Labour Conference, a Labour Investigation Committee was appointed in 1943 to investigate into the question of wages and other matters like housing, social conditions and employment. A draft bill was considered by the Indian Labour conference in 1945. The 8th meeting of the Standing Labour Committee recommended in 1946 to enact a separate legislation for the unorganized sector including working hours, minimum wages and paid holidays. A Minimum Wages Bill was introduced in the Central Legislative Assembly on 11.4.46 to provide for fixation of minimum wage in certain employments. It was passed in 1946 and came into force with effect from 15.3.48.

2.3.3 Japan

The government of Japan constituted the Labour Issues Committee in 1955, consisting of representatives of employers and workers. The Committee recommended the government to introduce a minimum wage system by encouraging employers to make private agreements with their employees on minimum wages. The government encouraged employers to do so and 127 agreements were made before adoption of the Minimum Wages Law in 1959.

The Central Minimum Wage Council was established in 1957 to study the implementation of a minimum wage system. The Council then recommended the government to introduce a proper legal minimum wage system and assist employers to make minimum wage agreements. In 1959, the Minimum Wages Law was enacted. It should be noted that Japan has both regional minimum wages and industrial minimum wages due to its unique historical background. (Ms. Eva LIU & Mr. Jackie WU, 1999, p-12)

2.3.4 South Korea

In South Korea the debate on the establishment of a minimum wage system began in the mid-1980s. As the workers' education and income levels improved, they questioned whether government policies aimed at protecting the interests of the employers only. Also, the government was increasingly concerned with the criticism that export production mainly relied on low-cost labour and poor working conditions. In the end, the government agreed to introduce a minimum wage system. The Minimum Wage Act was adopted in 1986. When the minimum wage system was introduced, the employers worried about the possible negative effects, remarking that it would push up the wage level and impose heavy financial burdens on companies. In this view, employers demanded that introduction of the system should be postponed to allow enough time for companies to prepare themselves for it. As a result, the Minimum Wage Act entered into force in 1988. (Ms. Eva LIU & Mr. Jackie WU, 1999, p-12)

2.3.5 Philippines

In Philippines, the general minimum wages for both agricultural and non-agricultural workers were for the first time established by legislation on 4th August, 1951 by the Minimum Wage Law (Republic Act 602) and have been adjusted on an irregular basis since then many times by various Orders/ Acts/Decrees at intermittent intervals.

A common feature of all the wage laws (except during Martial Law when Marcos unilaterally determined wage levels) is the appointment of wage boards. The wage boards track developments in the local economy and recommend or determine there from the levels of wages to grant the working people. The members of the wage boards mainly come from representatives of the government and private property owners themselves. Representatives from the public or from the labor sector are appointed to provide a democratic facade. The setting of wages evolved

in a manner that conforms to the escalating crisis of the semi-colonial semi-feudal economy and of the world under imperialism. The changes took place in three distinct periods; pre-Martial Law or from 1951 - 1972, Martial Law or from 1972 - 1986, and from 1987 - to the present.

Pre-Martial Law Wage Laws and Their Impacts: Five wage laws were legislated during this period - (Republic Act) RA 602, 3844, 4180, 4707 and 6129. The Philippine Congress and Senate enacted these laws. A distinct attribute of these pre-Martial Law wage laws is their recognition of the most oppressive feudal relations like tenancy where landlords arbitrarily determine the share of their tenants, feudal servitude and other forms of feudal rent. These ensured that the vast majority of the working people remain enslaved by feudalism. These also set the precedent for the profeudal bias of succeeding wage laws.

Martial Law Wage Laws and Their Impacts: Marcos enacted 11 wage laws during his 15 years of terrorist rule. These wage laws have the following distinct characteristics i.e. they seemingly promoted reforms by shortening of the gap between the wages of workers in the non-agriculture sector relative to those in agriculture. The eight wage laws from 1976 to 1983 reduced the 1970 40% wage difference between them to 27.5%. However, the next three increased it again to 32.18% until the time the people ousted Marcos from power; These started the inequality between the wages of workers in comprador enterprises engaged in agricultural production like the mammoth poultry and piggery farms within Metro Manila relative to agriculture workers in the feudal countryside. The disparity averaged 8.22% from 1976-1983 before it steeply rose to 32.18% from 1984-1986; these started the decreased wages of industrial and service workers in the provinces relative to their counterparts in Metro Manila. The discrepancy averaged 5.83%.

Post-Martial Law Wage Laws and Their Impacts: The three wage laws EO 178, RA 6640 and RA 6727 enacted after the ouster of the Marcos dictatorship deepened exploitation to unprecedented levels. Nineteen years under these laws have turned the lives of workers, peasants and the petty-bourgeoisie to outright destitution. All of these wage laws continued to maintain the pro-feudal and pro-imperialist economic relations promoted by RA 602 and worsened by the wage laws under Martial Law. But RA 6727 enacted under the presidency of the landlord Corazon Cojuangco Aquino turned out to be the most notorious in terms of puppetry to landlord, big bourgeois comprador and imperialist interest. The transformation of the landlord and bourgeois comprador-dominated

wage boards from mere advisory bodies into formal ones authorized to determine and execute the said ruling classes' self-serving judgments on wage matters is blatantly reactionary. The Philippine State, through this mercenary provision, has practically given the ruling classes in the private sector the direct power to determine the ultimate level of exploitation that they can impose on the working people. The law also shields the Philippine State from direct accountability to the increased poverty of the wealth producers correspondent to the increased magnitude of exploitation borne by the reactionary law's effects. The granting of power to the regional wage boards also disperses the battle lines on this issue to other regions where, away from the scrutiny of militant public opinion, the landlord and bourgeois comprador classes hold firmer sway. It blunts the power of the mass movement in fighting for nation-wide and across the board wage increases through concentrated political battles in the National Capital Region or in the country's center of reactionary power.

Since 1989, government and business leaders have exuberantly bragged on the constant growth of the industry, service and agriculture sectors. However, they remain indifferent to the stagnation of wages. The masses' just demands for *across the board* wage increase are met with obscure and immaterial arguments. Among these are: (i) Higher wages is not good for the economy because it scares away foreign investments (*i.e. foreign monopoly capital*) that presently employs a big part of the labor force. (ii) Wage levels in the Philippines are too high. In fact, it is highest in the region. (iii) Granting wage increases would lead to the bankruptcy of small and medium scale enterprises. (iv) Wage increase is impermissible at this time because of the fiscal crisis.

Preposterously absent from these discourses are the aims of "*guaranteeing the rights of labor to its just share in the fruits of production, and ensuring a decent standard of living for the workers and their families.*"

2.3.6 Nigeria

In Nigeria, there was neither any legislation nor any legislative history for protecting minimum wage prior to the enactment of National Minimum Wages Act, 1981 (as amended last in the year 2000). However, general provisions regarding protection of wages, contracts of employment and terms and conditions of employment were contained in the Labour Code Act, 1971. The provisions of the Labour Code Act, 1971 pertaining to wages related to manner of payment of wages, prohibition on imposing

in any contract of employment of any worker any terms as to the place at which or the manner in which or the person with whom any wages paid to the worker are to be expended, prohibition on payment of wages to a worker in any premises used for the sale of intoxicating liquor or for the retail sale of goods (except in the case of worker employed on the premises), prohibition on giving an advance of wages to workers in excess of one month's wages, prohibition on deductions except authorized ones and prohibition on employer to establish a shop for the sale of provisions to his workers in any place of employment.

2.3.7 South Africa

While legislation on minimum wages was adopted quite early in many parts of Africa, it was not until the 1940s and 1950s that effective laws and a number of minimum wage fixing decrees were implemented on a significant scale. The systems of minimum wage regulation introduced at this time were heavily influenced by the colonial ties of most of the countries of the continent. The form of the legislation introduced in the British colonies followed, for the most part, the pattern of the Trade Boards Act of 1918 and the Wages Council Act of 1945 of the United Kingdom. Wages councils or boards were to be established by the responsible Minister where he was of the opinion that no adequate machinery existed for the effective regulation of remuneration or terms of employment of any employees or class of employees in particular industries, or sometimes simply where he considered it expedient to do so. The councils or boards, tripartite in form, were composed mainly of members of the industries concerned. They regulated not only minimum wage rates for the lowest paid categories but also minimum wage rates for various occupational classifications, as well as other conditions of employment such as hours of work, rest periods, holidays and annual leave. In certain territories the colonial practice differed from that of the United Kingdom in one important respect, namely that the legislation sometimes gave authority for the fixing of minimum wages of general application. It was intended that these rates, established on the basis of recommendations of regional or national labour advisory boards, would apply chiefly in certain urban areas where economic activities were diversified. South Africa got independence and became a republic in 1961. However, even after independence the old system of fixation of minimum wage through wage councils and wage boards continued. In 1997, *the Basic Conditions of Employment Act* came into being. Under this Act, a dual system of minimum wage fixing was established in South Africa. Under the Act the minimum wage rates

may either be set for certain sectors in sectorial determinations made by the government following the recommendations of the Employment Conditions Commission or minimum wage rates may be determined in collective agreements negotiated within bargaining councils, statutory councils or between groups of employers and employees.

2.3.8 Bangladesh

In Bangladesh, the birth of the first wage policy element can be witnessed in the labour policy of Pakistan declared in August 1955 wherein it was stated: the principle has been accepted that norms and standards of wages should be established and that a Wages Board should be set up as an experimental measure in Karachi consisting of an Expert Chairman, who may be assisted by two representatives each of employer and workers. In pursuance of the policy, the first minimum wage Law i.e. the Minimum wages Act, 1957 was enacted to regulate the wages of certain industries. The country went under martial law in Oct. 1958 and a new labour policy was declared in Feb. 1959. Although there was no direct reference to wage matters in the policy, a new law namely: the Minimum Wages Ordinance, 1961 replacing the former one was promulgated. The Minimum Wages Board constituted under the Ordinance was empowered to recommend the Minimum Wages for unskilled adult workers and juvenile workers who were not effectively organized or where no adequate machinery existed for regulation of minimum wages. The functioning of the Board was limited by the announcement of the new labour policy of the Government of Pakistan in 1969 which dealt with wage policy questions. The East Pakistan Minimum Wages (Fixation) Ordinance, 1969 promulgated as a by-product of the above labour policy provided for fixation of wages for establishments, employing 50 or more workers. Under the Ordinance, the wages of workers of various classes of tea gardens, categorized as "A" class, "B" class and "C" class gardens were also fixed under the mandatory provisions of law.⁴ The Minimum Wage Ordinance, 1961 was later amended by the '*The Minimum Wages (West Pakistan Amendment) Ordinance, 1970*'.

After the country became independent in 1971, major industries were nationalized and the Government assumed control of the abandoned industries. In order to rationalize wages and fringe benefits of workers, the Government of Bangladesh constituted the First Industrial Workers' Wages, Commission in 1972, which recommended a uniform wage

4 Drawn mainly from 'Minimum wage laws and administration: the widening gap', ILO 1990

structure and fringe benefits for workers employed in nationalized industries. The Government accepted most of the recommendations of the Commission which were implemented by legislation, namely the State-owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1973 giving effect to the recommendations from July, 1973. In the mean time, living underwent a sharp rise. Considering the necessity for reviewing the wage structure, the Government constituted the Industrial Workers', Wages and Productivity Commission in April, 1977 under the Chairmanship of a High Court Judge.

The terms of reference of the commission were to: Review, in the context of the present cost of living and productivity of industrial enterprises, the wage structure, remuneration, and other benefits for workers employed or engaged in State-owned industries, nationalized industries and industries taken over and managed by the government; Recommend the wage structure, remuneration and other benefits for different categories of workers in different industries, correlating them to the productivity of such industries, including the wages or remuneration payable in respect of time rate work and piece rate work; Suggest possible areas or spheres where the piece rate systems could be extended with a view to boosting production in various industries; Recommend measures and incentives to enhance labour productivity and to provide views on matters ancillary to the above or as the commission considered useful.

On the basis of recommendations of the commission the wage scales of workers in the public sector were revised with effect from 1st July, 1977. A similar revision of wage structure of workers in the public sector was also implemented from 1st July 1985⁵. The Minimum Wages (West Pakistan Amendment) Ordinance, 1970 was subsequently merged with the newly introduced Labour Act in 2006 with some modifications.

2.3.9 Sri Lanka

In Sri Lanka, the efforts with regard to regulation of minimum wages initially started with the promulgation of Minimum Wages (Indian Labour) Ordinance in December, 1927 which largely aimed at amending the pre-existing laws relating to Indian labourers in Sri Lanka i.e. the Estate Labour (Indian) Ordinance, 1889 and the Indian Immigrant Labour Ordinance, 1923 (aimed at protecting the interest of Indian Immigrant labour in Sri Lanka). The Ordinance of the year 1927 was amended in 1935 by the Amendment

5 Supra

Ordinance (No. 34 of 1935) to be read and construed as one with the Service Contract Ordinance, 1866; Estate Labour (Indian) Ordinance and the Indian Immigrant Labour Ordinance, 1923. Subsequently, the minimum wages for labourers in general were established by the Wages Board Ordinance, (Ordinance No. 27 of 1941) issued on 19 September 1941 and the Shop and Office Employees Act, 1954 aimed at protecting the minimum wages of the employees engaged in shops and offices. The above mentioned Ordinances and Act have subsequently been amended from time to time so as to expand their scope.

2.3.10 Sweden

Sweden has no national legislation concerning minimum wages. Minimum wage rates are determined in collective agreements. There is no formal procedure for extending collective agreements by decision of a public authority automatically. There are three main types of collective agreements in Sweden:

- 1) For certain sectors, central collective agreements at the national level determine minimum wage rates and other minimum standards for those workers who are members of the unions that are party to the agreement.
- 2) Regional sectoral agreements may also set minimum wage rates provided that they are higher than any minimum rates negotiated in the central collective agreements.
- 3) Finally, any collective agreement at the enterprise level must provide minimum standards that are higher than any central or sectoral collective agreement that is applicable.

Collective agreements automatically bind both the members of the trade union and the companies that are members of the employer` organization concluding the agreement. A person who is not a member of the trade union usually has no rights under the collective agreement. Approximately 90 per cent of all workers are covered by collective agreements. Scope and exclusions of wage agreements are determined by collective agreements. Minimum wage rates are determined in sectoral collective agreements. The Swedish Labour Court determines disputes relating to collective agreements that could not be solved via negotiations. Any party to an collective agreement, found guilty of breaching that

agreement may be ordered to pay damages as determined by the Labour Court.

2.3.11 United Kingdom

Statutory support for minimum wages in the United Kingdom (UK) dates back to 1891. In fact, minimum wages had been in force until 1993 when the UK government abolished the Wages Councils which were responsible for setting a legally enforceable minimum wage in an industry⁶. Following the abolition, there was growing evidence of jobs being offered below the old minimum rates⁷. Contrary to the original intention of raising employment, there was little evidence of increased employment. Instead, the removal of minimum wages led to a loss of jobs, particularly in the retail and catering sectors. (Jackie WU & Diana Wong, 2008, p-44)

Following the election in May 1997, the new Labour Government promised in the Queen's Speech to uphold its manifesto commitment by introducing legislation on a new national minimum wage system. During the summer of 1997, a preliminary non-statutory Low Pay Commission was established to start taking evidence on the level of a new national minimum wage. In November of the same year, the National Minimum Wage Bill was introduced in Parliament and subsequently enacted as the National Minimum Wage Act in 1998, giving the Commission a statutory footing. With the passage of the Act, the new minimum wage system has been in force since 1 April 1999. (Jackie WU & Diana Wong, 2008, p-44)

CONCLUSION

An analysis of the gradual evolution of the history of regulation of minimum wage in general and in an inter-country perspective in particular highlights the fact that there has been in this regard a general trend from protecting a very limited and vulnerable groups of workers to gradually cover as many categories of workers as possible within the scope of minimum wage regulation. In spite of this general trend still in many countries there are categories of employments, sectors and workers which are yet to be covered within the scope of such measures.

⁶ For further details on the historical development of the minimum wage system, please see Legislative Council Secretariat (1999).

⁷ A Low Pay Network study analyzed almost 6 000 jobs offered at Job centres in the catering, retailing, clothing manufacturing and hairdressing sectors in April and May 1994. Over a third of the jobs paid less than the rates set by the now defunct Wages Council.

Chapter 3

Profiling Labour Market in the Context of Minimum Wage

3.1 INTRODUCTION

The issue of ensuring a minimum standard of wages to vast section of workers assumes paramount importance for most of the countries. However, the strategies and interventions to address this issue may differ from country to country depending on its overall socio-economic context in general and prevailing labour and employment scenario in particular. A broad understanding of this context and labour and employment scenario is quite relevant in order to appreciate and understand the policy and regulatory framework dealing with minimum wages. It is in this context, this section deals with a cross country perspective of the labour and employment scenario of the countries selected under the study.

3.2 CHINA

China has an estimated population of 1336.718 million. 73.6% of the population is in the age group of 15-64 years, 17.6% in the age group up to 14 years and remaining 8.9% in the age group of 65 years and above with the median age of 35.5 years. A substantial proportion of approximately 47% of the population is urban. Shanghai; Beijing; Chongqing, Shenzhen and Guangzhou are its major cities. In the country the life expectancy at birth is 74.68 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 95.9%. School life expectancy is 12 years. China stands first in the world in terms of labour force with a total number of 815.3 million (2010). 38.1% of the labour force was engaged in agriculture, 27.8% in industry and 34.1% in services (2008). 68.60% of the total labour force was self employed (2007). The unemployment rate in urban areas was 4.3% (2009). However, there was substantial unemployment and under employment in rural areas nearly 9%. The proportion of population below poverty line is nearly 2.8%⁸ (CIA, 2011).

⁸ 21.5 million rural population lived below the official 'absolute poverty' (approximately \$90 per year); an additional 35.5 million rural population lived above that level but below the official 'low income' line (approximately \$125 per year) in the year 2007

China's economic reform started in 1978 has transformed the country from a state-planned system to a market-oriented economy. During three decades of reform, the Chinese GDP has risen quite rapidly. China's GDP grew by 9% in 2008 which further increased to nearly 9.4% in 2011, making it one of the world's fastest growing economies despite the impact of the global financial crisis. Over the past thirty three years, a more market-oriented labour market has emerged in China through a growing urban private sector, as state-owned enterprises (SOEs) have downsized.

Dramatic economic developments in China called for a change in employment laws and policies in order to keep pace with the new economic scenario. It may be mentioned in this context that China's pre-reform socialist economy had promoted an "iron rice bowl" employment system. Under this system, workers were guaranteed lifetime employment, food, housing, healthcare, children's education, and even clothing. Few regulations were enforced with regard to workers' rights and employment contracts were non-existent. At present, the iron rice bowl system is slowly dying out. Consequently, new policies relating to different aspects of job and quality employment, including wage, benefits and health care are emerging as the state government responds to the new economic system.

Despite some progress on reforms, a sizable surplus of labour still exists in China's rural sector and state-owned enterprises. With China's urbanization process accelerating over the last decade, more than 200 million people have left the countryside for cities. Estimates in 2006 found that only 180 million were still working on the land, 200 million had switched over to other industries, and about 100 million comprised the surplus workforce. In addition, from 1999 to 2005, more than 21 million workers were laid off as a result of downsizing SOEs. Since massive layoffs occurred mostly in traditional industries, such as coal, textiles, and machinery, those laid-off workers often lack the necessary education and skills to be competitive in China's new market economy; in addition, their age and experiences in traditional industries cannot help and translate into employment opportunities. (The Sloan Center on Aging & Work, Global Policy Brief No.8, 2010)

Labour surplus environment supports a low-level wage structure and has long been a key factor of China's high economic growth rate. However, labor surplus also gives employers leverage in the labour relationship and leaves vulnerable workers, such as the middle-aged, migrant workers without necessary skills and education, and fresh college graduates

without much work experience, at a disadvantage. The global financial crisis and economic downturn in the recent past hit the export industry first, causing factories to shut down and putting migrant workers out on the street, college-educated Chinese also have joined the unemployment group. The main challenge facing China's policy makers in coming years is to absorb surplus labour into quality jobs, and encourage employers to strategically foster a healthy labour relationship.

3.3 INDIA

As per the latest Census, India has a population of 1210.193 million with approximately 50% of the population up to the age of 25 years and 50% above the age of 25 years. 15% of the population is in the age group of 26-35 years. Thus in all 65% of the population is up to the age of 35 years and remaining 35% above the age of 35 years. 72.2% of the total population lives in villages and remaining 27.8% lives in towns and urban agglomerations. New Delhi; Mumbai; Kolkata; Chennai and Bangalore are its major cities. As per the latest source (Census of India, 2011) the literacy rate of the country is 74.04%. India stands second in the world in terms of labour force with a total number of 478.3 million (2010). 52% of the labour force was engaged in agriculture, 14% in industry and 34% in services (2009). 56.5% of rural and 43.3% of urban was self employed (2004-05). The unemployment rate was 10.8% (2010). The proportion of population below poverty line was 25% (2007). (CIA, 2011)

Structural reforms in India intensified after a wave of liberalization in 1991 put the economy on a secularly increasing growth trajectory. Total labour force in the country is growing steadily but has not resulted in a concomitant rise in organized (formal) sector employment. The twin phenomena of high growth momentum coupled with lackluster employment generation in India are believed to be a by-product of archaic and rigid labor market policies. The vast majority of reform-oriented analysts claim that economic reforms have penetrated the trade and industrial sectors in India; however, the labor markets have not received due policy focus. (Ahluwalia, M.S. (n.d))

3.4 NIGERIA

Nigeria has a population of 155.215 million. 55.9% of the population is in the age group of 15-64 years, 40.9% in the age group up to 14 years and remaining 3.1% in the age group of 65 years and above with the median age

of 19.2 years. A substantial proportion of 50% of the population is urban. Lagos; Kano; Ibadan; Abuja and Kaduna are its major cities. In the country the life expectancy at birth is 47.56 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 72%. School life expectancy is 9 years. Nigeria stands eleventh in the world in terms of labour force with a total number of 50.48 million (2010). 70% of the labour force was engaged in agriculture, 10% in industry and 20% in services (1999). 70.9% of men & 74.8% of women in the total civilian employed labour force was self employed (2005). As per Annual Unemployment Report, 2011 National Unemployment rate in the Country (by ILO definition) is 11.3%. The proportion of population below poverty line was 70%. (CIA, 2011)

The Nigerian government has had a long battle with trade unions that have constantly accused it of ignoring several core labor standards that the government has an obligation by international law to comply. Trade unions in Nigeria are principally concerned with workplace gender discrimination, the prevalence of child labor, and the harassment of trade union members in the workplace (Okene, O.V.C., 2007). In Nigeria, several surveys have indicated a highly segregated labour market and a significant wage gap between men and women. The surveys show that fewer women are employed in the formal economy due to a gender-based division of labor. As a result, most women are self employed either in private business or petty trading (Adewumi, F., 2007). Child labour is a persistent issue in Nigeria and has remained consistently high. In 2003, up to 40% of the 15 million children in Nigeria were feared to be at risk of being trafficked for forced labor, forced prostitution and armed conflict. Another 6 million children were also estimated not to be in school and 2 million children worked more than 15 hours a day. (The Sloan Center on Aging & Work, Global Policy Brief No. 18, 2011)

3.5 BANGLADESH

Bangladesh has a population of 158.570 million. 61.1% of the population is in the age group of 15-64 years, 34.3% in the age group up to 14 years and remaining 4.7% in the age group of 65 years and above with the median age of 23.3 years. Approximately 28% of the population is urban. Dhaka; Chittagong; Khulna and Rajshahi are its major cities. In the country the life expectancy at birth is 69.75 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 55.9%. School life expectancy is 8 years. Bangladesh stands eighth in the world in terms of

labour force with a total number of 73.86 million. 45% of the labour force was engaged in agriculture, 30% in industry and 25% in services (2008). The unemployment rate in urban areas was 5.1% (2010). However, about 40% of the population is under employed; many participants in the labour force work only a few hours a week, at low wages. The proportion of population below poverty line was 40%. (CIA, 2011)

In Bangladesh, the approximate ratio of formal and informal sector in Bangladesh is 20:80 and the ratio between public and private sector is 30:70. However 51% of employment is covered by agriculture - forestry and fishery sector, the production and transport sector cover 6.4% of employment, 1% of employed people are in clerical occupation, 4.5% in sales and 1.2% in service sector. Women are increasingly entering into job market mainly in ready-made garments and allied sector, tea gardens, NGOs, health care services, food processing industry, export processing zones, services sectors and commercial enterprises and informal sector i.e. construction, agriculture etc.

In Bangladesh, each year approximately two million additional workers enter the labor force looking for jobs. Even if the population growth rate declines dramatically, large annual additions to the labor force will continue for some years given the dynamic effects of demographic transition. The current administration is faced with the challenge of creating roughly 2 million new jobs over year. As the share of the farm sector in the economy continues to decline, the industrial and service sectors have to create millions of new jobs to absorb the influx of farm labour. Globalization and changing economic condition is influencing traditional workplace values, nature of employment, working conditions, welfare facilities, industrial relations and contemporary social protection system. The introduction of free market economic policies, unbalanced economic and industrial reforms have posed serious challenges to job security and social protection of workers in different sectors.

3.6 JAPAN

Japan has a population of 126.475 million. 64% of the population is in the age group of 15-64 years, 13.1% in the age group up to 14 years and remaining 22.9% in the age group of 65 years and above with the median age of 44.8 years. A substantial proportion of 67% of the population is urban. Tokyo; Osaka-Kobe; Nagoya; Fukuoka-Kitakyushu; Sapporo are its major cities. In the country the life expectancy at birth is 82.25 years. As

per the latest source (UNDP Report, 2011), the literacy rate of the country is 99%. School life expectancy is 15 years. Japan stands ninth in the world in terms of labour force with a total number of 62.97 million (2010). 3.9% of the labour force was engaged in agriculture, 26.2% in industry and 69.8% in services (2010). 14.7% of the total labour force was self employed (2005). The unemployment rate was 5% (2010). The proportion of population below poverty line was 15.7%. (CIA, 2011)

The Japanese economy is currently experiencing a “distorted recovery” from the prolonged post-bubble economy recession of the 1990s (OECD, 2008: Economic surveys: Japan, Paris). The country’s once-heightened unemployment rates have been lowered, and GDP per capita has steadily increased since 2002.

Parallel to this recovery, Japan’s labor market has been increasingly characterized by a widening gap between good jobs and bad jobs. Similar to some other industrialized nations (most notably South Korea, Spain, and Italy), (OECD, 2008: Economic survey of Korea 2008) Japan’s labor market has observed a growing duality in wages, work hours, and job security between two segments of the workforce, in the OECD’s classification, regular and non-regular employees. In Japan, where lifetime employment still remains a prevalent employment institution, labor-market duality has been seen particularly between those inside the institution (regular employees) and those outside of it (non-regular employees) (OECD, 2008 : Employment outlook, 2007) Although part-time and fixed-term workers are always part of the workforce, their share within the country’s workforce has rapidly increased, from 20.2% in 1990 to 33.7% in 2007, concentrated particularly among young employees. (Ishiguro, K., 2008). As of 2006, Japan’s minimum wage recorded the 3rd lowest among OECD countries (following South Korea and Turkey) (OECD, 2008: Economic surveys: Japan, Paris) To the government’s concern, such widening labor market segmentation will weaken the mobility between the two segments of the workforce-non regular employees seem trapped in job insecurity, financial insecurity, and lack of opportunities to develop job skills because they do not benefit fully from firm-based training (OECD, 2008 : Employment outlook, 2007).

Japan has also experienced the world’s fastest aging population and anticipates a severe workforce shortage in the decade ahead. Boosted mainly by steadily increasing life expectancy, falling childbirth rates, and the aging of the Baby Boom generation, since 2007, Japan has been defined

by the United Nations as the world's first "super-aging society," in which those aged 65 and older account for more than 21% of the total population (OECD, 2004). If no major changes in immigration policy occur, the 65+ population is projected to account for about 40% of the total population by 2050. In FY2007, Japan's national debt recorded about 150% of the GDP, by far the highest in the history of the country. Providing pension and health-care benefits to the growing number of retirees will further strain the already strapped national economy. (OECD, 2008: Economic surveys: Japan, Paris)

3.7 PHILIPPINES

Philippines has a population of 101.833 million. 61.1% of the population is in the age group of 15-64 years, 34.6% in the age group up to 14 years and remaining 4.3% in the age group of 65 years and above with the median age of 22.9 years. A substantial proportion of 49% of the population is urban. Manila; Davao; Cebu City and Zamboanga are its major cities. In the country the life expectancy at birth is 71.66 years. As per the latest source (UNDP Report, 2011) the literacy rate of the country is 93.4%. School life expectancy is 12 years. Philippines stands fifteenth in the world in terms of available labour force with a total number of 55.5 million (2010). Out of the total available labor force of Philippines approximately 38 million were employed, (36.50 million were employed in Philippines and 1.50 million were deployed overseas) which constitutes 68.5% of the available labour force. (World Bank, 2011). As per the available sources, 33% of the labour force was engaged in agriculture, 15% in industry and 52% in services (2010). There has been a considerable employment growth in each of the Services and Industry sector of about 4% since 2009 while employment in the Agricultural sector has been fluctuating. A large portion of these employed workers are salary/wage workers, followed by self-employed people. The unemployment rate in the country was 7.3% (2010). The proportion of population below poverty line was 32.9%. (CIA, 2011)

Like various other developing countries in the world, currently Philippines are also facing stiff international competition. The effect of increased international competition can be seen in two main trends. In a few cases, there is development of functional flexibility, or high commitment human resource practices. But the majority of Philippine industry is focused on numerical flexibility, reducing headcount through

layoffs, retrenchments, subcontracting, labor only contracting, and casualization; this has severely affected the labor movement and the plight of many individual workers especially in terms of earnings and working conditions (Erickson, Kuruvilla, Ofreneo and Ortiz, 2001). As a result Filipinos are looking for additional hours of work (underemployed), or going abroad (overseas employment) or choose to be self-employed. This makes them, together with the unpaid family workers, part of the vulnerable employment. Some of the major challenges posed by the current labour market situation in the Philippines include: high rate of youth unemployment (7.3% in 2010), protecting the interest of overseas Filipino workers and balancing of the interest of core and periphery workforce.

3.8 UNITED KINGDOM

As per available source United Kingdom has a population of 62.698 million. 66.2% of the population is in the age group of 15-64 years, 17.3% in the age group up to 14 years and remaining 16.5% in the age group of 65 years and above with the median age of 40 years. A substantial proportion of 80% of the population is urban. London; Birmingham; Manchester; West Yorkshire and Glasgow are its major cities. In the country the life expectancy at birth is 80.05 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 99%. School life expectancy is 16 years. United Kingdom stands nineteenth in the world in terms of labour force with a total number of 31.52 million (2010). 1.4% of the labour force was engaged in agriculture, 18.2% in industry and 80.4% in services (2006). 12.90% of the total labour force was self employed. The unemployment rate in the country was 7.8% (2010). The proportion of population below poverty line was 14%. (CIA, 2011)

Relative to many other countries of the world, the UK has, until recently, been characterized as having low unemployment rates. Measures to encourage employment growth include low level of social contributions associated with labour costs (30% of labour costs compared with an OECD average of 40%) (OECD, 2007, *Employment outlook*. Paris: OECD), as well as a strict regime of active labour market policies aimed at increasing labour market participation of particular groups (notably young people who are not in education or training)⁹. (OECD, (2009a). *Society at a glance*. Paris: OECD)

⁹ The UK has the second highest rate amongst OECD countries of young men aged 15 to 19 not in employment, education, or training

The changing face of the UK economy in the current global recession may both exacerbate current problems in the labour market (such as labour market disadvantage of women and ethnic minorities in terms of employment opportunities and pay) (OECD, 2008, *Employment outlook*. Paris: OECD) and refocus government priorities. Government initiatives to increase the labour market participation of people currently on disability benefits, for example, may be hindered by the current labour market climate. In addition to the immediate threat of rising unemployment, policy makers are also faced with long-term implications of the demographic challenges. The UK has a substantial proportion of an ageing population. As per the office for National Statistics in the year 2008, the proportion of the population under 16 years of age was lower than that of the population over state pensionable age. By 2050, the ratio of the population age 65 and older to the population ages 20-64 is expected to reach 50%, up from 27% in 2003. (The Sloan Center on Aging & Work, *Global Policy Brief No. 7*, 2010)

3.9 SOUTH AFRICA

As per the latest source (Stats SA, 2011) the estimated population of South Africa is 50.59 million. Nearly 31.3% of the population is below the age of 15 years and approximately 7.7% above the age of 60 years and remaining 61% is in the age group of 15-60 years. As per CIA, 2011 the median age in South Africa is 25 years. A substantial proportion of 62% of the population is urban. Johannesburg; Cape Town; Ekurhuleni (East Rand); Durban and Pretoria are its major cities. In the country the life expectancy at birth is 49.33 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 88%. School life expectancy is 13 years. South Africa stands thirty fifth in the world in terms of labour force with a total number of 17.39 million (2010). 9% of the labour force was engaged in agriculture, 26% in industry and 65% in services (2007). The unemployment rate was 24.9% (2010). The proportion of population below poverty line was 50%.

South Africa is one of the young nations in the world. The country and its people were shaped by years of exclusionary policies and practices introduced by colonialism and formalized by the Apartheid regime in 1948. Racial segregation and discrimination by a white minority government characterized Apartheid. In 1994, the country had its first democratic election with full universal suffrage for all people aged 18 and above.

The years leading up to the election were tumultuous, but were mostly characterized by consultation, negotiation, and reconciliation between various stakeholders such as business, organized labor, the government, and political parties. These negotiations became known as the Convention for a Democratic South Africa (CODESA). Agreements struck during these negotiations laid the ground work for collaborative governance and pluralism, and revealed the transformation agenda of South Africa. Through these processes, the country was able to pass through transition peacefully into a democracy, exceeding the expectations of many.

Although freedom and democracy have been achieved, the country continues to face overwhelming challenges. These challenges - including high levels of unemployment, low skill and education levels, and lack of skilled laborers primarily amongst previously disadvantaged groups - are direct consequences of the discriminatory and oppressive policies of the Apartheid regime. (The Sloan Center on Aging & Work, Global Policy Brief No. 11, 2010)

3.10 SOUTH KOREA

South Korea has a population of 48.75 million. 72.9% of the population is in the age group of 15-64 years, 15.7% in the age group up to 14 years and remaining 11.4% in the age group of 65 years and above with the median age of 38.4 years. A substantial proportion of 83% of the population is urban. Seoul; Busan (Pusan); Incheon (Inch'on); Deagu (Taegu) and Daegon (Taejon) are its major cities. In the country the life expectancy at birth is 79.05 years (75.84 years for males and 82.49 years for females). As per the latest source (UNDP Report, 2011), the literacy rate of the country is 99%. School life expectancy is 17 years. South Korea stands twenty fifth in the world in terms of labour force with a total number of 24.75 million (2010). 7.3% of the labour force was engaged in agriculture, 24.3% in industry and 68.4% in services (2010). 32.8% of the total labour force was self employed (2006). The unemployment rate was 3.7% (2010). The proportion of population below poverty line was 15.6%. (CIA, 2011)

In South Korea, traditionally the major focus of employment and labor policy was expanding workers' basic labor rights while supplying businesses with high-quality workforce needed at industrial sites. Until the 1980s, workers' labor rights were suppressed to promote economic productivity. Although many employees suffered from poor working conditions, political activities by trade unions at the workplace were

forbidden by the government. During the 1980s, however, labor relations in South Korea underwent a major transition. As trade union movements became more active, a large number of labor disputes started arising after 1987. (Ministry of Labour, 2008)

According to the Korea National Statistical Office (2006). South Korea is aging more quickly than many other industrialized countries. The rate at which the aging population is increasing presents a severe strain on public finances. The anticipated shortage of labor owing to South Korea's aging population is another obstacle that is putting a pressure on influencing the creation of aging-related labor policies. However, the employment of the elderly has only recently been a concern of the South Korean government and substantial government effort has been made to improve the employability of older workers and to improve their working conditions. (The Sloan Center on Aging & Work, Global Policy Brief No. 6, 2009)

3.11 SRI LANKA

Sri Lanka has a population of 21.283 million. 67.2% of the population is in the age group of 15-64 years, 24.9% in the age group up to 14 years and remaining 7.9% in the age group of 65 years and above with the median age of 30.8 years. A substantial proportion of 14% of the population is urban. Colombo is its major city. In the country the life expectancy at birth is 75.73 years. As per the latest source (UNDP Report, 2011), the literacy rate of the country is 94.2%. School life expectancy is 13 years. Sri Lanka stands fifty seventh in the world in terms of labour force with a total number of 8.074 million (2010). 32.7% of the labour force was engaged in agriculture, 29.4% in industry and 57.8% in services (2008). The unemployment rate was 5.8% (2010). The proportion of population below poverty line was 23%. (CIA, 2011)

The recent labour market trends in Sri Lanka indicate that while the labour force and number of employed have grown, labour force participation and employment rates have fallen over the last decade. Low rates of female labour force participation in employment, high unemployment and a static wage disparity between the sexes, are evidence that females are at a distinct disadvantage in the labour force. In the recent past, the share of employment in agriculture has declined sharply and the share of workers in industry and services has been on the rise. The services sector accounts for the largest share of employment in the country.

The current labour force data of Sri Lanka suggests an intensification of job losses in key sectors such as manufacturing, construction, trade and financial services. Many companies have also been forced to reduce labour absorption by various means, which have had the effect of drastically reducing workers' take-home pay and triggering voluntary resignations. Growth in female employment has partially offset reductions in male employment in some sectors, possibly because females offer employers a less expensive substitute form of labour and also due to increased pressure for additional family members to find work. This is further evidence of the need to address the wage, employment and unemployment disparities so apparent between males and females in the labour market. Job losses in urban areas and the closing up of employment opportunities abroad are likely to impact on poverty levels. While existing jobs are under threat, the global economic downturn is further depressing the rate of new job creation, seriously affecting the job prospects of vulnerable groups, such as the young, the disabled, and those with lower human capital, as a result of repeated displacement caused by conflict.

3.11 SWEDEN

Sweden has a population of 9.088 million. 64.8% of the population is in the age group of 15-64 years, 15.4% in the age group up to 14 years and remaining 19.7% in the age group of 65 years and above with the median age of 42 years. A substantial proportion of 85% of the population is urban. Stockholm is its major city. In the country the life expectancy at birth is 81.07 years. As per the latest source (UNDP Report, 2011) the literacy rate of the country is 99%. School life expectancy is 16 years. Sweden stands seventy sixth in the world in terms of labour force with a total number of 4.961 million (2010). 1.1% of the labour force was engaged in agriculture, 28.2% in industry and 70.7% in services (2008). 10.6% (14.9% of men, 5.8% of women) of the total labour force was self employed (2007). The unemployment rate in urban areas was 8.4% (2010). (CIA, 2011)

The Swedish economy experienced dramatic economic growth in the years following the Second World War and leading up to the first oil crisis in 1973. Fueled by this unprecedented growth, the Social Democrats were able to put into effect one of the most extensive welfare states in the world (Swedish Institute, 2009). Coined "the Swedish model," many have praised what seemed the perfect compromise between a socialist system and a capitalist model, where the state caters to citizens from "cradle-to-grave," yet provides fertile ground for private investment and ownership

of capital and enterprises. Diminishing economic growth has placed great pressure on state-financed services in recent decades, but most of these elements (such as tax-financed schools, child care, health care, pensions, elder care and social services) remain intact. Like most other countries, Sweden was hit hard by the current economic crisis. Unemployment has increased dramatically during the recession. Sweden's unemployment rate is comparable to the EU average at 9% and the US rate at 9.4% (Eurostat, 2009). With respect to the labor market, Sweden, along with many of its European neighbors, faces a challenge in an aging population. About 18% of the population is over the age of 65. The most worrisome aspect is that compared to other OECD countries, Sweden has a low proportion of people who are of working age (aged 20-64). Fifty-nine percent of the population was of working age in 2001, a figure that is expected to dwindle to 54% in 2030. (Eurofound, European Working Conditions Observatory, 2007). This means that even if Sweden currently has a fairly high level of employment, this number can be expected to dwindle in the coming years.

3.12 CONCLUSION

The labour and employment scenario discussed above clearly reveals that though there are a lot of differences in the labour and employment context of all these countries, however, there are also certain common features which highlight the need for adopting appropriate policy and legal measures for regulating minimum wages. For example, in all the countries almost 2/3rd of the population (with an average of 65.23%) is in the working age group of 15-64 years, in almost all the countries employment from the formal and organized sector is shifting to informal and unorganized sector at a fast pace, many countries are facing the problem of aging population and substantial proportion of workforce in all the countries is either unemployed (in the range of almost 5%-25%) or under employed and in all the countries (except Sweden) a substantial proportion of the population (with an average of 28.9%) lives below the poverty line. In some of the countries the proportion of such population exceeds even more than 30% (32.9% in case of Philippines, 40% in case of Bangladesh, 50% in case of South Africa and as high as 70% in case of Nigeria). This apart as per various sources a substantial proportion of population in most of the countries constitutes of wage earners and a substantial majority of the workforce in the countries selected under the study falls under the unorganized sector as compared to the organized sector with no bargaining power or very less bargaining power to assert for their legitimate wages.

Chapter 4

Policy and Legislation on Minimum Wage: An Inter Country Comparison

4.1 INTRODUCTION

Wages represent earnings and earnings determine the standard of living as also the quality of life hence, they have considerable significance for every worker. In this context, a sound wage policy and legislative framework assumes vital importance. Accordingly, almost all the countries of the world have adopted policy and put in place legislative measures in order to guarantee and protect minimum wages to various sections of workers, especially those working in the marginalized sectors of the economy. An understanding these policies and measures is quite relevant for having a comparative picture and to draw appropriate lessons for making suitable policy recommendations in this regard. It is with this objective, these policies and measures have been discussed in this chapter in an inter country perspective.

4.2 CHINA

4.2.1 Policy

In China, the minimum wage policy was implemented in response to the abuse of labor, in particular at the early stage of economic reform in 1993 which led to the 1994 Labor Law¹⁰. The huge labor surplus, due to the country's population and its relatively low level of industrialization, had given private companies considerable leverage in the labor relationship. Employees in private companies were often underpaid or forced to work overtime without pay. The 1994 Labor Law clarified for the first time the role of the state, local governments, and the employers in determining and enforcing the minimum wage. "The distribution of wages shall follow

¹⁰ Regulations concerning minimum wages in enterprises (1994, January 12). China Labour Newspaper, p.2. Retrieved January 10, 2010, from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/44000/65000/E94CHN02.htm> in Xu Qingwen, and Wing Kwan Anselm Lam, China Public Policy, Global Policy Brief No.8, 2010, The Sloan Center on Aging & Work at Boston College, p-4

the principle of distribution according to work and equal pay for equal work. The level of minimum wage shall be raised gradually on the basis of economic development. The State shall exercise macro regulation and control over total payrolls" (Section 46). "The State shall implement a system of guaranteed minimum wages" (Section 48). The employer, both state-owned and private, needs to determine its wage level according to minimal wage as well as "the nature of its production and businesses and economic efficiency" (Section 47). (Xu Qingwen and Wing Kwan Anselm Lam, 2010)

According to Section 48 of the 1994 Labor Law, specific standards on minimum wage are determined by the Departments of Human Resources, Labor and Social Security in the local governments of provinces, autonomous regions, or municipalities, due to varying rates of economic development across cities and regions. The state determines that minimum wage should be based on the lowest cost of living expense for laborers and their dependents. Consideration is given to the national average wage level, local economic productivity, employment (or unemployment), and regional wage differences. Consequently in 1995, 130 cities formulated policies in accordance with the 1994 Labor Law to regulate the minimum wage of workers in private enterprises, which included the role played by trade unions. (Du. Y & Pan, W, 2009)

In 2004, the Ministry of Labour and Social Security (MLSS) issued the "Minimum Wage Regulations," which symbolized the overall implementation of the minimum wage system in the Chinese labor market¹¹. The policy also extended the minimum wage protection to part-time workers and provided a more stringent penalty for violation. In 2007 the minimum wage system, was further improved¹². The new policy was in response to certain problems that arose in implementing minimum wage policies. For example, certain cities and provinces set the minimum wage arbitrarily without scientific data or evidence and some employers treated the minimum wage as regular wage. In addition, the MLSS instructed that local governments adjust the minimum wage every two years, and the minimum wage be increased by a rate that would not be lower than the rising percentage of the consumer price index. While the 2007 policy encourages employees to report minimum wage violations, it lacks any enforcement mechanisms. The 2008 Labor Contract Law does

11 Ministry of Labor and Social Security. (2004). Provision on minimum wages.

12 Ministry of Labor and Social Security. (2007). Concerning further improvement of the minimum wage system.

not change much about the minimum wage regulation, rather reinforces that employees' wages should not be lower than the minimum wage, even for employees in the probation period. (Xu Qingwen, and Wing Kwan Anselm Lam, 2010)

Since the implementation of minimum wage policy in 1996, the minimum wage has been increasing nationwide. However, studies indicate that the minimum wage has not matched the increasing rate of salary. From 1996 to 2006, while the national average worker's salary had increased from 206 to 1789 yuan per month, an increase of 13.5% per year, the national minimum wage had increased from 209 to 538 yuan per month, an increase of 9.9% per year. The minimum wage to average wage ratio had been declining. To put it in perspective, while the ratio of minimum-to-median wage was about 45% on average in OECD countries in 2004, in China, the ratio of minimum-to-average wage was 41% in 1996 and 30% in 2006. (Han.Z., & Wei. Z., 2006). In practice, huge regional minimum wage variations exist; cities and provinces implement their policies on minimum wage standards depending on the area's specific situation (Xu Qingwen, and Wing Kwan Anselm Lam, 2010).

4.2.2 Regulatory Framework

In China, the minimum wages are mainly regulated by the provisions of Labour Law 1994 (effective from 1st Jan. 1995), Regulations on Minimum Wages 2004 (effective from 1st March 2004), Labour Contract Law of the People's Republic of China, 2007 (effective from 1st Jan. 2008), China's New Wage and Hour Laws 2004 and Law on Labour Dispute Mediation and Arbitration 2007 (effective from 1st May, 2008).

The Labour Law applies to all enterprises and individual economic organizations, which are collectively referred to as 'employing units'. These expressly include State organs, institutional organizations and societies.

The provisions concerning minimum wages apply to enterprises, private non-enterprise entities and individual industrial and commercial households with employees (the employing entities) and the labourers who have formed a labour relationship with them. (Section 2 of Regulations on Minimum Wages)

4.2.3 Compliance Mechanism

As regards the mechanism for ensuring compliance with minimum wage provisions, enforcement powers are vested in the labour department

of local governments. If the employing unit delays or fails to pay a full amount of salary, a labourer can appeal to the local people's court for a payment according to law, and the people's court has to issue an order for such payment. (*Labour Contract Law 2008* §§30, 74, 77; *Regulations on Minimum Wages* §14; *Law on Labour Dispute Mediation and Arbitration 2007*, *China's New Wage and Hour Laws May 2004*)

The administrative departments of labour at or above the provincial level are responsible for the inspection and supervision of the application of minimum wage. Specifically, the competent departments of the local governments are empowered, according to law, to make supervisions and inspections on a number of situations in fulfilling a labour contract, including the situation in which an employing unit pays labour remunerations agreed in the labour contract, as well as implements the minimum wage standards. While conducting supervision and inspection, the competent labour departments are entitled to check related materials concerning labour and collective contracts and to conduct on-site inspections at workplaces. Employing units and labourers have to provide material and information, based on the facts, to the competent labour department.

In addition, trade unions may supervise the implementation, and report violations, of the minimum wage legislation. (*Labour Law Chapter XI, Labour Contract Law, Chapter VI and Regulations on Minimum Wages, Article 4*)

As regards the penalty for non respect of provisions dealing with minimum wage legislation, Article 85 of Labour Contract Law, provides that where either (a) an employing unit fails to comply with the provisions of a labour contract or provisions by the State and fails to timely pay a full amount of labour remuneration to a labourer; or (b) the labourer's wage paid is lower than the local minimum wage standard, the competent labour department should order the employing unit to pay the outstanding amount. If these payments are delayed, a compensation equivalent to 50%-100% of these payments must be paid in addition to the due payments. *Article 32(3) provides that failure to pay remuneration as agreed in the labour contract gives the labourer the right to rescind the labour contract summarily, i.e. without giving the 30 days' notice otherwise required under the Labour Law.* Similarly, Article 13 of the Regulations on Minimum Wages provides that where a violation is established, the employer may be ordered to pay the difference owed within a specified period, plus damages of up to 5 times the outstanding amount.

4.3 INDIA

4.3.1 Policy

The Constitution of India envisages a just and humane society and accordingly gives place to the concept of living wage in the chapter on Directive Principles of State Policy (chapter IV of the constitution). This directive is contained in Article 43 of the Indian Constitution which states that, "*the State shall endeavour to secure by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities*".¹³ In order to assure fair remuneration to various classes of labor, the Indian government has made a series of measures under minimum wage legislation and Social Security legislations. The minimum wage in India was set in the Post-World War II era when the Indian Labor Conference evaluated a draft bill in 1945¹⁴. Laws explicitly dealing with major aspects of social security such as provident fund, gratuity, pension, and maternity benefits (which seek to complement and supplement income in various eventualities) are in force today to safeguard the long term security of workers and their families.

Since in India there is no one concept of minimum wage, and various terms have arisen during the course of the discussion of wage levels in the country. An understanding of these would not be out of context for appreciation of the debate. As put forward by the Committee on Fair Wages¹⁵ (in 1958) they are:

i. **Bare/basic Minimum wage:**

This concept is used in awards or judicial pronouncements. In the *Express Newspapers Case*¹⁶ the Supreme Court held that it is wage which would be sufficient to cover the bare minimum need of the

13 However, the provisions contained in the directive principles are only in the form of guidelines and not justiciable

14 Ministry of Labor and Employment. Government of India. (n.d.). Wages

15 The Central Government, immediately after passing the act in 1948 in its Industrial policy resolution declared its intention to, amongst other things, promote fair wage agreements in organized industries. To facilitate this the government of India appointed the 'Committee on fair Wages' to determine the principles on which fair wages should be fixed and to suggest the lines on which these principles should be applied.

16 Reported in AIR 1958 S. C. 578

worker and his family. There is a legal duty to pay at least a subsistence wage. The Supreme Court in 1958¹⁷ held that the former wage is a rate, which has got to be paid to the worker irrespective of the capacity of the industry to pay. It was observed that if the employer cannot pay this bare subsistence wage he / she would have no right to conduct his / her enterprise on such terms.

ii. Statutory Minimum wage:

This refers to the minimum wages fixed by the government exercising the minimum wage fixation powers given to it by the Minimum wages Act, 1948. Once such a wage is fixed for a given employment the employers are bound under law to pay such a wage. There is some confusion on the contents of this wage and some believe that it is a wage which may be higher than the bare minimum or subsistence wage providing for some measure of education, medical requirement and amenities. According to the Supreme court in *Unnichoyi v. State of Kerala*¹⁸ the statutory wage is such a wage that must not only provide the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities for himself and his family.

iii. Need Based Minimum wage:

The 15th Indian Labour Conference¹⁹ adopted this concept in 1957. A resolution was adopted, the gist of which was that a minimum wage should be "need based" ensuring the minimum human needs of the industrial worker. Certain norms were laid down by the conference to determine what this minimum wage should be, which, they said should guide all wage fixing authorities in fixing the Minimum wage. Perhaps for the first time, in India, the needs, which the minimum wage should satisfy, were laid down in precise quantitative terms. These norms have been accepted and also further expanded by the Indian Supreme Court. The resolution adopted in 1958, by the

17 In *Crown Aluminium Works v. Workmen* (1958) SCR 615.

18 Reported in 1961 SC 1 LLJ.

19 The Indian Labour Conference is a tripartite forum, consisting of representatives of employers, employees and the Government, organised by the Government of India - Ministry of Labour. The recommendations of the 15th ILC therefore have considerable standing because, all those vitally interested in the question of wage fixation had come together to lay down agreed norms for quantifying minimum wage.

Conference while accepting these norms, stated that where difficulties were experienced in fixing the minimum wage it was the concerned wage fixing authorities' responsibility on showing the circumstances, which prevented them from adhering to these norms. The capacity to pay of the employer was taken into account.

v. Living wage:

This according to the Committee on Fair Wages²⁰ represented the highest level of the wage and it would include all the amenities which a citizen living in a modern civilized society was entitled to expect when the economy of the country was sufficiently advanced.

vi. Fair wage:

The committee termed this as anything above the minimum wage (see (ii) above) and below the living wage. In a situation where an employment already has a notified minimum wage fixed and the workers feel that the employer has the resources to pay a better wage and succeed in their claim through adjudication / collective bargaining, the higher wage procured is termed a "fair wage"

In the day to day practice of lawyers only the concepts of "Statutory Minimum wage", "Basic Minimum wage", and "Fair Wage" are in use.

vii. National Floor Level Minimum Wage (NFLMW):

In India, there is wide spread inter-state disparity due to variations in socio-economic and agro-climatic conditions, income, prices of essentials commodities, paying capacity, productivity and local conditions. With a view to have a uniform wage structure and to reduce the disparity in minimum wages across the country, the concept of National Floor Level Minimum Wage on a non-statutory basis was envisaged on the basis of the recommendations of the National Commission on Rural Labour (NCRL) in 1991. Keeping in view the recommendations of NCRL and subsequent rise in price indices, the National Floor Level Minimum Wage for unskilled labour was fixed at ₹ 35 per day in 1996. Since then it has been revised many times and presently, it stands at ₹ 115 per day effective from 01.04.2011 (GOI, 2012).

²⁰ The committee was appointed by the Government in 1948. A tripartite body, composed of representatives of employers, employees and the Government.

As regards the definition of minimum wage under the minimum wage legislation, the same has not been defined under the Minimum Wages Act. However, Section 4(1) of the Act details out the component of minimum wage to include: (a) a basic rate of wages and a cost of living allowance; or (b) a basic rate of wages, with or without the cost of living allowance, and the cash value of concessions in respect of the supply of essential commodities at concession rates, if authorized; or (c) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

4.3.2 Regulatory Framework

In India, the minimum wages are mainly regulated as per the provisions of the Minimum Wages Act, 1948 and Minimum Wages (Central) Rules, 1950. The Minimum Wages Act applies throughout India. The Schedule to the Act sets forth the list of employments/ occupations for which the appropriate Government may set minimum wage rates. Every person falling under the category of employee (as defined under Section 2(i) of the Act) engaged in scheduled employment is covered within the purview of the Act. The term employee has been defined quite broadly so as to cover every person employed for hire or reward to do any work skilled or unskilled, manual or clerical, in any scheduled employment, in respect of which minimum rates of wages have been fixed. The definition includes an out-worker who receives work to be carried out either in their own home or on any premises other than those under the control of the employer. It includes persons employed by the government, but does not include any member of the Armed Forces of the Union.

It is important to mention in this context that the appropriate Government is bound only to set minimum wage rates for scheduled employments in which there are more than 1000 employees engaged in the whole of the Province. (*Minimum Wages Act 1948 Section 1(2), Section 3(1), Schedule Part I and II*). However, the Act does not apply in case of wages payable by an employer to a member of his or her family who is living with and dependent on him or her. A member of the employer's family includes their spouse, child, parent, brother or sister. (*Minimum Wages Act 1948 Section 26(3)*). The Act also enables appropriate government to exclude disabled employees from certain provisions of the Minimum Wages Act, 1948 subject to such conditions as the appropriate government thinks fit. (*Minimum Wages Act 1948 Section 26(1)*). Similarly, sub-section (2) of Section

26 also empowers the appropriate government for special reasons thought fit by it (by notification in the Official Gazette) subject to such conditions and for such period as it may specify to grant exemptions from the provisions of the Minimum Wages Act or part of the provisions of the Act in case of all or any class of employee engaged in any scheduled employment or to any locality where there is carried on scheduled employment. There is ample scope under the Act for fixing specific minimum wage rate by occupation, by sector and by region. Similarly, there is also an enabling provision for fixing specific and differential minimum wage rates in case of trainees/ apprentices, adolescents, children and piece rate workers.

4.3.3 Compliance Mechanism

As regards the enforcement mechanism for ensuring compliance with minimum wages, the appropriate government has been empowered under the Act to appoint inspectors for enforcing the provisions of the Minimum Wages Act. The Labour inspectors may enter any premises or place where employees or out-workers are employed or work for the purpose of examining any register, record of wages or notices required by the Act, examine any person found in such premises or place and who he has reason to believe is an employee or out-worker, require persons to provide information, copy records and exercise any other prescribed powers. Claims relating to unpaid wages may be brought by workers, his or her legal heir or union representative or inspectors. The detailed rules pertaining to such claims are set out in the Minimum Wages (Central) Rules 1950.

As regards the penalty for non-respect of minimum wage legislation, an employer who pays an employee less than the minimum wage is liable either for a fine not exceeding ₹ 500 or prison term not exceeding 6 months or both. An employer who fails to maintain a register or record required by Section 18 of the Minimum Wages Act 1948 is liable for a fine of up to ₹ 500 . (Minimum Wages Act 1948 Section 22(1), (2)). In addition, the legislation also provides that if it is established that an employee has been paid less than the minimum wage, that person should be paid the difference between the minimum wage and the amount actually paid and compensation at a level not exceeding ten times the excess amount. (Minimum Wages Act 1948 Section 20(3)(i))

4.4 NIGERIA

4.4.1 Policy

In Nigeria, initial wages are normally set by employers but many adjustments are done through collective agreements between employers and the unions. Agreed upon compensation requires the approval of the Federal Minister of Employment, Labor and Productivity, where the increases are moderate, non-inflationary and affordable. The agreed and approved compensation becomes applicable from the first day of the calendar month that follows such agreements, and agreements cannot be backdated. However, these agreements are occasionally either not implemented by the government, or when they are, only in a distorted way (Ngozi Onyejeli, 2011). A typical example was the review of the minimum wage in 2000 that guaranteed a 25% increase, effective from May 1, 2001, and a further 15% the year after. However, that agreement was never implemented, causing several industrial disputes. In the end, a 12.5% increase was implemented by the government. The president of the Nigeria Labour Congress (NLC) mobilized a labor committee to insist on a further 25% increase. The government only managed to implement a further 15% in 2007, refusing to abide by the time frames set out for subsequent negotiations with workers²¹. Nigerian workers have struggled for improved wages and national minimum wage legislation. Given its resources and level of development, Nigeria ought to be paying one of the highest minimum wages in Sub-Saharan Africa, however, in reality, it pays one of the lowest.

4.4.2 Regulatory Framework

In Nigeria, the minimum wages are regulated by the National Minimum Wages Act, 1981 (as amended last in the year 2011). Under the Act, the term employee/worker has been defined quite broadly so as to include every member of the civil service of the Federation or of a State or Local Government or every individual who enters into an employment contract with an employer whether for manual labour, clerical work or otherwise expressed or implied, oral or in writing (Section 9). However, the national minimum wage rates do not apply to part time workers (working

21 Nigeria Labor Congress. (2009). Policy document in Ngozi Onyejeli, *Nigeria Public Policy*, Global Policy Brief No. 18, January 2011, The Sloan Center on Aging & Work at Boston College, p-3

fewer than 40 hours per week); workers paid on commission or piece rate basis; workers in seasonal employment such as agriculture and; workers in merchant shipping or civil aviation. Further, national minimum wage rates do not apply to establishments employing lesser than 50 workers (Section 2).

The Act does not provide for specific minimum wage rate by occupation, by sector or by region. As regards the specific categories of workers, disabled workers i.e. persons who have an infirmity or physical disability that renders them incapable of earning the minimum wage is the only category who may be paid at lower than the national minimum wage rate, provided their employer has been granted an exemption by the Ministry of Labour with respect to that worker (Section 4(1)). The National Minimum Wages Act, 1981 does not define the term minimum wage.

4.4.3 Compliance Mechanism

Under the Act, the duties and the requisite powers for ensuring the compliance with the Minimum Wage Act have been assigned and vested with the authorized labour officers (to be authorized by the minister in the civil service of the Federation to act for the purpose of this Act) who may carry out inspections of employment premises from time to time for this purpose.

The penalty for non respect of minimum wage legislation in Nigeria is only in the form of fine extendable only up to 20,000 Nairas and 100 Nairas for each day in case of continuing offence²².

The minimum wage legislation further provides that It shall be the duty of the employer of workers in respect of whom this Act applies to keep such records of wages or conditions of employment as are necessary to show that the provisions of this Act are being complied with in respect of workers in his employment, and to retain the records for a period of three years after the period to which they refer, and if he fails to do so, he shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N 20,000 and to a penalty not exceeding N 1000 for each day during which the offence continues. (*National Minimum Wage Act Section 3, 5 National Minimum Wage Act amendment 2011. Section3, 4*) On the conviction of an employer under section 3 of the Act for failing to pay to a worker

²² Till very recently this penalty was only upto 100 Nairas for non - payment of minimum wage and 10 Nairas for each day in case of continuing offence

wages not less than the national minimum wage, the court may make an order that the employer convicted shall pay, in addition to the fine, such sum as appears to the court to be due to the worker on account of wages, the wages being calculated on the basis of the national minimum wage.

4.5 BANGLADESH

4.5.1 Policy

In Bangladesh, laws and policies relating to wage determination, including minimum wage determination, and the mode of payment of wages date back to 1936²³. The broad policy on minimum wage emanates from the Constitution of the People's Republic of Bangladesh (Articles 15 and 20) which assures the right to work or guaranteed employment with reasonable wages, working conditions and security against enforced unemployment, illness or disablement. This directive of a balanced income and wage policy has been translated in the shape of (a) making periodic wage awards for workers in public enterprises, in case of Government employees, newspaper workers, and inland transport workers; (b) determining minimum wage for skilled and unskilled workers in certain specified types of industries; and (c) passing a law for agricultural workers (although without specifying any implementing machinery). Article 15 of the Constitution of Bangladesh recognizes: it is a fundamental responsibility of the State to attain, through planned economic growth a constant increase of productive forces and steady improvement in the material and cultural standards of living of the people with a view to securing for its citizens: Provision of the basic necessities of life, including food, clothing, shelter, education and medical care; the right to work at reasonable wages, having regard to the quantity and quality of work; the right to reasonable rest, recreation, and leisure; the right to public assistance in case of undeserved want arising from unemployment, illness or disablement or as suffered by widows or orphanage in old age or in other such cases.

Article 20 of the Constitution recognizes: (i) work as a right, a duty and a matter of honour for every citizen who is capable of working, and everyone is to be paid for this work on the basis of the principle of from each according to his ability, to each according to his work, and (ii) the State will endeavour to create conditions in which as a general principle persons

²³ The Payment of Wages Act, 1936 regulated the payment of wages of certain classes of employed persons and various kinds of deductions from wages.

will not be able to enjoy unearned income and in which human labour, in every form, intellectual and physical, will become a fuller expression of creative endeavour and of human personality (ILO, 1990).

As regards the concept and definition of minimum wage, the Labour Act, 2006 defines wage instead of minimum wage. The same has been defined to mean all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his/her employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include – (a) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government; (b) any contribution paid by the employer to any pension fund or provident fund; (c) any travelling allowance or the value of any travelling concession; (d) any sum paid to the worker to defray special expenses entitled on him by the nature of his employment.

For the purposes of Chapter X (Wages and Payment), wages also includes: (a) any bonus or other additional remuneration payable under the terms of employment; (b) any remuneration payable in respect of overtime work, holiday or leave; (c) any remuneration payable under any award or settlement between the parties or under order of any Court; (d) any sum payable under this Act or any agreement by reason of termination of employment whether by way of retrenchment, discharge, removal, resignation, retirement, dismissal or otherwise; and (e) any sum payable due to lay-off or suspension²⁴.

4.5.2 Regulatory Framework

In Bangladesh, the minimum wages are regulated by the Labour Act of 2006. As per the Act, the minimum wage rates are declared by the government on an industry basis following recommendations by the Wages Board, a specialist tripartite board established under Chapter 9 of the Act. The Wage Board may recommend minimum rates of wages for all classes of workers in any grade in that industry and may specify the minimum rates of wage for time-work and piece-work and the minimum time-rates specifically for the workers employed on piece work. It has

²⁴ Labour Act 2006 - Unofficial English Translation by BEF §§2(45), 120 and by Dhar §§2(45), 120

to indicate whether the minimum rates of wages should be adopted uniformly throughout the country or with some local variations. The categories of workers excluded from general coverage of the Labour Act are excluded from the protection of the minimum wage. The specific category of workers excluded from the coverage of the Labour Act is that of the newspaper workers and a separate provision is made for minimum wage rates process specific to newspaper workers.

4.5.3 Compliance Mechanism

A worker to whom money is due under Section 149 of the Labour Act 2006 (prohibition on paying less than the minimum wage) may apply to the Labour Court for recovery of the same within one year from the date on which the money became due to the worker. (*Section 329, Labour Act 2006*)

For the purpose of ensuring compliance of the provisions of the Bangladesh Labour Act, the Chief Inspector appointed by the Government under Section 318 of the Act has been vested with the powers of an inspector throughout the country. The powers and responsibilities of the Chief Inspector and his delegates include:

- (a) making such examinations and enquiries as may be necessary to ascertain whether the provisions of the Labour Code and other rules, regulations, orders and schemes are complied with;
- (b) requiring the production of registers, records, notices and other documents kept in pursuance of the Act;
- (c) examining any person in any establishment, or whom he has reason to believe to be or have been within the last 2 months employed in any establishment;
- (d) requiring explanations from the employer or other person examined; and
- (e) exercising such other powers and functions as are conferred by the Act or as may be prescribed. (*Section 318,319, Labour Act 2006*)

The Labour Act of Bangladesh provides for an order to be passed against the delinquent employer to pay the affected workers the difference between the remuneration due and paid (Sec.289). In addition, failure

on the part of the employer to pay the minimum rates of wages is also punishable by penalty in the form of fine extendable up to 5000 Takas or imprisonment up to one year or both (Sec. 289(1)).

4.6 JAPAN

4.6.1 Policy

In Japan till recently, public policy mainly focused on securing the minimum safety net for workers' economic needs as the labor supplier. Promoting fair and equitable distribution of wages and other compensation and benefits remained largely a secondary objective²⁵ (Koike, K. 1988). Over the last few years, however, an increasing wage gap between regular and non-regular employees has come to be a growing national concern and has thus become an urgent policy agenda (Masa Higo and Atsuhiko Yamada, 2009)

The government of Japan enacted the Minimum Wage Law (Law No. 137 of April 15, 1959) with the stated purpose of contributing to the nation's economic development by securing basic economic needs of workers so as to stimulate competitive and yet fair balance between the demand (employer) and supply (employee) sectors of the labor market (Koike, K. 1988). To date, this law regulates minimum standards only for wages, not including other forms of compensation (i.e., fringe benefits, overtime pay). Under the Law Concerning Ensuring Wage Payment (Law No. 34 of May 27, 1976), the government and employers are responsible for ensuring wage payment to employees in case of such circumstances as an employer's bankruptcy, a poor national economic trend, and major structural changes in an industry²⁶.

As regards the concept and definition of minimum wage, the Labour Act, 2006 defines wage instead of minimum wage. The same has been defined to mean the wage, salary, allowance, bonus, and every other payment to the worker from the employer as remuneration for labour, regardless of the name by which such payment may be called. (*Labour Standards Law Section 11*)

²⁵ Koike, K. (1988). Understanding industrial relations in modern Japan in Masa Higo and Atsuhiko Yamada, Japan Public Policy, Global Policy Brief No.2, July 2009, the Sloan Center on Aging & Work at Boston College, p-3

²⁶ Sugeno, K. (1992) in Masa Higo and Atsuhiko Yamada, Japan Public Policy, Global Policy Brief No.2, July 2009, the Sloan Center on Aging & Work at Boston College, p-3 .

4.6.2 Regulatory Framework

In Japan, the minimum wages are regulated by the Labour Standards Law, (No. 49 of April 7) 1947 and the Minimum Wages Law, (Law No. 137 of April 15) 1959. All the employees and workers have the protection under the minimum wage legislation. The term employee/worker as defined under Section 9 of the Labour Standard Law for this purpose means a person employed at an enterprise or place of business and receives wages there from without regard to the kind of occupation excluding persons employed in businesses or offices employing only family members residing together and domestic employees. However, there is an enabling provision under the legislation to pay wages at reduced rates by the employers subject to obtaining approval from the Director of the Prefectural Labour Bureau to the following categories of persons: (i) workers having an extremely small capacity for work due to a mental or physical disability; (ii) the workers in a probationary period; (iii) the workers provided by Ministry of Health, Labour & Welfare Ordinance who receive vocational training having them of acquiring the basic skills and knowledge of them necessary for their jobs, subject to authorization referred to in Section 124(1) of the Human Resources Development Promotion Act, 1969 and (iv) workers engaged in light work, and other workers as provided for by Ordinance of Ministry of Health, Labour & Welfare are excluded from the legislative coverage (*Section 7, Minimum Wages Law, 1959*).

4.6.3 Compliance Mechanism

The prefectural labour bureau is responsible for enforcing the minimum wage system. The prefectural labour inspectors of the prefectural labour bureau may enter workplaces, demand presentation of accounting books and documents, inspect work articles and question workplace compliance. The prefectural labour bureau carries out a range of publicity activities, centring on an annual ten-day campaign to distribute leaflets on minimum wages (1 - 10 October) to employees and employers and hold briefings to make the minimum wage rates known to the public. In addition to informing workers of the revisions, supervision and guidance are provided in an effort to ensure payment of minimum wages to eligible workers. (Jackie Wu & Diana Wong, 2008, pp-30-31)

Any individual convicted of violating the minimum wage legislation is punishable as follows: (a) for dismissing or giving disadvantageous treatment to a worker by reason of the worker reporting an alleged

violation of the Act to any of the relevant bodies - by a fine not exceeding 300,000 yen (or up to 6 months imprisonment); (b) for failing to pay wages equal to or greater than the minimum wage amount to workers covered by the minimum wage - by a fine not exceeding 500,000 yen; (c) for failing to inform workers of applicable minimum wages, by posting information continuously at conspicuous places in workplaces and by other means - by a fine not exceeding 300,000 yen; (d) for failing to report, or falsely reporting, to the Minister or Directors as required under Section 29 of the Act - by a fine not exceeding 300,000 yen; (e) for refusing, impeding or evading an inspection, or failing to make a statement or making a false statement to questions asked by Labour Standards Inspectors - by a fine not exceeding 300,000 yen; or (f) for failing to pay wages in accordance with the requirements of the Labor Standards Act pertaining to method and timing of payment, payment of piece-rate workers, emergency payments and absences allowances - by a fine not exceeding 300,000 yen. (Minimum Wages Act, 1959 Section 4(1), 8, 29, 32(1), 34(2), 39, 40, 41; Labour Standard Act, 1947 Section 24, 25, 26, 27, 120(i))

4.7 PHILIPPINES

4.7.1 Policy

In Philippines, the broad policy framework for minimum wage is provided by the Labour Code (Presidential Decree 442) of 1974 which promulgated certain regulations on wages for specifically protecting workers from possible exploitation by employers. The measures evolved standards on the form, time, place and direct payment of wages; non-interference in the disposal of wages; wage deductions; withholding of wages; and the civil liability of the employers and contractors. The code inter-alia stipulates the following:

- Payment by means of chits, tokens, coupons, vouchers, promissory notes, or any object other than a legal tender is prohibited, even when expressly requested by the employee (Article 102)
- Payment must be made at least once every two weeks, or twice a month at intervals not exceeding 16 days (Article 103) and at or near the place of undertaking (Article 104)
- Wages must be paid directly to the worker to whom they are due. Appropriate regulations have been formulated by the Secretary of Labour in case of force majeure or death of worker (Article 105)

- Employees of the sub-contractor are to be paid in accordance with the law. The employer is held jointly and severally liable with the contractor or sub-contractor in the same manner as he is liable to the employee directly hired by him.
- To ensure greater protection of wage, an employer or indirect employer may require a sub-contractor to furnish a bond equal to the cost of labour under contract, on condition that the bond will answer for wages due to the employees should the contractor fail to pay wages (Article 106)
- Workers should enjoy first preference as regard wages due to them for services rendered during the period prior to bankruptcy or liquidation. Unpaid wages should be paid in full before other creditors establish claim to be shared in the assets of the employers (Article 110)
- Employers are prohibited from forcing, compelling or obliging employees to purchase merchandise, commodities or other property from the employer or any other person, or otherwise making use of the store or services of the employer or any other person (Article 112)
- It is unlawful to withhold an amount from the cash wages of a worker by any means without his consent; to make any deduction for the employer's benefit as consideration of a promise of a employment; or to retaliate against a worker who has filed a complaint or instituted proceedings. (Article 116-118)
- It is unlawful to make a false statement, report, or record (Article 119).

The Labour Code provides for regulations relating to the fees required by private employment agencies, recruiters, and private contractors from the persons they are to place in employment (Article 34) and to the amount which an attorney can receive for cases of withheld wages or judicial or administrative proceedings for recovery of wages. (Article 111)

The Department of Labour and Employment (DOLE) ensures implementation of the above measures through an inspectorate programme and an information and labour education programme.

4.7.2 Regulatory Framework

In Philippines, the minimum wages are regulated as per the provisions of the 'Labour Code of the Philippines, 1974 (as amended last in Feb, 2007) and 'Wage Rationalization Act, 1989 (as amended last in June, 1996), Rules Implementing Wage Rationalization Act; Amended Rules of Procedure on Minimum Wage Fixing, National Wages and Productivity Commission Guidelines No.1, 2007 and Act Increasing the Penalty and Imposing Double Indemnity for Violation of the Prescribed Increases or Adjustments in the Wage Rates (Republic Act No. 8188 of 1996). The procedure for minimum wage determination has been laid down under Articles 99, 121, 122 and 125 of the Labour Code and the Rule III, Section 3 of the Amended Rules of Procedure on Minimum Wage Fixing.

The minimum wage rates set under the Labour Code apply to all workers²⁷ and employees in the private sector regardless of their position, designation or status, and irrespective of the method by which their wages are paid, except: Household or domestic helpers, including family drivers and workers in the personal service of another²⁸; Workers and employees in retail/service establishments regularly employing not more than 10 workers, when exempted from compliance with the Act for a period fixed by the Commission/Boards²⁹; Workers and employees in exempted Barangay Micro Business Enterprises and Government sector employees.

The disabled workers are entitled to receive at least 75% of the legal minimum wage (*Section 3 of the Omnibus Rules Implementing the Labor Code Rule VII*). As regards piece rate workers, the legislation (Article 124 of the Labour Code) provides that all workers paid by result, including those who are paid on piecework or task basis, shall receive not less than the prescribed wage rates per eight hours of work a day, or a proportion thereof for working less than eight hours. The employees/workers employed in accordance with a learnership or apprentice agreement are automatically covered by the relevant minimum wage determination for their region

27 As per the Labour Code every individual employed by an employer falls under the definition of employee / worker

28 However, such workers are covered by alternative minimum wage protections set out in Chapter III of Title III of Book Three of the Labor Code as amended by amendment in 2004

29 Provision in this regard is contained Under Rule 2 of the Amended Rules on Exemption from compliance with the Prescribed Wage Increases/Cost of Living Allowances Granted by the Regional Tripartite Wages and Productivity Boards which enables such establishments to apply to the appropriate Regional Board for exemptions from applicability of minimum wage legislation if such establishment is experiencing temporary financial difficulties.

and industry and are entitled to receive full minimum wage including full cost of living allowance except for the period of first six months of an apprenticeship, during which they are entitled to receive at least 75% of the applicable minimum wage. (*Omnibus Rules Implementing the Labor Code Rule VI, Section 29 and Rule VII, Section 4*)

4.7.3 Compliance Mechanism

In order to ensure the compliance of minimum wage, the legislation provides for inspections by the Department of Labor and Employment. These inspections include examination of payrolls and other financial records kept by the company in order to determine whether workers are paid the prescribed wage rates. In unionized companies, the DOLE inspectors shall always be accompanied by an authorized representative of the recognized bargaining unit of any interested union. In non-unionized companies, the DOLE inspectors shall always be accompanied by a worker representing the workers of the company.

The workers' representative shall have the right to submit his or her own findings to DOLE and to testify on the same if he cannot concur with the findings of the labor inspector. (*Labor Code of the Philippines Section 128(a) Wage Rationalization Act 1989 Section 9*).

Failure to pay prescribed minimum wage rates by any person, corporation, trust, firm, association or any entity is punishable by a minimum fine of P25,000 (Peso) extendable upto P100,000 (Peso) or, imprisonment of a minimum term of two years extendable upto four years, or both at the discretion of the court. (*Wage Rationalization Act Sec.12*)

In addition or as an alternative to the fine which may be imposed, a person may be imprisoned for not less than 2 years and not more than 4 years for a failure or refusal to pay any prescribed increases or adjustments in the wage rates.

Where the violation is committed by a corporation, trust, firm, partnership, association or other entity, the prison sentence shall be imposed on the entity's responsible officers, including (but not limited to) the president, vice president, chief executive officer, general manager, managing director or partner. Further, the employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees. Such a payment shall not absolve the employer

of criminal liability under the minimum wages laws. (*Wage Rationalization Act 1989 Section 12; Act and Guidelines Increasing Penalty and imposing Double Indemnity Section 1*)

4.8 UNITED KINGDOM

4.8.1 Policy

The setting of a statutory minimum wage is the main legislative instrument covering wage policy in the UK. The National Minimum Wage (NMW) is something of an exception to the UK non-interventionist legislative framework (or what the government has described as a “light touch” to employment regulation), but is seen by government and unions as an important instrument in tackling wage inequality, as well as “making work pay” (part of the government’s promotion of employment amongst marginal sections of the working age population not in work). The employers’ organization, the CBI (Confederation of British Industry) lobbied against the introduction of the minimum wage on the basis that regulation would harm the other key pillar of the UK’s employment strategy - job creation (CBI, 2004) However, it is generally acknowledged to strike a balance between fair compensation and business efficiency (CBI, 2006)

4.8.2 Regulatory Framework

In United Kingdom, the minimum wages are regulated by the Agricultural Wages Act, 1948 and National Minimum Wage Act, 1998. Every individual falling under the category of employee/worker as defined under the National Minimum Wage Act is entitled to get the protection of the minimum wage legislation. The term employee/worker has been defined to mean an individual who has entered into or works or has worked under a contract of employment, or any other contract whether express or implied, whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried out by the individual³⁰. (*National Minimum Wage Act 1998 Section 54 (1)-(3)*). As per the Section 2 (1), a person qualifies for the national minimum wage

³⁰ A contract of employment has been defined to mean a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing (Section 54(3))

if he/she is a worker who is working, or ordinarily works, in the United Kingdom under a contract and has ceased to be of compulsory school age i.e. 16 years. The standard minimum wage rate applies to workers aged 22 and over. However, a worker aged between 22 and 26 years of age is entitled to a lower minimum wage rate for the first 6 months of employment with a new employer if they have agreed to take part in accredited training on at least 26 days during the first 6 months of employment with that employer (*National Minimum Wage Regulations 1999 Section 13(2)*). A lower rate may be set for workers who are under the age of 26. (*National Minimum Wage Regulations 1999 Section 13*) The minimum wage legislation of UK does not provide for specific minimum wage by occupation, by region or for piece rate workers. However, a different minimum wage applies to home and agency workers. (*National Minimum Wage Regulations 1999 Section 35, 36*).

Apprentices aged under 26, who are in the first 12 months of their apprenticeship or who have not reached the age of 19, prisoners who are carrying out work pursuant to the prison rules and people who live as part of a family (but who are not members of the family) and who share in the work and leisure activities of the household are excluded from minimum wage legislation. (*National Minimum Wage Regulations 1999 §2(2), 12 (1) and (2) National Minimum Wage Act 1998 §45*) Similarly, members of the armed services and share fishermen³¹, who have agreed to be remunerated only by a share in the profits or gross earning of the vessel they work on are also excluded from the protection of minimum wage legislation. (*National Minimum Wage Act 1998 §7(1), 43*). In addition, other excluded categories of persons are genuinely self-employed or companies director (unless they have a contract of employment), trainees on government-funded schemes (*Some of these schemes are: (a) Entry to Employment in England; (b) Get Ready for Work in Scotland; (c) Access in Northern Ireland; and (d) Skillbuild in Wales*) and voluntary workers.

The entitlement to minimum wage applies to all workers regardless of individual levels of ability, productivity or effectiveness. Therefore, if a disabled person is a “worker”, he or she must be paid at least the minimum wage rate. However, for disabled people who undertake work-related activities for therapeutic reasons and have no contractual obligation to work or right to any payment or other reward, they will not count as workers and will not be entitled to minimum wage.

31 Share fishermen are fishermen who receive a share of the profit or gross earning of a fishing boat

The minimum wage legislation in UK (Agricultural Wages Act 1948, Section 2B) provides for separate minimum wage rate for agricultural workers by the Agricultural wages board, which should be higher than the national minimum wage rate.

4.8.3 Compliance Mechanism

The National Minimum Wage Act empowers the Secretary of State to appoint officers, or any Minister of the Crown, or any government department or body to ensure that the provisions of the Minimum Wage Act are complied with. (*National Minimum Wage Act 1998 Section 14(1)*). In practice Her Majesty's Revenue and Customs (HMRC) has operational responsibility for enforcing the minimum wage system through the following combination of measures:

(a) publicizing employer obligations and employee rights, principally through direct advertisements, the employment right website and the minimum wage helpline; (b) requiring employers to keep minimum wage records; (c) investigating complaints about non-payment of minimum wage. Compliance officers of HMRC visit employers thought likely to be paying below the minimum wage rates and take enforcement actions when necessary; and (d) assisting individuals in taking action through an employment tribunal or the civil court. (Jackie Wu & Diana Wong, 2008, pp 48-49)

Compliance officers may enter premises and require the production of records concerning the payment of minimum wage rates. If an officer determines that the minimum wage has not been paid, he/she may issue an enforcement notice requiring the employer to pay the difference between the amount that ought to have been paid and the amount actually paid. A notice of underpayment must require the employer to pay a financial penalty, which may range from twice the hourly minimum wage rate per worker per day for continuous non-payment of minimum wage to prosecution with fines of a maximum of 5000 pounds for specific criminal offences, which include: (a) underpaying minimum wage workers; (b) failing to keep minimum wage records; (c) producing and keeping false minimum wage records; and (d) refusing to give minimum wage records to the enforcement agency (National Minimum Wage Act 1998 Sections 17, 19 and 21).

4.9 SOUTH AFRICA

4.9.1 Policy

In South Africa, minimum wage levels are set for specific sectors through sectoral determinations. As a result there is no universal minimum wage but rather a series of minimum wage levels. The Basic Conditions of Employment Act, 1997 outlines stipulations for wage calculation, but do not apply to employees working less than 24 hours per month. In general, wages must be calculated by the number of hours ordinarily worked. Monthly remuneration or wage is four-and-one-third times the weekly wage. If remuneration is "calculated on a basis other than time, or if the employee's remuneration or wage fluctuates significantly from period to period, any payment must be calculated by reference to remuneration or wage during the preceding 13 weeks, or if employed for a shorter period."³²

As regards the concept and definition of minimum wage, the Basic Conditions of Employment Act, 1997 which inter-alia deals with determination and regulation of minimum wages defines wage instead of minimum wage, for the purpose of this Act. Under Section 1 of the Act the term wage has been defined to mean the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week.

4.9.2 Regulatory Framework

In South Africa, the minimum wages are regulated by the Basic Conditions of Employment Act 1997, (Act No.75, dated 26 November 1997) as amended by the Basic Conditions of Employment Act No. 11, 2002 and the Labour Relations Act 1995, (No.66, dated 13 December, 1995) as amended by Labour Relations Amendment Act, 2002 (No.12). The Basic Conditions of Employment Act, which governs sectorial determinations, applies to all employees and employers, except members of the National Defence Force, the National Intelligence Agency and the South African Secret Service, and unpaid volunteers working for an organization with a charitable purpose.

The protection of minimum wage legislation in South Africa is available to each employee as defined under Section 1 of the Basic Conditions of

³² Republic of South Africa (1997). The Basic Condition of Employment Act No. 75 of 1997. Retrieved from <http://www.labour.gov.za/legislation>

Employment Act. Under the Act the term employee has been defined to mean any person, excluding an independent contractor, working for another person or for the state and who is entitled to receive remuneration and any person who assists an employer in carrying out the employer's business. However, the Act does not apply to persons employed on vessels at sea, except to the extent provided for in a sectorial determination.

Sectorial determinations may not apply to employees already bound by a collective agreement concluded within a bargaining council. Sectorial determinations may also exclude certain employees/workers. These include independent contractors as they are not considered to be employees in accordance with the Basic Conditions of Employment Act, 1997. Sectorial determinations as a matter of practice regularly exclude managers from their scope. Each determination may in addition determine its scope separately. The government of South Africa has set determination for domestic workers, farm workers, taxi drivers, wholesale and retail employees, contract cleaning sector, children engaged in the performance of advertising, artistic and cultural activities, civil engineering sector, forestry sector, hospitality workers, learnership, private security service etc.

As regards the specific minimum wage rates, minimum wage legislation in South Africa leaves ample scope for different minimum wages for different occupations in sectorial determination, specific minimum wage by sector and also specific minimum wages by region (as in all sectorial determinations wage rates vary in accordance with the region in which the employee is working). As regards the minimum wage for specific categories of workers, in the Wholesale and Retail Sector, a specific minimum wage rate is stipulated for trainee managers. Minimum wage rates have also been established for Learners who have entered into a Learnership Agreement in accordance with the Skills Development Act. (*Sectorial Determination No. 5, Learnerships, dated June 2001, Article 2 (1) a under Basic Conditions of Employment Act 1997*).

4.9.3 Compliance Mechanism

For the purpose of ensuring compliance, the minimum wage legislation (*Schedule 2 of Basic Conditions of Employment Act, 1997*) provides for fines, which are set as a percentage of the wages which should have been paid to the employee. The minimum fine is for a first offence, in which case a fine equal to 25% of the amount due is levied. The maximum penalty is

set for an employer who has had four previous offences under the Basic Conditions of Employment Act within three years. In this case the fine shall be 200% of the amount due.

4.10 SOUTH KOREA

4.10.1 Policy

In South Korea, the policy measure in order to stabilize workers' lives and improve the quality of the labor force by guaranteeing them a minimum level of wages got momentum in the year 1986 with the enactment of minimum wage legislation. This legislation allows the state to intervene in the wage-determination process between labor and management and compels employers to pay wages not less than the minimum rate. The minimum wage system applies to all businesses or workplaces with one worker or more (since 2000), and the rate is equal for all industries and occupations. The minimum wage rate is determined by the Minimum Wage Council and based on workers' cost of living and labor productivity.

In the country, over the past few years, the number of non-regular employees has gradually increased to more than one-third of the total wage earners³³. Despite this increase, a substantial wage gap between regular and non-regular workers still remained. As part of the effort to redress discrimination against non-regular employees, the government enacted the non-regular Workers Protection Law in 2006. The law put in place the procedures for seeking a remedy for discrimination through the Labor Relations Commission.

4.10.2 Regulatory Framework

In South Korea, minimum wages are regulated by the Minimum Wage Act, 1986. When the minimum wage system was initially introduced, employers demanded that the introduction of the system should be postponed to allow enough time for companies to prepare for it. As a result, the Minimum Wage Act was made effective from 1988. The minimum wage system initially covered only manufacturing establishments with 10 or more employees. The coverage of the minimum wage system has continuously expanded since then. In 1989, the coverage was expanded to

³³ Korea National Statistical Office. (each year). Economically active population survey. Seoul: Korea National Statistical Office.

mining and construction establishments employing 10 or more employees. In 1990, the minimum wage system was further extended to cover all industrial establishments employing 10 or more employees. Since 2000, all establishments, regardless of the number of employees employed, have been under the coverage of the minimum wage system. However, disabled workers and domestic workers are not covered by the minimum wage system.

4.10.3 Compliance Mechanism

As regards the mechanism for ensuring compliance of minimum wage legislation, the Ministry of Labour, which is responsible for enforcing the Minimum Wage Act, may require workers and employers to report matters relating to wage disputes, particularly minimum wage issues. The Ministry of Labour also employs labour inspectors to enforce the minimum wage law. The labour inspectors may enter workplaces, demand presentation of accounting books and documents, inspect work articles and question workplace compliance. In addition, employers are required to inform workers of the applicable minimum wage rates by displaying the notice at conspicuous places or using other appropriate means. (Jackie WU & Diana Wong, 2008, p-36)

In South Korea, the penal provision for non respect of minimum wage legislation are quite stringent in the sense that any person who fails to pay the minimum wage rate to eligible workers is punishable by penalty in terms of imprisonment extendable upto three years or a fine extendable upto 20 million won (HK\$162,000), or both. In addition, any person who falls under any of the following categories is punishable by a fine extendable upto one million won (HK\$81,600): (a) failing to inform workers of the applicable minimum wage rates; (b) failing to provide records of paying workers the minimum wage; and (c) refusing, interfering with, or evading the demand or inspection, or making a false statement on the questions raised by a labour inspector. *Employers who fail to comply with a confirmed remedial order are liable to be fined for negligence not exceeding 100 million won (about \$80,321.29 USD).* (Jackie WU & Diana Wong, 2008, pp-36-37)

4.11 SRI LANKA

4.11.1 Policy

In Sri Lanka, the inferences for the broad policy with regard to minimum wage can be drawn from Wages Board Ordinance, 1941,

Shop and Office Employees Act, 1954 and the Preamble (Svasti) of the Constitution of Sri Lanka, (which aims to assure to all its people inter-alia justice and fundamental human rights), Directive Principles of State Policy (as contained in Chapter VI of the Constitution) which inter-alia enjoins upon the State to promote welfare of the people by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life; to help in the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities; and eliminate the exploitation of man by man or by the State as per the pledge taken under Article 27(2).

4.11.2 Regulatory Framework

In Sri Lanka, the minimum wages are regulated by the Wages Board Ordinance (Ordinance No.27),1941 and Shop and Office Employees Act (Act No.19), 1954. All the persons falling under the category of 'worker' as defined under Section 64 of Wage Board Ordinance, 1941 and Section 68 of the Shop and Office Employees Act, 1954 have the protection of minimum wage legislation. The term worker has been defined to mean *'any person employed to perform any work or trade. A worker is a person that is deemed to be employed in the business of a shop or office if wholly or mainly employed in a shop, serving customers or receiving orders, or dispatching or delivering goods; or in an office in connection with the business that the office conducts; or either in the shop or office, or outside it, in the service of the employer for work that is ancillary to the business carried out in the shop or office'*.

4.11.3 Compliance Mechanism

As regards the mechanism for ensuring compliance of minimum wage legislation, Officers are appointed to make sure that the provisions of the Wage Ordinance come into effect. The officers have the power to enter and inspect any premises in which workers are employed for the purpose of ascertaining whether the provisions of the Ordinance are being complied with (Section 52 and 55 of *Wages Boards Ordinance*). Employers of workers in any trade are required to maintain and keep in the premises where the trade is carried out a clear and accurate written record of the following information in respect of each wage period: (a) the wage period;

(b) the names of the workers who are paid wages in respect of such wage period; (c) the number of hours or days during which each such worker has worked in such wage period; (d) the wages paid to each such worker in respect of such wage period; (e) the date of payment of such wages; (f) the deductions from such wages; and (g) particulars of such other matters as may be prescribed.

Where the employer fails to keep such a record, the Commissioner may assess the wages or short payment thereof on the basis of all evidence (both oral and documentary) available to him. (*Wages Boards Ordinance Section 3, 3D(1), 41*)

As regards the penalty for non respect of minimum wage legislation, Section 44 of the Wages Boards Ordinance provides that any employer who fails to pay minimum wages shall be liable in the case of a first offence to a fine not less than one hundred rupees and not exceeding two hundred and fifty rupees, in the case of a second offence to a fine not less than two hundred and fifty rupees nor exceeding five hundred rupees; and in the case of a subsequent offence to a fine not less than five hundred rupees nor exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. Further where the fine relates to a failure to pay the minimum rates of wages determined by a Wages Board, the employer will be further liable to a fine not exceeding 50 rupees for each day on which the offence is continued after conviction.

(Wages Boards Ordinance Sections 4, 44(1), (2))

In addition to any fine or prison sentence, and whether for a first, second or subsequent offence, the court may order an employer to pay:

- (a) where a worker has not been paid the amount which ought properly to have been paid to that worker, such sum as may be found by the court to represent the difference between such amount and the amount actually paid and the surcharge payable in accordance with Section 4(2A) Wages Ordinance Board;
- (b) where no portion of the wages due to that worker has been paid, such sum as may be referred by the Court to represent such wages and the surcharge payable in accordance with Section 4(2A) Wages Ordinance Board. (*Wages Boards Ordinance Sections 4(1)(c), 4(2), 44(1)(c), 44(2)(c), 44(3)*)

4.12 SWEDEN

4.12.1 Policy

Sweden has numerous polices that regulate annual leave, pensions and allowances for families. Wages are generally set by collective bargaining. Similar to other European countries, Sweden has an extensive social welfare system that provides public health care and social insurance for all citizens. The law on social insurance therefore contains a number of regulations to ensure benefits to all citizens, whether they are capable to work or not.

4.12.2 Regulatory Framework

Sweden has no national legislation concerning minimum wages. Minimum wage rates are determined in collective agreements. Minimum wage are set through decentralized collective bargaining. There are three main types of collective agreements in Sweden:

1. For certain sectors, central collective agreements at the national level determine minimum wage rates and other minimum standards for those workers who are members of the unions that are party to the agreement.
2. Regional sectoral agreements may also set minimum wage rates provided that they are higher than any minimum rates negotiated in the central collective agreements.
3. Finally, any collective agreement at the enterprise level must provide minimum standards that are higher than any central or sectoral collective agreement that is applicable.

4.12.3 Compliance Mechanism

As regards the mechanism for compliance with minimum wage, the Swedish Labour Court determines disputes relating to collective agreements that could not be solved via negotiations. Any party to a collective agreement, found guilty of breaching that agreement may be ordered to pay damages as determined by the Labour Court. (Labour Disputes (Judicial Procedure) Act Ch.2, (1))

4.13 CONCLUSION

The elaboration of the policies and legislative framework prevailing in the countries selected under the study, provided above reveals that almost all the countries (except Sweden which has a very strong collective bargaining environment in the country, numerous policies regulating pensions and allowances for all the families and an extensive system of social security and social insurance for all its citizens obviating the need to protect minimum wages) irrespective of their level of economic development have adopted policies and legislative measures for regulation of minimum wages. However, as far as the efficacy of such measures is concerned there is substantial difference in this regard. The reasons for this difference are manifold which inter-alia include: the proportion of the working population under the minimum wage legislation (exclusion of various categories of workers from the legislative coverage in many countries on the basis of various criteria); relative strength of enforcement mechanism; proportion of the organized and unorganized workforce; effectiveness of compliance mechanism including awareness generation programs and penalties for violation of minimum wage legislation. An effective regulation of minimum wages, hence, requires different strategies and interventions at the level of policy and legislation depending upon the reason(s) responsible for non-compliance / non respect of the legislation.

Chapter 5

Method of Determination of Minimum Wage: An Inter Country Perspective

5.1 INTRODUCTION

Method of minimum wage determination is one of the most crucial aspects of the minimum wage administration. Different countries follow different practices and procedures in this regard mainly based on the overall employment relations and collective bargaining scenario in the country. This chapter gives a brief account of such method(s) in respect of countries selected under the study.

5.2 CHINA

In China, the department of labour administration under local governments i.e. government of a province, an autonomous region or a municipality is responsible for fixing the local minimum wage rates. The department has to consult the local chamber of industry and commerce, the association of enterprise directors and labour unions before fixing the local minimum wages.

The local department of labour administration determines the minimum wage rates for the locality and the coverage, and registers a report to the State Council's department of labour administration. After receiving the report, the State Council's department of labour administration asks the All-China Federation of Trade Unions and the China Enterprise Directors' Association to examine the report. If the minimum wage rates submitted and the coverage are found to be inappropriate, the State Council's Department of Labour Administration is entitled to give its views within 15 days from the day when the report is received. If there are modifications from the State Council's Department of Labour Administration, the local department of labour administration has to consider the proposed amendments and may adjust the rates and the coverage. The finalized local minimum wage rates and its coverage are published in the local government bulletin and newspapers. The local department of labour administration adjusts the minimum wages annually.

There are enough enabling provisions under the minimum wage legislation in China for determining minimum wage through decentralized collective bargaining. The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labour remuneration. The draft collective contract is submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption. A collective contract is concluded by the trade union on behalf of the staff and workers with the enterprise; the legislation provides that in enterprises where a trade union has not been established, such contracts shall be concluded by the representatives elected by the staff and workers with the enterprise. A collective contract shall be submitted to the labour administrative department after its conclusion. The collective contract becomes effective automatically if no objections are raised by the department within 15 days of the date on which it was received. Collective contracts concluded in accordance with the law have binding force and payments agreed in individual agreements cannot be lower than those stipulated in the collective contract.

Employing units cannot pay wages that are lower than the minimum wages set by the local, provincial, regional or municipal government in accordance with the State's system of guaranteed minimum wages or the minimum wages determined through decentralized collective bargaining.

Specific legislation relating to collective wage bargaining in foreign invested enterprises along with the provisions of Labour Law regulates collective bargaining regarding wages in foreign investment enterprises, which are not included within the ambit of the Labour Act. This legislation sets forth the criteria to be considered when setting wage rates. These include manpower costs, average wage levels in the industry, government wage guidelines, Consumer Price Index and productivity. (*Labour Law:33, 34, 35, 48 and Collective Wage Bargaining in Foreign Invested Enterprises, China Law and Practice, 1997-11-00. Vol. 11. No. 9, pp, 25-27*) As regards scheduled frequency of adjustment of minimum wage, the same is at least once in every two years. (*Article 10, Regulations on Minimum Wage*).

5.3 INDIA

India's system of minimum wage determination is quite cumbersome as compared to the systems in various other countries of the world. The Minimum Wages Act, 1948, provides that the "appropriate government" should fix minimum wage rates payable to employees in

listed (or “scheduled”) employments. This has at least three important implications:

- firstly, minimum wages are set by different authorities for different employments;
- secondly, the minimum wage is set only “in certain employments or occupations” and so not all wage-earners are covered;
- and thirdly, there exist a large number of minimum wage rates which sometimes differ widely across states, even for the same occupation.

Thus, India has a complex system of minimum wages, which are not applicable to all workers and set up often arbitrarily by different authorities, making it difficult to monitor and enforce the innumerable minimum wages. As regards, who sets the minimum wages, in practice, the “appropriate government” is either the Central Government or the State Governments. More specifically, the Act provides that the Central Government sets the minimum wage rate in state-owned enterprises, while state governments set minimum wages for any other type of enterprises. The Central Government is also responsible for setting the minimum wage in all companies operating under a railway administration or in relation to a mine, oilfield, or major port or any corporation established by the Central Government (Section 2). The State Governments and Union Territory Administration are the appropriate governments in respect of all other companies. In practice, both the Central and the state governments have appointed Advisory Boards, with the Central Advisory Board coordinating the work of all the State Advisory Boards. These Advisory Boards are usually tripartite, including representatives of government, employers and workers.

As regards the coverage, in the original Act, there were 13 scheduled employments (listed in Appendix I of the Act). These “employments” were considered as being the sectors uncovered by collective bargaining and therefore most vulnerable to unduly low wages and exploitation. However, there is nothing in the Act to limit its application to any particular type of occupation or industry. In fact, the Act empowers “appropriate governments” to expand the list of “scheduled employment” if necessary. Over time, this has resulted in substantial increase, to the extent that at present the number of scheduled employments in case of which Central Government is the appropriate government is 45 and 1679 where either the State Governments or Union Territories were the appropriate government (Information available with Wage cell, Ministry of Labour

and Employment as on 20 Dec. 2011). The criterion for inclusion in the list of scheduled employment is that there should be at least 1,000 workers engaged in that activity in that state. As a result, some states have largely expanded the number of scheduled employments [such as Tamil Nadu (90) and Orissa (83)], while other states [such as Mizoram (4) and Manipur (15)] have barely expanded on the original list of 13 employments (see Labour Bureau, 2005). The increasing list of employments and occupations suggests a move towards a more inclusive coverage of workers, which is in accordance with ILO Convention No. 131.

Section 3 of the Minimum Wages Act empowers appropriate Government to fix the minimum rates of wages in the scheduled employments and revise the minimum rates at an appropriate interval not exceeding five years. Under Section 5 of the Act, two methods have been provided for fixation/revision of minimum wages. They are Committee method and Notification method. *Under the Committee method, committees and sub-committees are set up by the appropriate Governments to hold enquiries and make recommendations with regard to fixation and revision of minimum wages, as the case may be. These Committees/Sub-Committees consist of persons to be nominated by the appropriate government representing employers and employees in a scheduled employments, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government (Section 9). There is also a provision under the Act for appointment of Advisory Board at the State level for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages (Section 7). Similarly, there is also a provision for appointment of Central Advisory Board by the Central Government for the purpose of advising the Central and the State governments in the matters of fixation and revision of minimum rates of wages and other matters under this Act. These boards have to consist of persons representing employers and employees in the scheduled employments in equal number and independent persons not exceeding 1/3rd of its total number of members and Chairman to be appointed out of the independent persons.*

Under the Notification method, Government proposals are published in the Official Gazette for information of the persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. After considering advice of the Committees/Sub-committees and all the representations received by the specified date in Notification method, the appropriate Government shall, by notification

in the Official Gazette, fix/revise the minimum wage in respect of the concerned scheduled employment and it shall come into force on expiry of three months from the date of its issue.

As per Section 4 of the Minimum Wages Act, 1948 (1) Any minimum rate of wages fixed or revised by appropriate government in respects of scheduled employments under (Section 3) of the Act may consist of: (i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorized; or (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the value of the concessions if any. (2) The cost of living allowance and the cash value of the concessions in respects of supplies of essentials commodities at concessions rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

As per Section 3(2) of the Act, the appropriate government may fix (a) a minimum rate of wages for time work; (b) a minimum rate of wages for piece work; (c) a minimum rate of remuneration to apply in case of employees employed on piece work for the purpose of securing such employees a minimum rate of wages on a time work basis (guaranteed time rate) and; (d) a minimum rate (whether a time rate or piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work then by employees (overtime rate). Section 3(3)(a) of the Act provides that while fixing and revising minimum rates of wages different minimum rates of wages may 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. Section 3(3)(b) of the Act further provides that minimum rates of wages may be fixed by one or more of the following wage periods, namely:- (i) by the hour, (ii) by the day, (iii) by the month, or (iv) by such other larger wage-period as may prescribed. Where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated. As regards the scheduled frequency of adjustments, the appropriate Government is duty bound to review the minimum rate at intervals that it thinks fit, such intervals not exceeding five years, and revise the minimum rate if necessary. (*Minimum Wages Act 1948 Section3(1)(b)*).

5.4 NIGERIA

In Nigeria, the National Minimum Wage Act, 1981 (as amended last in the year, 2011) provides for determination of a national minimum wage by the government. The Act does not set forth which organs should be consulted while setting the minimum wage rates by the government. However, when the national minimum wage rate was updated last time (in the year 2000), an ad-hoc tripartite committee was formed to facilitate discussions on the new rate. The Act also provides for determination of minimum wage by collective agreements. However, unless and until an enterprise has not been specifically excluded from the scope of the National Minimum Wage Act, the wages set in the collective agreement may not be less than the national minimum wage. As regards the scheduled frequency of minimum wage rate adjustments, the legislation also does not set forth how frequently minimum wage rates should be reviewed.

5.5 BANGLADESH

In Bangladesh, the only regular institution responsible for making minimum wage awards on cases referred to it by the Government is the tripartite Minimum Wages Board which was set up in accordance with prescribed procedures that cause long delays in making awards.

In practice, awards for workers of public enterprises and Govt. employees are made by ad hoc commissions when complaints from workers of the inadequacy of current wages become too strong and, in many cases, the wages awarded become the maximum and not the minimum. Such exercises appeared to be more a process of collective bargaining than minimum wage fixation. Awards of the minimum wages board are more in the nature of determination of minimum wages. Payment of wages lower than the award is an offence.

In the case of awards, of the Minimum Wages Board, the responsibility for enforcement lies with the Department of Inspection or Factories and Establishments. In other cases, namely awards of ad hoc commissions, enforcement is guaranteed on the Government's acceptance of the recommendation as the Government is responsible for payment.

The law relating to agricultural wages is an instance of unilateral determination of minimum wages by the Government, with the possible intention that worker's take advantage of law as it does not prescribe any enforcement machinery. Although, several years have passed since

introduction of law, no evidence of workers claiming the minimum wage would be obtained.

The general procedure and method for fixation of minimum wage is that where, in respect of any industry, the Government is of the opinion that, in view of the prevailing rates of wages of workers engaged in that industry, it is reasonable and necessary to fix the minimum rates of wages for all or any class of workers employed in such industry, it may direct the Wages Board to recommend, after such inquiry as the Wages Board thinks fit, the minimum rates of wages for such workers or class of workers. The Government may form the necessary opinion in this regard following an application by the employer or workers or both parties. The Wages Board has to make its recommendations within a period of 6 months from the date of direction from the Government. Upon receipt of a recommendation, the Government may, by notice in the official Gazette, declare the minimum wage rate in accordance with the recommendation or refer it back to the Wages Board for reconsideration with such comments and information as the Government may think fit. Upon receipt of the reconsidered recommendation by the Wages Board, the Government may declare the minimum rates of wages to be as recommended by the Wages Board, subject to such modifications and exceptions as may be specified in the notification. Unless another date is specified in the notification, the declaration takes effect from the date of publication of the notice. As per the provisions of the Labour Act, the minimum rates of wages declared in accordance with this procedure are final and cannot, in any manner, be questioned by any person in any Court or before any authority (*Section 139,140 of the Labour Act 2006 - Unofficial English Translation by BEF*). The members of the Minimum Wages Board are appointed by the Government and include a chairman, one independent member as well as one representative each for the employers and workers and one representative each of employer and workers engaged in the industry concerned. (*Section 138, Labour Act 2006*) As regards the scheduled frequency of minimum wage rate adjustments, as per the Labour Act, the minimum rates of wages for any industry may be re-fixed after every five years as may be directed by the Government.

5.6 JAPAN

In Japan, the Prefectural Labour Bureau is responsible for determining both the prefectural and industrial minimum wages. Under the Minimum Wage Law, a Prefectural Labour Bureau has to consult the Prefectural Minimum Wage Council concerned before determining the final rate

for the particular prefecture. Members of a Prefectural Minimum Wage Council may come from the government, employers' associations, labour unions, academic institutions and social welfare organizations, and are appointed by the Prefectural Labour Bureau for a term of one year, with the possibility of renewal. The number of members in such councils varies between 15 and 20 persons, depending on the size of the prefecture. Each year, the prefectural minimum wage councils deliberate the prefectural and industrial minimum wage adjustments in August. The deadline for the decision is normally 9 August. As the deadline is approaching, each of the prefectural minimum wage councils would usually agree on a proposed adjustment rate. Otherwise, decisions are taken by a majority vote. The prefectural labour bureau considers the proposed rate and makes the final decision by 1 September. The new prefectural and industrial minimum wages usually come into force on 1 October. (Jackie Wu & Diana Wong, 2008, pp-29-30) There is also a provision under the legislation for specific minimum wage for certain businesses or occupation upon application by any person who represents either all or some of the workers or employers in the relevant business or occupation. (Section 15(1)). Procedure for determination of specific minimum wages for occupation on the request of interested parties is also identical to regional minimum wage determination.

As regards the scheduled frequency of adjustment of minimum wage rates, as per Section 34 of the Minimum Wages Law, it is the responsibility of the Minister of Labour to make investigations into wages and other actual conditions of workers, and to ensure that the minimum wages system runs smoothly. However, in practice the regional and industrial minimum wages are adjusted annually since 2005.

5.7 PHILIPPINES

In Philippines, each of the 16 regions has its own Regional Tripartite Wages and Productivity Board setting minimum wage rates for their respective region. In practice, the minimum wage rates set by Regional Boards mostly foresee at least two categories: rates for agricultural workers and rates for non-agricultural workers. Additionally, current Wage Orders have specific rates for hospital workers, retail/service workers, cottage/handicraft workers, workers in schools etc.

Minimum wage rates are determined by two main bodies: the *National Wages and Productivity Commission (NWPC)* and the *Regional Tripartite Wages and Productivity Boards*. National Wages and Productivity Commission is

charged with prescribing rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial, or industry levels and reviewing regional wage levels set by the Regional Tripartite Wages and Productivity Boards; to determine if these are in accordance with prescribed guidelines and national development plans. Regional Tripartite Wages and Productivity Boards determine and fix minimum wage rates applicable in their regions, provinces or industries subject to the guidelines laid down by the NWPC.

The National Wages and Productivity Commission is not empowered to overturn Wage Orders made by the Regional Boards directly. However, the Commission may make a wage recommendation in relation to a specified industry or branch thereof where it considers that a substantial number of employees in that industry or branch of industry are receiving wages which, although in compliance with the minimum wage provided by law, are less than sufficient to maintain them in health, efficiency and general well-being (taking into account the peculiar circumstances of the industry and its geographical location). Such a wage recommendation may be either rejected or approved by the Secretary of Labor and Employment and, if approved, a Wage Order shall be issued by the Secretary subject to the approval of the President of the Philippines. (Labor Code of the Philippines:99, 120, 121, 122, 123; Amended Rules of Procedure on Minimum Wage Fixing 2007; Omnibus Rules to Implement the Labor Code Rule IX of Book Three)

National Wages and Productivity Commission as well as the Regional Tripartite Wages and Productivity Boards have the representatives from the Government, employers and the employees. As per the minimum wage legislation public consultations, notifications to employers' and employees' groups and officials are an integral part of wage-determination.

The Regional Tripartite Wages and Productivity Boards constituted under the Labour Code, are obliged to conduct continuing studies of wage rates, productivity and other conditions in the region, provinces or other industries therein subject to the guidelines issued by the National Wages and Productivity Commission (NWPC). These boards are also obliged to study all pertinent facts and based on standards/guidelines (issued by NWPC) have to determine whether a wage order should be issued. As regards the scheduled frequency of adjustment of minimum wage rates, the Wage Rationalization Act provides that wage orders should be determined whenever conditions in the region so warrant. The Act further provides that once a Wage Order has been issued by the Board, it

may not be revised for a period of 12 months, unless circumstances (such as extraordinary increases in the price of petroleum and basic services) demand that rates be revised. (*Article 123 of the Labour Code and Section 3 of the Amended Rules of Procedure on Minimum Wage Fixing Rule IV*)

5.8 UNITED KINGDOM

In UK, the Secretary of the State is responsible for determining the minimum wage rates. Determination of the minimum wage rates by the Secretary of State is made following the Low Pay Commission's recommendations. The Commission, supported by a Secretariat, comprises of an independent chair and 8 members of which three represent employers, three represent employees and two are independent. Before making a recommendation, the Low Pay Commission has to consult employers' representatives, workers' representatives and any other body or person they think fit. The report made to the Secretary of State has to set forth the reasons for the recommendations, explaining the procedures adopted with respect to consultations and the gathering of evidence. (*National Minimum Wage Act 1998 §4, 5, 7(6), 49; Schedule 1*) Wages may also be set by collective agreement, but any provision in any agreement is void in so far as it purports to exclude or limit any provision of the National Minimum Wage Act 1998 (*National Minimum Wage Act 1998 Section 49*). After the government has made a decision on the rates for the ensuing year, it puts forward the determined adjustments to Parliament via regulations. These regulations are subject to affirmative resolution, and debated in Parliament which can agree to the regulations or otherwise. In practice, Parliament has not overturned any recommendations made by the government on the minimum wage rates. The adjustment of the minimum wage rates, if any, usually takes place in October of a given year. As regards the scheduled frequency of adjustment, the legislation does not set forth how frequently the national minimum wage rate should be adjusted. It states that the Secretary of State may prescribe the rate from time to time. (*National Minimum Wage Act 1998 Section 1(3)*)

5.9 SOUTH AFRICA

In South Africa there is no legally mandated national minimum wage. A dual system of minimum wage fixing has been established. Minimum wage rates may be set for certain sectors in sectorial determinations made by the government following the recommendations of the Employment Conditions Commission. In the alternate, minimum wage rates may be determined in collective agreements negotiated within bargaining councils,

statutory councils or between groups of employers and employees. (*Basic Conditions of Employment Act 1997 Sec.54, 55*)

The Employment Conditions Commission advises the Minister of Labour on various issues including sectorial determinations regarding minimum wages. The Commission's advice takes into consideration the information gathered as part of investigations into conditions of employment in the sector and area that will be affected by the sectorial determination. The Commission is composed of one workers and employers' representative each, government representatives and three independent persons. In addition, the National Economic Development and Labour Council (NEDLAC), the South African organization for social dialogue, is consulted by the Minister of Labour regarding all appointments to the Commission. (*Basic Conditions of Employment Act 1997 Section 59, 60*)

Collective agreements may be negotiated within bargaining councils, statutory councils or between groups of employers and employees. Only agreements negotiated by a bargaining council may be extended to workers who were not party to the collective agreement. In the event, a collective agreement is concluded that applies to workers covered by a sectorial determination, the provisions of the sectorial determination cease to be binding upon employers and employees covered by the collective agreement. (*Labour Relations Act 1995 Section 32 (1) and Basic Conditions of Employment Act 1997 Section 56 (2)*)

So far as the scheduled frequency of minimum wage adjustment is concerned, most of the sectorial determinations set forth minimum wage rates for the next three years. As a result, increases have already been determined or they are linked to consumer price index.

5.10 SOUTH KOREA

In South Korea the Minister of Labour is the authority for fixing the minimum wage. The Minimum Wage Council (MWC), an advisory body, is established in the Ministry of Labour for preparing and submitting proposals to the Minister of Labour for adjusting the minimum wage for approval. The MWC is composed of 27 members: nine workers' representatives, nine employers' representatives and nine independent members (including chairman and vice-chairman) representing the public interests. The chairman and vice chairman of the council are elected from and among the independent members who come from socio economic

fields such as economics, sociology, social welfare and industrial relations. Workers' members are nominated by the Federation of Korean Trade Unions and employers' members by the Korea Employers' Federation. The Council members are appointed by the Minister of Labour for three years, with the possibility of renewal. The appointments of the independent members require the endorsement of both trade unions and employer associations.

Each year the MWC has 90 days to deliberate on minimum wage adjustment and to submit its proposal to the Minister of Labour. In theory decisions in the MWC are taken by two-thirds majority vote. In practice, the employers' representatives and the workers' representatives bargain over the rates of minimum wage, with independent members acting as moderators. The votes of independent members are decisive since employer and worker members can seldom reach an agreement. The Minister only has the legal authority to refer back (i.e. to accept or reject) the MWC's proposals, but not to alter them. The Minister may send the proposed adjustment back to the MWC for reconsideration within 20 days. Then the MWC has ten days to prepare and submit its revised proposal to the Minister of Labour. This tight schedule ensures that the adjusted rate can be determined and published by the Minister of Labour by 5th August. The new minimum rate is applied to the period of January to December of the following year. The minimum wage is adjusted annually. (Jackie WU & Diana Wong, 2008, pp-34-36)

5.11 SRI LANKA

In Sri Lanka, the authority for determination and fixation of minimum wage lies with the Minister of Labour. Where the minister considers it expedient that the remuneration of the employees of any specified shop or office or of the shops and offices of any specified description, or of shops and offices situated in a specified area or of any particular class or category of employees should be regulated, he may by order direct the Commissioner (of labour) to endeavour to determine the minimum rate of remuneration. An order may be made by the minister of his own motion or on application made by employees or employers or trade unions. However, the determination will be applicable to shop or office only when the employees of that shop or office agree (Section 21, 22 of *Shop and Office Employees Act*). In addition, the legislation (*Wages Boards Ordinance, 1941*) also provides for establishment of Wages Boards for any of trade by the Minister of Labour. The Wages Board consists of the Commissioner and of members representing employers and members representing employees in

the trade. A Wages Board established for any trade may constitute a District Wages Committee for that trade in any area or district. The decisions of the Wages Boards only have effect if they are approved by the minister. Where a Wages Board cannot be established for a particular trade, or fails to make a decision within one year of its establishment, the minimum rates of wages for the relevant trade may be set by the Commissioner of Labour. The Commissioner must also publicise any propose decision and submit the proposal to the Minister for approval and notification. (Wages Boards Ordinance: 6, 7, 8, 9, 18, 19, 20, 28, 29, 33)

The minimum wage legislation also contains the enabling provision for specific minimum wage by occupation, by sector and by region (Sec.8 and 18 of the Wages Boards Ordinance respectively). The Minister may by an order published in the Official Gazette establish Wages Boards for any trade, or any function or process in such trade e.g. agriculture, manufacturing, construction.

As regards the specific category of workers, they include disabled workers and trainees. Where the Commissioner is satisfied that any employee in relation to whom a minimum rate of remuneration has been determined under this Act is affected by infirmity or physical injury which renders him incapable of earning that minimum rate, the Commissioner may, if he thinks fit grant to that employee a permit, subject to such conditions as may be prescribed in the permit, authorizing his employment by an employer at a rate of remuneration, specified in the permit, which is less than the aforesaid minimum rate. (Section 36, *Shop and Office Employees Act and Section 39 of Wages Boards Ordinance*) A wages Board established for any trade may determine the conditions subject to which any workers may be employed in that trade as apprentices or learners. (*Section 40, Wages Boards Ordinance*)

As regard workers on piece rate basis, the Wages Board may determine a minimum rate of wages for piece work and a minimum time rate to apply in case of such workers in order to secure such workers a minimum rate of remuneration on a time work basis (a guaranteed time rate). Where no general minimum piece rate have been set for a trade to which a general minimum time rate applies (i.e. the minimum rate for time work set by a Wages Board decision), an employer has to ensure that any piece-workers are paid a piece-rate that yields at least the same remuneration as the general minimum time-rate. (Wages Boards Ordinance §§20(1)(a), 20(1)(b), 36)

5.12 SWEDEN

In Sweden, there is no formal procedure for extending collective agreements by decision of a public authority or automatically. Collective agreements automatically bind both the members of the trade union and the companies that are members of the employer' organization concluding the agreement. A person who is not a member of the trade union usually has no rights under the collective agreement. Approximately 90 per cent of all workers are covered by collective agreements. There are no general exclusions. Scope and exclusions of wage agreements are determined by collective agreements. As regards specific minimum wage rates, by occupation, by sector, by region or by specific category of workers the same varies from collective agreement to collective agreement.

5.13 CONCLUSION

The description of the method(s) of determination of minimum wage in the countries selected under the study, as provided above reveals that a multitude of practices and methods are adopted by various countries in this regard. Some of the key features emanating from the above discussion include: (i) while in majority of the countries wages are determined both at the local and regional level as well as at the national level, in some of the countries the determination takes place only at the national level; (ii) in majority of the countries the wages are determined taking into account the situations prevailing in the region as well as sector, in some countries such situations are not the relevant criteria; (iii) in most of the countries (such as china, India, Japan, Philippines, UK and South Korea) tripartism and consultations with social partners (representatives of industry, workers and government / independent persons) form an integral part of wage determination but in some countries such as Nigeria, Bangladesh and Sri Lanka tripartism and consultations with social partners do not have much role in this process; (iv) while in most of the countries tripartism and consultations is a permanent and regular feature of minimum wage determination, in some countries the same is quite ad hoc; (v) while in majority of the countries minimum wage determination does not exclude any of the categories of workers, in some countries many categories are excluded; (vi) while in majority of the countries local / regional minimum wage determination authorities are quite autonomous and independent (such as India, Japan, Philippines), in some countries they have to go by the guidelines of the authorities at the national level in this regard (such as China and UK).

Chapter 6

Criteria and Norms for Determination of Minimum Wage: An Inter Country Analysis

6.1 INTRODUCTION

Formulating meaningful criteria and norms to guide the fixation and revision of minimum wage is one of the most troublesome aspects of the administration of minimum wage. Such criteria play an extremely vital role in ensuring that minimum wages meet the objectives set for them and in ensuring that decision making is not arbitrary, but principled and reasoned. They are also considered as a means of narrowing the differences of view that are inevitable among parties participating in the decision making process. However, in practice it has proved to be quite difficult to lay down criteria of general application that are nevertheless precise. In spite of all these practical difficulties minimum wages are fixed and adjusted on the basis of certain criteria with some variation from country to country based on its labour and employment scenario and socio-economic and political milieu. This chapter discusses the criteria in this regard at an international and cross country level.

6.2 CRITERIA AT THE INTERNATIONAL LEVEL

At the international level there have been several efforts to clarify and summarize the various criteria to be used in determining minimum wage rates. In this context a specific mention can be made of ILO Recommendation No. 30 (1928) which suggests:

For the purpose of determining the minimum rates of wages to be fixed, the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living. For this purpose regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organized and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality.

Similarly Recommendation No. 89 (1951), which applies to agriculture, advocates that the wage fixing body should "take account of the necessity of enabling the workers concerned to maintain a suitable standard of living". The factors specifically enumerated for consideration are the following: the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements in agriculture, and the general level of wages for work of a comparable skill in other industries in the area where the workers are sufficiently organized.

Further, the conclusions of the Meeting of Experts convened by the Governing Body of ILO in 1967 to examine the problem of minimum wage fixing identified four basic criteria which should be taken into account: (a) the needs of the worker; (b) the employers' capacity to pay, in relation to the national economy as a whole; (c) a comparison of the standard of living of various social groups; and (d) the requirements of economic development.³⁴ These four criteria are mentioned in more recent studies as basic elements used in fixing minimum wage rates (See, for example, Gerald Starr, 1991: *Minimum wage fixing: An international review of practices and problems*, Geneva, ILO, 1981). The first three of the criteria mentioned above may be considered as traditional principles used in fixing the levels of minimum wages (See ILO: *Blue Report*, 1927). As regards the requirements of economic development, the importance of this criterion in fixing minimum wage rates came to be emphasized subsequently as a social and economic framework for the fixing of minimum wages³⁵. The Meeting of Experts also mentioned the general level of wages paid for work of comparable character, the wages fixed by collective agreements for identical or similar work, and the value of the service rendered as other additional criteria for criteria for determination of minimum wage³⁶. It is also interesting to note that the experts who met to examine the question of minimum wage fixing did not draw any distinction between the criteria used for fixing minimum wages and the criteria used for adjusting them.³⁷ Nevertheless, it is generally not feasible to take all these criteria into account each time minimum wage rates are adjusted; consequently, simplified criteria are widely used for this purpose.³⁸

34 ILO: Meeting of Experts of 1967, paras. 105 to 110

35 ILO: Meeting of Experts of 1967, paras. 45 and 69

36 *ibid.*, para. III

37 *ibid.*, paras. 105 to 112

38 Starr in *Minimum Wages - Wage fixing machinery application and supervision*, undated document, paragraph no. 274, chapter-4

When the ILO again considered the question of minimum wages in 1969 and 1970 it was faced with the fact that they were performing a much broader role in many countries than anticipated by the existing instruments, and that, particularly in developing countries, nation-wide economic repercussions could not be ignored. Accordingly Convention No. 131 (1970) specified a number of economic factors as well as the previously used social considerations as criteria for minimum wage fixing³⁹. Article 3 of Convention No. 131 reads as follows:

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

- a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

6.3 CHINA

In China, the Labour Law and Regulations on Minimum Wages set out a number of principles and criteria which have to be kept in mind in fixation of minimum wage and its readjustment. (*Labour Law Chapter V, Regulations on Minimum Wages Section 6 China's New Wage and Hour Laws May 2004*). As regards the criteria to be taken into account in fixing and revising minimum wage as per *Article 6 of Regulations on Minimum Wages and Article 49 of Labour Law*, the same include: the minimum living costs of employees and their dependants; Consumer price index for urban residents; Social security and housing fund contributions paid by individual employees (when setting the hourly rate of pay for part-time workers, reference must also be had to the basic pension and medical insurance contributions payable by employers); Average wage of workers in the locality and published monthly minimum wages (while setting minimum hourly rate for part time worker); Province's level of economic development (For example, the minimum wage that is set for rural localities in which the cost of living is lower (e.g., Yunnan in the far South of China) will be lower than the minimum wage set for urban areas (e.g., Beijing) where

³⁹ These same criteria also appear in Recommendation No. 135 (1970).

the living costs are much higher); Labour productivity and Employment situation (For example, under the 1993 Regulations, Shanghai had just one standard minimum wage that applied to all types of employment; by contrast, the Province of Guangdong had seven different minimum wages that were set to reflect the diverse range of manufacturing and other types of employment undertaken in that Province).

The Regulations also provide a detailed mathematical formula for setting minimum wage rates. As a guideline, the 2004 Rules provide that the minimum wage for full-time employees should fall within a range of 40-60% of the monthly average local wage. Hourly minimum wage standards for part-time workers are to be determined and adjusted with reference to the factors set forth above and the published monthly minimum wages; basic pension insurance contributions payable by employers; basic medical insurance contributions payable by employers; differences between full-time and part-time workers in terms of job stability, working conditions, and intensity of labor and welfare. The 2004 Rules also specify that an employee's minimum wage must not include any payments that are payable to an employee as: overtime pay; special allowances paid by reason of a particular work environment or condition (*e.g.*, shift duties, working in mines, at high altitudes, etc.), or statutory employee welfare benefits.

6.4 INDIA

The Minimum Wage Act, 1948 (the legislation dealing with various aspects of minimum wage) does not contain any criteria for the determination of the minimum wage and leaves the concept of minimum wage undefined. However, the recommendations of two important sources are usually considered while discussing minimum wages, namely (a) the conclusions of the Committee on Fair Wages, 1949. (The Committee on Fair Wages clearly specified that a - minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage should also provide for some measure of education, medical requirements, and amenities (b) the decisions taken at the 15th Session of the Indian Labour Conference (1957), suggesting a list of basic requirements which should be taken into account in determination of minimum wage. The 15th Indian Labour Conference laid down the detailed norms for setting up minimum wages, which included (a) three consumption units per earner (2 Adults +

2 Children), (b) minimum food requirement of 2700 calories per average Indian adult, (c) cloth requirement of 72 yards per annum per family, (d) rent corresponding to the minimum area provided under the government's Industrial Housing Scheme and (e) fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wage.

Further, the Supreme Court of India in the historic *Raptakos Brett* judgement in 1992⁴⁰ held that in calculating the minimum wage, the need based norms laid out in the 15th Session of the Indian Labour Conference in 1957 should be considered and specified additional components. The additional components specified included children's education, medical requirement and minimum recreation, including festivals, ceremonies, provision for old age and marriage which should constitute 25 per cent and be used as a guide for fixing the minimum wage. Accordingly, the State Governments have been advised from time to time to keep in view the above norms while fixing/ revising the minimum wages. Quite recently the 44th session of the Indian Labour Conference (ILC) organized during 14th and 15th Feb. 2012 also reiterated that while determining the minimum wage the norms/criteria laid down by the 15th session on ILC and the direction of the Supreme Court of India in (*Reptakos Co. v. Workers' Union*, 1992) should be take into account. It was also emphasized that these norms also need to be incorporated in the minimum wage legislation. Though these norms are need based, they leave some element of subjectivity because they vary from region to region and state to state. The implementation of the M.W. Act, 1948, which primarily falls in the State sphere, is regularly pursued by the Ministry of Labour and Employment through discussions and correspondence with the States.

6.5 NIGERIA

The legislation does not set forth any criteria to be followed when setting the national minimum wage rate. However, when the national minimum wage rate was updated last time (in the year 2000), an ad-hoc tripartite committee was formed to facilitate discussions on the new rate.

6.6 BANGLADESH

As regards the criteria for fixing minimum rates of wages in Bangladesh as per Section 141 of the Labour Act, 2006, in making its

40 *Workmen v. Reptakos Brett & Co. Ltd.* 1992 1 LLJ 340, AIR 1992 SC 504

recommendation the Wages Board has to take into consideration the needs of workers and their families, cost of living, level of wages and income in the country (standard of living), cost of production, productivity, price of products, Capacity of employers to pay (business capability), inflation rate, economic and social conditions of the country and of the locality concerned and other relevant factors.

The Wages Board has to review its recommendations if a change in the factors relevant to a recommendation so demand, and recommend to the Government any amendment, modification or revision of the minimum wage rates declared by the Government. However, no recommendation can be reviewed earlier than one year from the date on which it was made, unless the special circumstances of a case so require, or any later than three years from such date. (*Section 139(6), Labour Act 2006, 142*)

6.7 JAPAN

In Japan, the minimum wage fixing authorities (Prefectural Minimum Wage Council while making the recommendation on the minimum wage rates and the Prefectural Labour Bureau while approving the proposed minimum wage rates) have to take the following criteria into account: (i) cost-of-living in the region; (ii) Level of wages and income in the region/ Level of wages of comparable workers (iii) Social security benefits (iv) Capacity of employers to pay (*Minimum Wages Act, 1959 Section 9(2),9(3)*)

6.8 PHILIPPINES

As regards the criteria for wage determination in the Philippines, as per Article 124 of the Labour Code, 1974, the regional minimum wage rates to be fixed or revised by the Regional Board should be as nearly adequate as is economically feasible to maintain the minimum standard of living necessary for the health, efficiency and general well-being of the workers/ employees within the framework of the national economic and social development goals. In determination of such regional minimum wages the Regional Board inter alia has to take into consideration: (a) Demand for living wages; (b) Wage adjustment vis-a-vis the consumer price index; (c) Cost of living and changes therein; (d) Needs of workers and their families; (e) Need to induce industries to invest in the countryside; (f) Improvements in standards of living; (g) Prevailing wage levels; (h) Fair return on capital invested and capacity of employers to pay; (i) Effects on

employment generation and family income; and (j) Equitable distribution of income and wealth along the imperatives of economic and social development.

The wages prescribed in accordance with these criteria constitute the standard prevailing minimum wages in every region. These wages include wages varying with industries, provinces or localities if in the judgment of the Regional Board, conditions make such local differentiation proper and necessary to effectuate the purpose of the Labour Code.

The supplementary rules and regulations⁴¹ oblige the National Minimum Wage Commission also to take into account social services and benefits provided free of charge to the workers, as well as the possible effects of a given increase in the minimum wage on prices, money supply, employment, labour mobility and productivity, labour organization, domestic and foreign trade and other relevant indicators of social and economic development while setting the guidelines for minimum wage determination. In addition, where what is a fair return of the capital invested cannot reasonably be determined, or where the industry concerned is not operated for profit, its capacity to pay, taking into account all the resources available to it has also to be considered.

6.9 UNITED KINGDOM

In UK, under the minimum wage legislation, the minimum wage rates are not decided on the basis of any rigid formula. Instead, they are determined as per prevailing economic circumstances. The minimum wage rates must balance the aim to address low pay with the need to ensure that the rates are manageable for businesses and the economy. In general, the criteria for determining and adjusting the minimum wage rates include: economic conditions, pay differentials, business costs, competitiveness of the economy, inflation rate and employment level⁴².

6.10 SOUTH AFRICA

In South Africa, the criteria to be taken into account in fixation of minimum wage include: the ability of the employers to carry on their business successfully; the operation of small, medium or micro enterprises and new enterprises; the cost of living; the alleviation of poverty; conditions

41 Book III of the Labour Code of the Philippines, 1974 (Rule V, Section 5)

42 National Minimum Wage Act 1998 Section 7(5)) and Reports of Low Pay Commission of UK

of employment; wage differentials and inequality; the likely impact of any proposed condition of employment on the health, safety or welfare of employees and any other information made available to the Employment Conditions Commission.⁴³

6.11 SOUTH KOREA

In South Korea, in recommending the minimum wage rates to the Minister of Labour the Minimum Wage Council and in approving the proposed minimum wage rate the MWC and the Minister of Labour have to take into account: (a) cost of living; (b) economic growth rate; (c) average wage level; (d) labour productivity; (e) employment rate; (f) consumer price index; and (g) income distribution. (Jackie, Wu & Diana Wong, 2008, p-35)

6.12 SRI LANKA

In Sri Lanka there is no statutory criteria for setting the minimum rates of wages identified. However, minimum rates set by a Wages Board decision may consist of a special allowance at a rate to be adjusted, at such intervals and in such manner as the Wages Board directs, to accord as nearly as practicable with the variation in the cost of living index-number applicable to workers in that trade. (Wages Boards Ordinance Section 20(2) (a)(ii))

6.13 SWEDEN

In Sweden the minimum wages are determined by collective agreements and there is no fixed criteria as such. Approximately 90% of the workers are covered by collective agreements.

6.14 CONCLUSION

The above elaboration indicates that the criteria for fixing minimum wages specified in national legislation vary enormously from country to country from brief statements of general principles to quite lengthy listings of factors to be taken into account. In some countries such as United Kingdom, Bangladesh, India and Sri Lanka National legislation is completely silent on the issue of criteria for minimum wage determination.

⁴³ Basic Conditions of Employment Act 1997 Section 54(3)

In these countries the wages boards, councils or other bodies involved in minimum wage determination are free to adopt the criteria they consider most appropriate in the circumstances. There are two main arguments justifying this approach. First, where industry boards or councils have been conceived of as a transitional means of wage determination, to be used only until the workers and employers have become sufficiently organized, not having formalized criteria makes the decision-making more akin to collective bargaining. Second, the criteria normally used are considered not to be sufficiently precise to warrant inclusion in legislation or to serve as a meaningful guide.

Chapter 7

Conclusion and Recommendations

7.1 CONCLUSION

Continuous and uninterrupted supply of goods and services is the foremost necessity of the modern society, which solely depends on cooperation between the human agents involved in this process i.e. the capitalist and labor. Nobody would disagree with the fact that the real persons whose sweat and toil make these objects and services readily available deserve humane treatment. However, the problem is that in a situation of conflict between the interest of capital and labor, the employer aims at extracting maximum work at minimum payment and the workers want *inter - alia* maximum remuneration for the work they do.

Regulation of minimum wage assumes paramount importance in this context. Accordingly, most of the countries have taken steps to regulate the same by adopting policy and legislative measures in this regard. In fact, regulation of minimum wage has a long history starting from Hammurabi's Code which came into existence as back as in 2000 B.C. In the modern times, the initial steps in this direction were taken in 1890s by New Zealand and Australia, followed by Massachusetts (US) in 1912 by making legislative provisions (though the scope of such measures was initially limited to women and children in precarious employments). After adoption of Minimum Wage Fixing Machinery Convention (No.26) by ILO in 1928, various other countries started taking initiatives in this direction. Presently, most of the countries in the world either have legislation exclusively dealing with minimum wage regulation or have provision in this regard in their general labour legislation.

A review of the history of such measures in various countries clearly reveals that these measures which initially aimed at protecting the very limited and vulnerable categories of workers have gradually progressed and culminated in increasing their scope to the maximum possible categories of workers. The result is that at present, in some of the countries the minimum wage legislation extends to cent percent employees/workers in all the categories of employments and occupations.

Different labour market contexts require different strategies and interventions in the area of policy and law pertaining to regulation of minimum wage. However, the ultimate objective of such efforts should be to maintain harmonious industrial relations, maintain sustainable growth and to ensure a decent and dignified life to maximum number of people in the country by guaranteeing a minimum and non - negotiable standard of wages to all the wage earners.

The most crucial aspect of the overall system of minimum wage administration is its efficacy. This largely depends on due participation of various stake holders in the process of minimum wage determination, widest possible coverage of wage earners within the scope of minimum wage legislation and effective compliance mechanism. The key elements of effective compliance mechanism are: augmentation of quantitative and qualitative strength of enforcement officials; desired level of awareness among the employers and wage earners with regard to notified minimum wages and effective sanctions. The prevailing labour market situations in various countries require appropriate changes and modifications in the policy and law dealing with minimum wage in terms of building on their country specific strengths and overcoming the limitations.

Another crucial aspect of minimum wage administration is the method of minimum wage determination. The key elements in this process include: determination of minimum wages at the national, regional or local level; involvement of various social partners; permanent / ad-hoc nature of tripartism and consultation mechanism and coverage and scope of minimum wage determination. A cross country analysis of the discussion on all these elements reveals that the regulatory framework in majority of the countries provides ample scope for determination at national as well as at regional/local level. However, the degree of autonomy to regional/local governments in this regard varies from country to country.

Another key finding in this regard is that while the regulatory framework in most of the countries provide for permanent mechanism for tripartism and consultations with various stake holders, in some countries the same is quite ad-hoc.

Identifying appropriate norms/criteria for minimum wage determination is perhaps the most crucial but highly troublesome aspect related to minimum wage administration. The ILO, way back in 1928,

while adopting recommendation in this regard clearly emphasized that the minimum wages to be fixed should be sufficient to enable the workers and their family members to maintain a suitable standard of living and that for this purpose regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organized. It also emphasized that in case, no such standard of reference is available, the general level of wages prevailing in the country or in the particular locality may be taken into account. Further, the meeting of experts convened by the governing body of ILO in 1967 to examine the problem of minimum wage determination identified: (a) the needs of the worker; (b) the employer's capacity to pay in relation to national economy as a whole; (c) a comparison of standard of living of various social groups and (d) the requirements of economic development as the four basic criteria to be taken into account in determination of minimum wage. Again in 1970, while adopting Convention No. 131 the levels of productivity and desirability of attaining and maintaining a high level of employment were added as additional criteria to be taken into account.

In spite of the broad consensus on this issue at the level of ILO, the practice in this regard varies enormously from country to country. While the minimum wage legislations in some countries contain brief statements of general principles to be followed, in some countries the legislations contain comprehensive list of the factors to be taken into account. There are also countries, where the minimum wage legislation is completely silent on this aspect. In such countries the minimum wage determination bodies have been given absolute discretion in this regard leaving ample scope for region / industry specific flexibility. This has a chance to result in both better minimum wage administration as well as in total arbitrariness defeating the vary purpose of minimum wage regulation.

7.2 RECOMMENDATIONS

- The gradual evolution of the minimum wage policy has been from initial limited coverage to expanded coverage. The time has now come to expand its scope to cover all the employees in all the sectors/ employments in its ambit.
- In the context of most of the countries, minimum wage refers to subsistence wage. Therefore, the scope of the minimum wage legislation should not be limited to employees / workers in certain

specified categories of employments and occupations. It should rather be applicable to all the wage earners.

- None of the categories of employments should be exempted from the requirement of payment of minimum wage determined under the provisions of minimum wage legislation. This recommendation has been made, taking into account the fact that at present, the minimum wage legislation in some of the countries e.g. India (Section 26(2) of Minimum Wages Act, 1948 to be precise), contains enabling provision to exempt some of the employments from minimum wages. In practice, some of the employments under the relief oriented programs are exempted from the payment of minimum wage determined under the minimum wage legislation. Employment provided to needy people in rural areas under Mahatma Gandhi National Rural Employment Guarantee Scheme may be cited as an example of the same. Due amendment in this regard needs to be made in the legislation dealing with minimum wage.
- There needs to be a minimum wage at the national level, irrespective of the fact whether the govt. at the National / State / Provincial / Local level is the appropriate govt. in respect of the employment / occupation, employees are engaged in. The local governments may be free to determine and set the minimum wages at their level above the minimum wage at the national minimum. The minimum wage legislation, in the countries including India where there is no such provision needs to be amended accordingly.
- In many cases non - payment of minimum wage amounts to violation of fundamental rights and human rights in addition to violation of the minimum wage legislation. Therefore, the violation of minimum wage legislation needs to be viewed seriously and the penalty for non respect of minimum wage legislation needs to be made deterrent. In the context of India, at present this penalty is only in the form of fine extendable up to `500/- or imprisonment up to 6 months. Such an important social legislation also needs to incorporate minimum penalty both in the form of fine and imprisonment and the maximum penalty also needs to be increased. The same may be increased to a term imprisonment up to six months or `5000/- or both for the first contravention and imprisonment for a term up to one year or fine up to `10,000/- or both for subsequent contravention.

- Similarly, the penal provision for contravening various other provisions of the minimum wage legislation like non- maintenance of registers and records which at present extends only up to ₹ 500/- needs to be enhanced to ₹ 5000/- for first contravention and ₹10,000/- for subsequent contravention.
- Since in the context of most of the countries the minimum wage determined as per the provisions of minimum wage legislation refers to subsistence wage, therefore, the cost of living, the needs of workers and their families, the general level of wages in the country, prevailing social security benefits and the rates of wages being paid for similar work in trades where the workers are adequately organized should have primacy over economic factors. The minimum wage legislations therefore needs to be amended to provide for incorporation of these criteria in due sequence.
- In the context of many countries including India, the minimum wage legislation does not define the term minimum wage. In the context of India, an attempt in this regard was made by the Fair Wages Committee, 1948 which observed: “A minimum wage must provide not merely for the bare subsistence of life but also for the preservation of the efficiency of the workers and for this purpose; the minimum wage must also provide for some measure of education, medical requirement and amenities”. This concept was further improved by the 15 Session of the Indian Labour Conference (1957) suggesting a list of basic requirements we should be taken into account in determination of minimum wage.
- Further, the Supreme Court of India in the historic *Raptakos Brett* judgement delivered in 1992 specified certain additional components to be added in determining minimum wage. The additional components specified included children’s education, medical requirement and minimum recreation, including festivals, ceremonies, provision for old age and marriage which should constitute 25% and be used as a guide for fixing the minimum wage. The 44th Session of the ILC, 2012 has also emphasized on this criteria and strongly advocated to incorporate the same in the text of the legislation dealing with minimum wages. It is, therefore, suggested that the term minimum wage needs to be clearly defined taking into account all the above mentioned facts and incorporated in the Act as also the criteria for

minimum wage determination also needs to be incorporated in the Act.

- Minimum wage legislation in majority of the countries provides for periodicity for revision of minimum wage after its initial fixation. In case of India, this limit is 5 years. However, the legislation does not make it obligatory upon the government to revise the minimum wage in the stipulated time limit. The proviso to Section 3(1) provides that if the government does not revise the existing minimum wage even after the expiry of a period of 5 years the existing rates would continue. This proviso needs to be deleted from the legislation as it has resulted in action on the part of the government.
- In case of India the period of 5 years to revise the minimum wage is too long. The time limit needs to be made reasonable and it should be binding upon the government to revise the minimum wages. The proviso may be amended to provide that if the government fails to revise the minimum wage within the stipulated reasonable time limit, the minimum wage would be deemed to have been revised to the extent of addition to the existing rates of special allowance to compensate the employees for rise in the cost of living index number since the last revision. The minimum wage legislation may alternatively provide for linking the minimum wage to a varying dearness allowance formula as in the case of government employee.
- In case of India, we already have the National Floor Level Minimum Wage (NFLMW) initiated for the first time in 1996. However, the same needs to be made statutory and applicable to every employment by making necessary amendments in the minimum wage legislation. The NFLMW may be reviewed and revised on the basis of NSSO Consumer Expenditure Survey conducted every five years. In addition, the same needs to be reviewed and revised every two years if there is no provision of VDA as proposed by Ministry of Labour and Employment, Govt. of India during 44th Session of ILC, 2012.
- In order to give full effect to the spirit of Minimum Wages Act, 1948 due consideration needs to be given at the earliest to do away with the non-obstante clause attached to Section 6 of Mahatma Gandhi National Rural Employment Guarantee Act, giving the scope for payment of lesser wages by the government to workers engaged

under Mahatma Gandhi National Rural Employment Guarantee scheme (the largest employment guarantee scheme in the world) in cases where the notified wages under the Minimum Wages Act are more than the wages declared under MGNREGA. A verdict in this regard has already been given by Hon'ble High Court in Writ Petition 11848/2009 of Andhra Pradesh and several state governments, Central Employment Guarantee Council working group on wages and a number of jurists and activists have already invited the attention of the Central Government towards this urgent need.

- At present, in India, there is a large list of scheduled employments under the Minimum Wages Act in Central and State sphere enabling the government to determine different wages for different employments. It creates problem in implementation. This problem can be overcome by clubbing of various identical employments under one category.
- There is need to enhance the claim period under the Minimum Wages Act from the present time limit of six months to one year under section 20(2) of the Act, 1948. Further, to effectively implement minimum wage legislation the same needs to be amended providing for Claims Authority at the local level (such as Block and Panchayat Samiti level)
- In order to effectively implement the minimum wage legislation, the minimum wages fixed and revised as per the provisions of minimum wage legislation should be given of wide publicity through various means.

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