

Fundamental Principles and Rights at Work and Informal Economy in India: Trends, Initiatives and Challenges

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Dr. Dhanya M. B



V.V. Giri National Labour Institute

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Dr. Dhanya M.B



V.V. Giri National Labour Institute
(Ministry of Labour & Employment, Govt. of India)
Sector-24, NOIDA-201301

Associate Fellow, V.V Giri National Labour Institute. The author can be contacted at dhanyambala@gmail.com

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Preface

The discourse of “labour rights” has emerged as a new discipline, to certain extent, in various academic forums. To find a concrete solution, the debate on labour standards should run parallel with the discussion on labour rights. Hence, the topic of the project holds extreme relevance for ratification of the ILO’s Fundamental Conventions. This work examines the status of Fundamental Principles and Rights at Work (FPRW) in the informal economy in India and locates the gaps and challenges in ratifying the ILO Conventions 87, 98, 138 and 182. The study also tries to identify various gaps in the existing data base of the informal sector regarding the four ratified fundamental conventions (Conventions 29, 105, 100, and 111). In short, based on the recent NSSO data on employment, the present study attempts a detailed analysis of FPRW and highlights the trend and challenges that need to be addressed in a systematic way.

Analysis of recent trends in the informal economy provides an overall picture of informalisation and casualisation of work and its implications on labour. Simultaneously, discussions on rights and practices explore rights at work related to core fundamental conventions as well as existing practice on discrimination with respect to employment, remuneration to workers, trade union membership, child labour, forced labour, etc. Finally, this study concludes that Government of India has been proactive in ensuring the rights at work enshrined in the FPRW conventions. But, considering the large unorganized informal economy in India, more measures have to be taken in order to achieve universal coverage.

I am confident that this working paper would be of immense interest and use to policy makers, academicians, and other concerned working in the area of labour rights and informal economy.



(V P Yajurvedi)
Director General

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First of all, I would like to acknowledge Shri V. P. Yajurvedi, Director General, VVGNLI, NOIDA, for his encouragement and support to initiate the study. I would also like to acknowledge Shri A C Pandey, Joint Secretary, Ministry of Labour and Employment, Government of India for his kind support. Sincere acknowledgement is also extended to late Shri Vikas, Former Director, MoLE, GoI.

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Finally, I am deeply indebted to my family and friends, especially, Dr P Sivakumar, faculty, RGNIYD; Dr Rinju Rasaily, Associate Fellow, VVGNLI; Dr. Partha Pratim Sahu, GIDR and Ms. Priya P Nair, Under Secretary, Ministry of Finance, GoI for their encouragement to finalise the work in the specified period. Last but not the least, I most gratefully acknowledge my parents and my brothers for all their support throughout the period of this research.

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CHAPTER I

Introduction

1.1 Background

The Universal Declaration of Human Rights (1948)¹ ensures right to work, favourable conditions of work without any discrimination, right to equal pay for equal work and tries to ensure that everyone has the right to form and join trade unions for the protection of his/her interests. Apart from ensuring right to work as everyone's right to the opportunity to gain his or her living, rights at work that include the enjoyment of just and favourable conditions of work and to form and join trade unions are also important. These rights are recognised and guaranteed not only in the main human rights instruments but also in International Labour Organization's (ILO) Conventions. As an agency of the United Nations overseeing labour issues, the ILO Declaration of Philadelphia (now a part of the ILO constitution) played a crucial role by emphasising the rights of all human beings to pursue their material well-being and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.² It considers fundamental rights as those that guarantee workers and employers to freely request "a just share of the fruits of progress" whether individually or collectively and without discrimination.³

The emergence of the concept of decent work has led to the recognition of the importance of Fundamental Principles and Rights at Work for the means to achieve ILO's strategic objectives⁴ as well as the combined global efforts to realize rights at work as an integrated strategy for decent work. The Declaration on Fundamental Principles and Rights at Work (FPRW) by the International Labour Organisation (ILO) in 1998 and its Follow-up is an important way forward to world of work. Subsequently, eight ILO conventions have been qualified by the Governing Body of the Organisation as being fundamental to guarantee the rights of those who work considered to be of higher priority as follows:

¹ Article 23, Universal Declaration of Human Rights

² ILO (2012)

³ ILO Declaration of Philadelphia

⁴ ILO (2012)

Fundamental Conventions	
1	The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2.	The Right to Organise and Collective Bargaining Convention 1949 (No. 98)
3.	The Forced Labour Convention, 1930 (No. 29)
4.	The Abolition of Force Labour Convention, 1957 (No. 105)
5.	The Minimum Age Convention, 1973 (No. 138)
6.	The Equal Remuneration Convention, 1951 (No. 100)
7.	The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
8.	Worst Forms of Child Labour Convention, 1999 (No. 182)

These eight conventions are known as Fundamental Principles and Rights at Work (FPRW).

1.2 Rationale of the Study

Since early 1980s and even before liberalisation/globalisation, more than 90 per cent of the total workforce has been engaged in informal sector; informal employment has been widespread and continues to be an emerging phenomenon. The magnitude is verified by the fact that nearly 92 per cent (NSSO 2009-10) of the workforce are in the informal sector in India. A significant share of the informal sector workers are deprived of benefits or security, similar is the case of those who are engaged in informal employment in the formal/organised sector. ILO's definition of informal sector is broadly characterised as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned.⁵ Though perspectives on what constitutes informal sector vary according to various sources, it involves a large number of workers, substantial quantum of production and geographical spread, it reminds the governments to be concerned about this emerging issue of concern. There is a need to focus on this large informal sector especially in the light of the labour market reforms to boost competitiveness and employment as part of

⁵ International Labour Organization (ILO) Resolutions Concerning Statistics of Employment in the Informal Sector Adopted by the 15th International Conference of Labour Statisticians, January 1993, para. 5

the globalisation on the economy. FPRW in the informal economy is significant as it is the threshold to decent work, since it gives fair income, security at workplace, equal opportunities and treatment, freedom to organise and participate in decision-making. Therefore, the relevance of FPRW in this context cannot be undermined.

Towards eliminating discrimination in respect of employment, occupation and remuneration to workers on any ground as well as the elimination of all forms of forced or compulsory labour, India has already ratified four fundamental conventions (No. 29, 105, 100 and 111). The existing policies and legal provisions⁶ of the country to this effect are in full conformity with the provision of these four conventions in addressing discrimination with respect to employment, occupation and remuneration and practices and also elimination of all forms of forced and compulsory labour. Though remaining four of the eight core conventions (Convention No. 87, 98, 138 and 182) have not been ratified by India, but almost all provisions of these conventions have been given effect by various initiatives of the government.⁷ However, it may be beneficial to discuss that to what extent would these initiatives guarantee that the workers' rights recognised in these provisions have been exercised in the informal economy of India. India has taken several initiatives and suitable measures to accelerate the process leading to ratifying these four conventions in the next International Labour Conference, which will be held in the year 2015. Hence, it is crucial at this juncture to examine the status of FPRW in the informal economy and locate the gaps and challenges coming in the way of ratifying the ILO conventions 138, 182, 87 and 98. In the above backdrop, the following objectives have been identified as the major focus of the study.

1.3 Objectives of the Study

1. Examine the status of Fundamental Principles and Rights at Work (FPRW) in the informal economy.

⁶ See Chapter 4.

⁷ Working class in India has the rights to form their associations and can exercise collective bargaining. For public servants carrying out sovereign functions and duties of the State there are different mechanisms in place to redress their grievances and assert their rights. India is committed to eliminate child labour in all its forms and in the process of amending the existing law towards ratifying Conventions 138 and 182. Right of Children to Free and Compulsory Education 2009 ensures that all children in the age group of 6-14 years are in school.

- Effects of the four ratified conventions (Convention 29,105,100 and111) on the informal economy in India.
 - Measures being taken for ratifying the other four ILO conventions (Convention 87,98, 138 and182)
2. To examine the existing National legislation in achieving Fundamental Principles and Rights at Work (FPRW).
 3. To identify various gaps in the existing data base of FPRW in various sectors and give suggestions for further action.

1.4 Methodology

The study is based on secondary data collected from several governmental sources, such as periodicals and published governmental sources. Conceptual understanding of the subject matter was framed from the extensive review of literature. Recent data for the analysis were used from various sources to interpret the progress and comparison over the years in terms of different variables for measuring the status of rights at work in the informal economy. Moreover, Census, NSSO and other data sources were analysed and interpreted subsequently. Besides referring survey reports/documents/literature on the subject, websites of different ministries, ILO, workers' organisations and employers' federation were used wherever required.

4.5 Limitations of the study

There are mainly two limitations that need to be acknowledged and addressed regarding the present study. The first limitation concerns the secondary data deficiency for analysing the informal sector. The second limitation is that the study has not undertaken any primary survey because of the limited time period of four months.

CHAPTER II

Fundamental Conventions: An Overview

This chapter provides an overview of FPRW conventions briefly tracing the background development of the ILO Declaration of Fundamental Principles and Rights at Work. It highlights the features of its content, and explains its follow-up and development in the era of globalisation. The latter part of this chapter captures the national and international scenario of FPRW.

2.1 Brief History of the Fundamental Principles and Rights at Work (FPRW)

Declaration on Fundamental Principles and Rights at Work (FPRW) built on the Philadelphia Declaration is considered as a major statement of principles and policies adopted by the International Labour Organisation on rights at work since its constitution in 1919. The incubation period of the Declaration of FPRW began in 1994 on the occasion of ILO's 75th anniversary when via the Philadelphia Declaration, the ILO reflected upon its mandate and mission in the context of contemporary realities as the 20th century drew to a close.⁸ Social and labour issues gained more importance on the international community agenda at the end of the 20th century. The World Summit on Social Development in 1995 (Copenhagen) and the Ministerial Conference of the World Trade Organization in 1996 (Singapore) also played a role in the development of the Declaration by promoting respect for relevant ILO conventions including those on FPRW. Thus, the principles and rights contained in the Declaration of FPRW have been articulated in both these conferences. The Singapore ministerial conference adopted the following language in paragraph 4 of their Final Declaration:

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them ...”⁹

⁸ A. Trebilcock A (2001)

⁹ World Trade Organization (1996), WT/MIN(96)/DEC/W, paragraph 4

In Singapore Conference, developing countries, including India, rejected the proposal to include labour standards as an agenda in the World Trade Organization. Reflections of the Singapore Declaration and the Organization for Economic Co-operation and Development (OECD) study¹⁰ can be detected in the text of what became the ILO Declaration on Fundamental Principles and Rights at Work (in paragraph 5). These fundamental principles and rights provide benchmarks for responsible business conduct and are incorporated into the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.¹¹ Furthermore, the OECD's Guidelines for Multinational Enterprises emphasise the principles and rights found in the ILO Declaration and the UN Global Compact promotes them as universal values to be achieved in business dealings around the world¹².

2.1.1 Declaration on Fundamental Principles and Rights at Work (FPRW)

The 1998 FPRW Declaration states that:

“all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.”¹³

Thus, the Declaration maintains the link between social progress and economic growth to guarantee fundamental principles and rights at work

¹⁰ OECD (1996). (This study basically concluded that there was no trade advantage from failure to respect freedom of association – in effect endorsing from an economic perspective what the ILO had long asserted in a positive sense from the viewpoint of basic human rights)

¹¹ ILO (2002, Brochure)

¹² OECD (2005)

¹³ ILO Declaration on Fundamental Principles and Rights at Work, ILC, 86th Session, Geneva, 18 June 1998.

with particular significance on the basis of equality of opportunity, which helps to generate and to fully achieve workers' human potential (Annexure 1, FPRW Declaration).

Since the adoption of the Declaration, the ILO Office has developed and implemented a programme of technical cooperation in both ratifying and non-ratifying member states. The annual follow-up concerning non-ratified fundamental conventions entails merely some adaptation of the present modalities of application of the article¹⁴ and the global reports¹⁵ serves to obtain the best results from the procedures carried out pursuant to the Constitution.¹⁶ This follow-up mechanism through annual reports on ratifications and periodic thematic global reports are then discussed during the International Labour Conference. At the same time, during 1990s the concept of 'decent work' by the ILO marked a major intervention in the discourse on world of work. Decent work sums up opportunities for work that are productive in conditions of freedom, fair income, security and human dignity. Rights at work (worker's right) is one of the four elements¹⁷ of the ILO model for decent work, which ensures that all those who work have the rights at work. Thus, the fundamental rights at work constitute a central foundation of decent work.

2.1.2 Declaration on Social Justice for a Fair Globalisation

It is well known that sweeping wave of globalisation had brought about innumerable changes in socio-economic and cultural life of the people of the world, which is followed by widespread uncertainty in the world of work by growing concerns of labour rights abuses.¹⁸ Consequently, the need for international organisation to work better, together, on these issues has emerged as a major concern with the course of globalisation. The 2008 ILO Declaration on Social Justice for a Fair Globalization is a renewed statement of faith to meet the challenges of the 21st century and it reaffirms the importance of respecting, promoting and implementing

¹⁴ Article 19, paragraph 5(e) of the Constitution (ILO)

¹⁵ As part of the follow-up to the declaration, ILO Director General submits a *Global Report* on one of the four categories of fundamental principles and rights to the tripartite International Labour Conference each June. It is available at <http://www.ilo.org/declaration/follow-up/globalreports/lang--en/index.htm>

¹⁶ Annex 1: ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

¹⁷ Employment, Social security, workers rights, social Dialogue

¹⁸ ILO's declaration on social justice for a fair globalisation(2008)

fundamental principles and rights at work, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. In the Decent Work framework of ILO there are three important concerns in realising workers' rights as direct association with fundamental conventions. These concerns are also related to forced and child labour, discrimination at work and freedom of association and collective bargaining. With respect to each of these, the rights of workers are derived from some simple principles such as those set out in ILO instruments, which are usually referred to as International Labour Standards. The declaration on fundamental rights, as reconciled basic principles that are interdependent and essential to decent work, has been recognised as an instrument for equality and justice since being treated equality is an indicator of justice.¹⁹ Thus for the international community at large fundamental principles and rights at work have become the 'social minimum' for the global economy.²⁰ Moreover, the 2002 discussion 'Resolution on Decent Work and the Informal Economy' at the International Labour Conference (90th session) recognised that informal workers – employed and self-employed – have the same rights as formal workers to decent work, and promotes the organisation of informal workers²¹. Thus, the fundamental principles and rights at work are applicable to both formal and informal workers in equal terms.

2.1.3 Recent Development in FPRW: From Commitment to Action

International Labour Conference (2012) Report IV 'FPRW: From Commitment to Action' constitutes the first Global Report submitted to the Conference for a recurrent discussion on FPRW in accordance with the revised follow-up to the 1998 Declaration and the Social Justice Declaration.²² This report noted that majority of the informal workers in the world are not getting the actual benefits from FPRW. This is one of the major challenges to the promotion of FPRW, especially where the global proportion of the workforce in the informal economy is as high as 90 per cent.²³ In developing countries, large number of workers depends

¹⁹ Mills (1987), points out that equality has to be considered as a basic precept for justice.

²⁰ Maria Luz Vega Ruiz and Daniel Martinez (2002)

²¹ ILO (2002)

²² ILO (2012)

²³ ILO: Statistical update on employment in the informal economy (Geneva, ILO, 2011).

on informal sector and agriculture is clearly the most affected sector along with other sectors such as construction, textiles, tourism, transport and household services. Simultaneously, between formal and informal employment there is growing recognition of the range and close linkages in the global production chains.²⁴ While taking into account the debates to tackle informality and its adverse consequences, it is understood that the progress made has not been remarkable till now, given the magnitude of the problem. FPRW cannot be effectively applied in the absence of law, furthermore, both rights and enabling mechanisms constitute an important element of the formalisation process.²⁵ Appropriate national legislations needs to be accompanied by effective institutions and mechanisms of enforcement as an essential precondition for the full realisation of FPRW.²⁶

2.2 International and National Scenario of FPRW

The ILO is trying to set a goal of universal ratification by 2015, Figure 2.1 shows that 115 ratifications are still required from member states as on 31 December 2012. The pace of ratification of the Child Labour Convention is high and the remaining fundamental conventions is not so parallel and also have slowed down considerably for the last five years. Noticeably, Freedom of Association and Collective Bargaining Conventions still have the lowest number of ratifications among the most populated countries, at the same time the Equal Remuneration Convention covers almost 95 per cent of the world population (Annexure A). The situation is same in the case of India also as we have not yet ratified Freedom of Association and Collective Bargaining Conventions. The position of the 48 member states that have not ratified all of the fundamental conventions and their reasons for not ratifying differ widely according to their socio-economic and political situations as well as the absence of intention to ratify or not indicated its position to the Office²⁷ concerning the ratification of some fundamental conventions²⁸ as per the annual reports²⁹. In this juncture, it

²⁴ A. Trebilcock (2001), pp. 63–86.

²⁵ FPRW: From Commitment to Action (2012), ILC, Report IV

²⁶ ILO: *Giving globalization a human face*. A significant number of comments by the social partners in reply to the article 19 questionnaire refer to the lack of effectiveness of FPRW enforcement mechanisms.

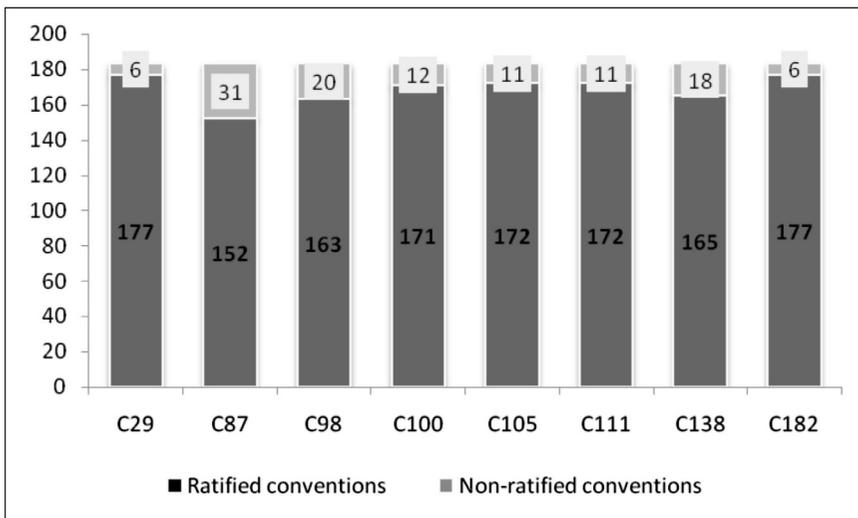
²⁷ Annual reports

²⁸ China, with respect to Conventions Nos 29, 87, 98 and 105

²⁹ ILO: Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Governing Body, 310th Session, Geneva, Mar. 2011, GB.310/3. See also ILO: *Giving globalization a human face*, Part VI.

would be difficult to assess the importance of each of the fundamental conventions without drawing a detailed analysis of each convention at the global level. Hence, the impact and the challenges regarding the ratified and non-ratified fundamental conventions at the global level are essential for assessing what can be done to respect fundamental conventions in future for a developing nation like India.

Figure 2.1
Ratification of fundamental conventions (as on 31 December 2012)



Source: ILO (2013), Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Appendix 4, Governing Body, 317th Session, Geneva

Government of India has been proactive in ensuring the rights to workers and addresses discrimination through various policies and legislations. Among the eight FPRW conventions, so far India has ratified four fundamental conventions (Nos. 29, 105, 100 and 111) and the other four conventions (Convention Nos. 87, 98, 138 and 182) have not been yet ratified by India. The subsequent section discusses the National and international trends of eight core conventions on FPRW with special focus on its status in India.

2.2.1 Freedom of association and the effective recognition of the right to collective bargaining (Convention Nos. 87 and 98)

According to ILO Convention Nos. 87 and 98, all workers and all employers have the right to freely form and join groups for the support

and advancement of their work-related interests. It guarantees adequate protection to workers against acts of anti-union discrimination with respect to their employment. Moreover, these principles cannot be ignored or prohibited for any group of workers. Voluntary collective bargaining aims at reaching mutually acceptable collective agreements through which employers or their organisations and trade unions discuss and negotiate their relations.³⁰ If an agreement is not reached even after collective bargaining, dispute settlement measures ranging from conciliation through negotiation to arbitration can also be used. It is recognised that to promote democracy, right to organise and bargain collectively have an own role as they facilitate decent conditions at work. Empirical studies show a strong relationship between democracy and respect for freedom of association and collective bargaining rights. Stronger democracy and freedom of association and collective bargaining rights may result in greater economic and social stability that enhance global competitiveness and economic performance.³¹

At global level, governments of Brazil, Canada, Malaysia, Mexico, New Zealand, Singapore and United States have clearly stated that they do not have any intention to ratify either one or both of these conventions or that they are unable to ratify due to legal incompatibility or for contextual reasons. Apart from reporting of strengthened social dialogue by states, such as Bahrain, Brazil, India, Islamic Republic of Iran, Kenya, Malaysia, Marshall Islands and Mexico, some countries, such as Morocco and Vietnam, are in final position of ratifying these conventions.³² Hence, there are challenges that countries face in order to ratify these conventions.

Different countries face different challenges, for example, problem of national and legal incompatibilities; lack of institutional capacity can be an obstacle in the way of realising freedom of association or collective agreements; political instability and/or transition periods interrupt or hamper ratification processes; other contextual factors related to political, social or economic circumstances can pose challenges. Additional difficulties include lack of public awareness and/or support, prevailing employment

³⁰ InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, Declaration Overview.

³¹ Freedom of association in practice: Lessons learned, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2008

³² *ibid*

practices and problems related to trade unions³³ and also no unions in the private sector.³⁴ Hence, although legal provisions clearly remain the most significant obstacles identified by workers' and employers' organisations, greater emphasis is being placed on the challenges posed by contextual factors, such as political, economic and/or social circumstances, especially in the case of workers' organisations in Afghanistan, Iraq, Kenya, Malaysia, Nepal, Saudi Arabia, Somalia and Sudan. For instance, according to the National Union of Afghanistan Employees (NUAE, locally called AMKA), the main challenges relate to poverty, corruption and lack of transparency, as well as to various forms of trafficking. In Saudi Arabia and the United Arab Emirates, lack of capacity among workers' organisations was identified as a major challenge. The United Arab Emirates Coordinating Committee of Professional Associations (UAECCPA) emphasised that its main challenges were lack of awareness about workers' rights, lack of unity among workers and serious legal obstacles to the creation of trade unions. In Somalia, the Federation of Somali Trade Unions (FESTU) identified the lack of advocacy and awareness arising as challenges, as well as the national labour laws, which poses critical problems to trade union activities and respect for workers' rights.³⁵

Convention Nos. 87 and 98 relating to Freedom of Association and Collective Bargaining have not been ratified by India but almost all provisions of these conventions have been given effect by providing the rights to the working class of the country (except public servants performing sovereign functions, police and prison officials) to form their associations and to collective bargaining.³⁶ The Government of India is in the process of ratifying these conventions, especially the collective bargaining convention, shortly. In response to these core conventions India has its own extensive law that is guaranteed by its Constitution and the central and states laws.

³³ Few countries found the problem related to Trade Union also, for example, In Bahrain the Workers' Trade Union Law, section 10, does not recognize the right to establish trade unions in the public sector. Similarly, in Guinea-Bissau trade unions are not permitted in financial institutions and certain commercial enterprises. In Malaysia, the Trade Union Act, 1959, excludes several categories of workers from any form of organization.

³⁴ According to the Government of the Marshall Islands, the principle of the effective recognition of the right to collective bargaining is not applied in the country. This is to a large extent due to the fact that there are no unions in the private sector.

³⁵ ILO (2000), *World of Work*, pp. 4–8

³⁶ Practical situation of these rights explored more in the forthcoming chapter.

2.1.2 Equal remuneration and elimination of discrimination with respect to employment and occupation

Both Equal Remuneration Convention 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention 1958 (No. 111) restrict discrimination at work on the basis of workers' sex, religion, race, disability, HIV status, etc. and ensure equal remuneration. Discrimination at workplace may be direct or indirect.³⁷ The International Labour Organization (ILO) states "Discrimination is direct when regulations, laws and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex. Job advertisements that exclude or overtly discourage applications from married workers or people over a certain age or of a certain colour/complexion are other examples of direct discrimination."³⁸ Indirect discrimination occurs where rules or practices appear to be impartial on the surface but there exist informality in attitudes and practices. Being discriminated is an abuse of a person's dignity and worth. The Equal Remuneration Convention promote the equality of opportunity and treatment by having a national policy that aims to provide equal remuneration for men and women for work of equal value. However, this principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means.³⁹

With regard to Convention Nos. 100 and 111, the ratification pace is relatively high when compared to other fundamental conventions (see Figure 2.1). Simultaneously there are indications from many governments⁴⁰ in ratifying these conventions. Some of the countries⁴¹ have reported difficulties because of the lack of following factors: (i) public awareness; (ii) information and data; (iii) legal provisions; (iv) political and socio-economic circumstances; (v) responsible public institutions; (vi) employers' and workers' organisations; and (vii) social dialogue. Another important

³⁷ Fundamental rights at work: Overview and prospects, Labour Education 2001/1 No. 122, ILO

³⁸ Human Rights and Business Pages Non Discrimination and Equality, Available at <http://www.duurzaamadeel.nl/website/var/assets/public/publications/themas/diversiteit-arbeidsparticipatie/non-discriminationandequality.pdf>

³⁹ ILO Declaration on Principles: A New Instrument to Promote Fundamental Rights, A workers' education guide, 2000, ILO

⁴⁰ For eg: Government of Bahrain, Brunei, Kuwait and Liberia Republic of Maldives, Marshall Islands, Myanmar and Suriname Solomon Islands.

⁴¹ Like Brunei Darussalam, Marshall Islands and Tuvalu

reason for the wage differentials exist in the country is particularly between national and migrant workers, for instance in Kuwait. Liberia stated that the difficulties in realising the principles and rights mentioned in the conventions were mainly due to: (i) high unemployment; (ii) lack of resources to encourage job creation; (iii) lack of capacity of responsible government institutions; and (iv) lack of education and training among workers' organisations. The employers' organisation Firestone Liberia observed that the main challenge was the lack of capacity of responsible public institutions, particularly in the labour inspectorate. In addition, the Firestone Agricultural Workers' Union of Liberia (FAWUL) and the United Workers' Union of Liberia (UWUL) have observed that unemployment, absence of adequate resources for families and socio-economic factors are among the main challenges to the elimination of discrimination.⁴²

India has ratified both Conventions (Nos. 100 and 111) to guarantee the elimination of discrimination with respect to employment and occupation and remuneration to the workers on any ground.

2.1.3 Elimination of all forms of forced or compulsory labour

The ILO Forced Labour Convention (No. 29) defined forced labour as all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁴³ The Abolition of Forced Labour Convention 1957 (No. 105) stated that forced labour can never be used for the purpose of economic development or as a means of political education, discrimination, labour discipline, or punishment for having participated in strikes.⁴⁴ Moreover, prior to Abolition of Forced Labour Convention, the Slavery Convention 1926 provides for necessary steps for preventing compulsory labour and in addition, the Abolition of Slavery 1956 provides for the complete abolition of forced labour, debt bondage and serfdom.⁴⁵ Forced labour can be considered as converse of decent work since it means a kind of control of one human being over the other. There may be different kinds of forced labour⁴⁶, however, in the entire form of forced labour there are primarily

⁴² Annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Organization Governing Body, 313th Session, March 2012,

⁴³ M. Kern and C. Sottas (2003), Chapter 3.

⁴⁴ ILO (2005)

⁴⁵ Abolition of Forced Labour Convention, 1957 (No. 105)

⁴⁶ for eg: slavery and abductions, bonded labour, forced labour imposed by the military, forced labour in the trafficking in persons etc.

two common features: one is exercise of coercion and second is denial of freedom. At the same time, certain groups are particularly vulnerable to the contemporary forms of labour such as women, children, ethnic or racial minorities and migrant people.⁴⁷

While taking into account the challenges in ratifying the conventions, most of the challenges reported by few countries⁴⁸ are same as the challenges that are discussed earlier, such as dearth of public awareness, legal provisions, responsible public institutions and social dialogue. Moreover, mandatory military service is also another challenge to the ratification of these conventions in certain countries.⁴⁹ India has ratified both Conventions (Nos. 29 and 105) to guarantee fundamental rights of economic liberty and freedom of labour.

2.1.4 The Minimum Age and Worst Forms of Child Labour

ILO adopted Minimum Age Convention in 1973 and subsequently Worst Forms of Child Labour Convention (No. 182) in 1999. Minimum Age Convention sets the general minimum age for admission to employment or work at 15 years (13 years for light work) and the minimum age for hazardous work at 18 years (16 years under certain strict conditions)⁵⁰. It provides for the possibility of initially setting the general minimum age at 14 years (12 years for light work) where the economy and educational facilities are insufficiently developed.⁵¹ Worst Forms of Child Labour Convention defines a “child” as a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children.⁵² In Figure 2.1 it can be seen that Worst Forms of Child Labour Convention is

⁴⁷ Stopping the Forced Labour, (2001), Global Report Under the Follow Up to ILO Declaration on FPRW, International Labour Conference 89th session,

⁴⁸ The countries like Afghanistan, Brunei Darussalam, Marshall Islands, Solomon Islands and Tuvalu have reported.

⁴⁹ Republic of Korea (Trade union view)

⁵⁰ The Minimum Age Convention No 138

⁵¹ Source - <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/langen/index.htm> accessed on 03.01.13

⁵² ILO, Worst Forms of Child Labour Convention, 1999 (No. 182), Article 3

the most widely ratified convention among the other ILO Fundamental conventions. Of the ILO's 183 member states, 88 per cent have ratified ILO Convention No. 138 on the minimum age for admission to employment and since 1995 the number of ratifications of Convention No. 138 has increased⁵³ dramatically from 48 to 165.

Poverty, political situation and lack of public awareness are the major challenges hindering the ratification of such conventions. Other challenges include absence of legal provisions, the lack of tripartite capacity and the lack of capacity of responsible public institutions as well as to the capacity of employers' and workers' organisations in the elimination of child labour. While looking specifically at some of the countries' perspective, United States referred to a number of persisting issues, including the situation of children whose parents are not authorized to work and children accompanying their parents to the fields due to the lack of day-care services. In Somalia, the main concern is child soldiers, which is a very sensitive issue that needs to be dealt with carefully in the national context.⁵⁴

While the target date of 2015 for universal ratification of Convention No. 182 is approaching, nine countries⁵⁵ including India have yet to ratify it but majority of the states have indicated progress towards the ratification of both conventions. The Government of India is already persuaded to facilitate ratification of Convention No. 182 by incorporating necessary amendments in the Child Labour (Prohibition & Rehabilitation) Act, 1986.

2.3 Conclusion

Legislative and constitutional protection for workers to protect rights at work can be considered as the hallmark of any progressive nation. It is considered as one of the fundamental premises of decent work. In India various promotional activities concerning the fundamental

⁵³ ILO (2012), *Tackling child labour: From commitment to action* / International Labour Organization, International Programme on the Elimination of Child Labour (IPEC), Geneva: vol. 1.

⁵⁴ Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (2012) GB.313/INS/3

⁵⁵ Cuba, Eritrea, India, Republic of Maldives, Marshall, Islands, Myanmar, Solomon Islands, Somalia and Tuvalu and India

principles and rights at work have been carried out for several last years, and the involvement of social partners, such as trade union, employers, government officials and NGOs, is highly appreciable. Concurrently, most of the national laws are in line with the provisions of these fundamental conventions. However, Fundamental Principles and Rights at Work relating to the informal/unorganised workers has been a subject of considerable discussion among trade union leaders, academicians and labour experts in India. While the existing legal protection for workers have been, to a large extent, effective in providing protection to workers in the formal/organised sector. This has not been the case with the unorganised workers, who largely remain outside the purview of most of the national legislations. Hence, it is need of the hour to examine the issues that the informal workers face regarding rights at work and to examine the gaps or mismatch between the legal provisions and practice. This aspect is examined in detail in the next chapter.

CHAPTER III

Informal Economy in India: An Analysis of Recent Trends

Indian labour market predominantly comprises of informal employment in both formal as well as informal sector. Informal sector is quite heterogeneous in nature and at the same time there is notable change in the form of informal work over the years, from traditional forms of non-standard wage works (e.g. casual jobs) and self employment (e.g. street-trading) to new forms of non-standard wage work (e.g. temporary and part-time) and self-employment (e.g. high-tech home-based work).⁵⁶ As a result, a substantial proportion of the workers are deprived of rights, especially those who are working in informal sector than formal sector. Informal workers face greater work-related risks, such as less secure contracts, fewer benefits, and poorer working conditions for wage workers⁵⁷. The ILO's initiative on Fundamental Principles and Rights at Work (FPRW) is an important instrument to address such issues since it assures fair income, security in the workplace, equal opportunities and treatment, freedom to organize and to participate in decision-making. In the modern 'decent work' scenario, trends and challenges of FPRW in the informal economy at the national level is an emerging and complicated issue.

This chapter begins with a discussion of the key aspects of the informal/formal economy related to its size and composition and also sector-wise analysis of workers by gender and industry depending on the type of work they do, and particularly on rights at work related to eight fundamental conventions. In specific, the recent trends of informalisation and casualisation of work and its implications on labour has been discussed at the end of this chapter.

3.1 Informal Economy: Concept and Definitions

The term 'informal sector' emerged as a broader concern subsequent to ILO's effort to develop conceptual framework and guidelines for the collection of statistics on informal sector⁵⁸. Thereafter,

⁵⁶ Martha Alter Chen, Renana Jhabvala, Frances Lund (2002)

⁵⁷ Ibid. p. 6

⁵⁸ Ajaya Kumar Naik, 2009.

various definitions of informal sector⁵⁹ have been used in India as per their specific requirements of each organization, viz National Sample Survey Organization (NSSO), Directorate General of Employment and Training (DGET), and so on. In the beginning, most of these organizations captured differences in terms of formal/organised or informal/unorganised sectors. However, globalisation and IT revolution has induced increasing flexibilisation and informalisation of production relationships even at formal workplace⁶⁰ and these workers are not covered under labour and social protection laws. Meanwhile, National Commission for Enterprises in the Unorganised Sector (NCEUS) set up Task Force to review the existing definitions of informal/unorganised sector to come out with a new definition, which is as follows:

The informal sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers (NCEUS, 2008).

While addressing the issues of employment in informal sector the NCEUS noted that apart from formal and informal sector distribution, there is informal and formal employment within these two sectors and the definition has further strengthened in terms of informal employment. It is complementing the definitions of unorganised/informal sector with a definition of informal employment.

In view of the above, the following definition of NCEUS has identified and defined unorganised/informal sector:

Informal workers consists of those working in the informal sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers (NCEUS, 2008).

Thus, NCEUS defined organised/formal and unorganised/informal sectors on the basis of enterprise type, number of workers and social benefits. The informal sector and its workers plus the informal workers in the formal sector constitute the informal economy⁶¹. The present study

⁵⁹ The terms 'unorganised' and 'informal' sectors are often used interchangeably

⁶⁰ Standing, G. (1999)

⁶¹ National Statistical Commission (2012), pp-11.

has applied the NCEUS definition of organised/formal and unorganised/informal sectors for the NSSO data analysis.

3.2 Shift in Employment by Formal and Informal Classification

Shift in employment pattern, both quantitative and qualitative, signify better work condition, and are important indicators for standard of living.⁶² The last decade from 1999–2000 to 2009–10, witnessed an employment growth of 1.6 per cent per annum⁶³, and the second half (2004–05 to 2009–10) of the decade was relatively modest.⁶⁴ In India around 91 per cent workforce is involved in informal employment, even though the absolute size of employment has increased in the formal sector and declined in the informal sector in the recent years. Formal sector employment has increased by almost 3 per cent between 2004–05 and 2009–10 and in absolute terms, 20 million compared to just 461 million workers in the country (Table 3.1). This indicate the shift of employment from informal to formal without much increase in the overall employment, which is well documented by several scholars in recent years.⁶⁵ Even though the increase in formal sector employment shows a positive sign, in contrast, slowing down of overall employment growth is a serious apprehension in the economy.

Table 3.1
Distribution of formal-informal sector, 2004–05 and 2009–10

	Formal Sector		Informal Sector		Collective	
	2004–05	2009–10	2004–05	2009–10	2004–05	2009–10
Number (in millions)	62.56	82.95	394.9	378.25	457.46	461.21
Percentage	13.68	17.99	86.32	82.01	100	100

Source: NSSO, 2004–05, 2009–10⁶⁶

Further, as shown in Table 3.2, formal workers both in formal as well as informal sector has gone up between 2004–5 and 2009–10. The distribution of informal workers within the formal sector has also increased

⁶² Mehrotra et al. (2012).

⁶³ usual principal and subsidiary status (UPSS)

⁶⁴ GOI (2013), Economic survey, 2012-13, page 275

⁶⁵ Malhotra, 2012, Kanan, 2012

⁶⁶ Computed from unit level data of NSSO, 66th round

substantially. However, the equation of formal and informal workers within formal sector has changed over the years with more informal workers compared to formal workers. This reveals that on the one hand formal sector has been widening but with poor quality of employment in terms of job protection and working condition.⁶⁷ Despite the intense debate on impact of globalisation on labour and employment, the changing market conditions would lead to pressures for greater flexibility in the employment and utilisation of labour⁶⁸ is an important matter of concern. Moreover, it leads to reduction in employment security and social protection and an overall deterioration in quality of employment⁶⁹, neglecting basic workers' rights. Quality of employment is always counting with the rights at work or workers' rights, since right deficiency is the reason for the low quality of employment.

Table 3.2
Distribution of formal-informal sector and worker (in millions)

	Formal sector		Informal sector		All	
	2004-05	2009-10	2004-05	2009-10	2004-05	2009-10
Formal Worker	33.42 (53.42)	38.19 (46.03)	1.43 (0.36)	2.41 (0.64)	34.85 (7.62)	40.6 (8.8)
Informal Worker	29.14 (46.58)	44.77 (53.97)	393.47 (99.64)	375.84 (99.36)	422.61 (92.38)	420.6 (91.2)
Total	62.56 (100)	82.95 (100)	394.9 (100)	378.25 (100)	457.46 (100)	461.2 (100)

Source: NSSO, 2004-05 and 2009-10

Note: figures in the parenthesis depict percentages.

3.2.1 Employment across social groups

Table 3.3 shows the distribution of formal and informal sector across social groups, which reflects that the total workers of Other

⁶⁷ Low wages, increased hours of work etc

⁶⁸ Papola T S (2005), Workers in a Globalising World: Some Perspectives from India, Paper presented at the Conference on □Globalisation and Labour Mobility in India and China□, organised by Asian Business and Economic Research Unit (ABERU), at Monash University, Australia.

⁶⁹ *ibid*

Backward Classes (OBC) is highest followed by others, schedule caste and schedule tribes in the country. Moreover, distribution across formal and informal sector indicates a different picture with relatively higher people from socially backward group employed in informal sector. Hence, informal/formal sector is much more favourable to the workers in the OBC and 'other' groups than to the workers from the SCs and STs.

Table 3.3
Distribution of Formal-Informal Sector across Social Groups

	Formal sector	Informal sector	Total
ST	17.2	82.8	100 (9.7)
SC	17.3	82.7	100 (20.3)
OBC	15.6	84.4	100 (41.7)
Other	22.2	77.8	100 (28.3)

Source: NSSO (2009-10), Absolute figure (in million) in parenthesis

3.2.2 Industry of employment

The industrial distribution presented in Table 3.4 indicates that formal sector workers are mainly concentrated in the service sector (45.35%), followed by manufacturing, construction and agriculture. So, India's pattern of development indicates a premature emergence of the service sector as the major contributor to GDP.⁷⁰ On the other hand, more than half of the informal sector workers are involved in agriculture with some presence in manufacturing, trade, hotel, restaurants, construction and others. Further, in terms of gender, 67 per cent of the total female workers, compared to 42 per cent of the total male workers, are engaged in agriculture. Concurrently, non-agricultural formal sector sees the presence of just 11.51 per cent of the total female work force, whereas it is considerable with 21.34 per cent in non-agricultural informal sector. The informal sector coverage is very important in the sense that a greater number of women workers, 85 per cent, are engaged in the informal sectors of employment than the male workers, 81 per cent.

⁷⁰ Papola, (2005)

Table 3.4
Industry wise distribution by formal and informal sector and gender,
2009-10 (in millions)

	Formal sector			Informal sector			Collective		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Agriculture, etc.	7.12	4.97	12.09	143.78	80.93	224.72	150.90 (42.29)	85.90 (67.08)	236.81 (51.34)
Mining and quarrying	1.66	0.19	1.85	0.95	.14	1.10	2.62 (0.78)	0.33 (0.25)	2.95 (0.63)
Manufacturing	14.08	2.54	16.63	24.51	11.96	36.47	38.59 (11.58)	14.51 (11.3)	53.11 (11.51)
Electricity, gas and water supply	1.07	0.12	1.19	0.13	0	0.13	1.20 (0.36)	0.12 (0.09)	1.32 (0.28)
Construction	9.81	3.74	13.56	27.91	2.79	30.70	37.72 (11.32)	6.53 (5.09)	44.26 (9.59)
Trade, hotel and restaurants	3.69	0.32	4.01	42.76	5.46	48.23	46.45 (13.94)	5.79 (4.52)	52.24 (11.32)
Transport, storage and communication	4.73	0.30	5.03	15.53	0.23	15.76	20.26 (6.08)	0.53 (0.41)	20.80 (4.5)
Finance, business, real estate, etc.	4.77	0.86	5.64	4.38	0.42	4.80	9.15 (2.74)	1.29 (1.00)	10.45 (2.26)
Public admn, health, education, etc.	16.22	6.68	22.91	9.99	6.32	16.31	26.22 (7.8)	13.0 (10.15)	39.22 (8.5)
Total	63.18	19.76	82.95	269.96	108.28	378.25	333.15 (100)	128.05 (100)	461.20 (100)

Source: NSSO (2009-10). Note: figures in the parenthesis depict percentages.

3.2.3 Status of employment

Apart from formal and informal workers, quality of employment can also be examined further through workers' status of employment. According to the employment status, employed persons are categorised into three groups: self employed, regular wage/salaried employees and casual labour. Table 3.5 shows that more than half of the formal sector workers are regular, little less than one-third are casual and one-fifth of

them are self employed. On the other hand, informal sector workers are largely self employed and casual workers with little presence of regular workers. As regular work is supposed to be the better form of work in comparison to self and casual work, the relative low percentage of regular work and high proportion of casual labourer in informal sector clearly indicate the dualism in the economy in terms of quality of employment in formal and informal sectors.

Table 3.5
Percentage distribution by employment status, 2009-10

Status	Formal sector	Informal sector	Total
Self-employed	11.01	59.23	50.56
Regular employed	59.67	7.20	16.64
Casual Worker	29.32	33.57	32.8
Total	100	100	100

Source: NSSO, 2009-10.

3.2.4 Conditions of employment

Conditions of employment include type of job contract, eligibility for paid leave, nature of employment (temporary/permanent), availability of social security benefits and so on. This study has looked into the categories of formal and informal employment based on the availability of social security measures, but at the same time the benefits by schemes and gender are also an important component for both sectors. Availability of social security benefits (see Annexure C) includes 'Provident Fund', 'pension', 'gratuity', 'health care and maternity benefits'. Gender wise comparison of total workers availing social security shows that female workers (19 per cent) are less benefitted than male workers (81 per cent) in both the sectors. Health care and maternity benefits constitute 6.7 per cent of total female workers availing social security benefits in comparison to 4 per cent of male workers. Health care and maternity benefits includes benefits given by the employer for treatment of illness/injury or an employee being eligible for paid leave for a specified period⁷¹ or the expenditure for maternity care or childbirth being borne by the employer as per the conditions of employment⁷². While considering paid leave, the proportion of employees in the non-agriculture sector who were not eligible for paid

⁷¹ pre-natal/ childbirth/ postnatal stages

⁷² NSSO definition

leave has increased in 2009-10 from that in 2004-05 with slight gender differences in regular wage and salary (Table 3.6). Many employees who were not eligible for paid leave (96.4 percent employees among casual labour and 47.4 percent employees among regular employees) are a serious matter of concern. Hence, it can be interpreted that employment relations are not greatly subjected to national labour legislation, social protection or entitlement to certain employment benefits⁷³.

Table 3.6
Percent of employees not eligible for paid leave in non-agriculture sectors during 2004-05 and 2009-10

	Regular wage/ salary	Casual labour	All workers
2004-05			
Male	45.8	96.4	65.5
Female	48.3	96.2	65.4
Total	46.2	96.4	65.5
2009-10			
Male	47.8	96.5	69.9
Female	45.7	96.0	69.1
Total	47.4	96.4	69.8

Source: Informal Sector and Conditions of Employment in India, Report No. 539 (NSSO, 2012).

3.2.5 Type of contract

Type of contract is another aspect of conditions of work, especially the written contract that commits the employer to pay social security contributions on behalf of the employee and that also subject the employment relationship to standard labour legislation. Hence, the decline of workers' rights can be examined from the job contract or agreement. For the last few decades, especially after the post-reform period, there has been an increased tendency to outsource, offload or subcontract in the Indian labour market. The rationale is that the establishment could focus more on the productivity in the core or predominant activity so as to remain competitive while outsourcing the incidental or ancillary activities.⁷⁴ Table 3.7 analyses whether there is any written contract or agreement for the job in which the employee is engaged. Among all the employees (regular wage/salaried employees

⁷³ like paid annual or sick leave, etc

⁷⁴ Lalit Bhasin (2007), Labour and Employment Laws of India, Bhasin & company, Accessed from <http://www.mondaq.com>

and casual labourers) in the non-agriculture sector, more than half of the informal sector workers and 31 per cent of the formal sector workers have no written job contract. Majority of those who have a written job contracts are on more than three years' contract in the formal sector and one year or less in the informal sector. Moreover, in more than three years' contract, male workers constitute 80 per cent as compared to 20 per cent female workers. Among the latter, who have more than three years' contract, most of them are in formal sector (61%). Even though most of the female workers in contract depend on the formal sector, when compared to male workers their overall work participation rate is meager in size (Annexure B). Those who report to have written job contracts with their employers, half of the informal sector workers' length of duration of job contract is one year or less. Thus, it is ascertained that most of the workers engaging in regular salaried/ wage and casual labour are not protected under national legislations, with respect to the duration of employment with his or her employer.

Table 3.7
Type of job contract in non-farm sector (in millions)

	Formal sector	Informal sector	Total
No Written job contract	60.3 (30.86)	95.67 (61.14)	77.91
Written job contract for 1 year or less	4.4 (76.86)	1.32 (23.14)	2.84
More than 1year to 3 years	2.7 (82.59)	0.59 (17.41)	1.67
More than 3 years*	32.6 (93.14)	2.42 (6.86)	17.58
Total	100	100	100

Source: NSSO, 2009-10 (Formal/informal distribution is in brackets)

Note: *More than three years include: if the contract of employment specifies a particular date of termination which is more than 3 years or if the type of job contracted is such that no time is fixed but the contract can only be terminated for certain administrative reasons such as incompetence, misconduct or for economic reasons. However, if no written contract exists, then irrespective of the duration of employment it included in no written job contract.

3.2.6 Specification for work

Table 3.8 shows whether the self-employed workers⁷⁵ worked under given specification, i.e., whether the person carried out the

⁷⁵ Activity status include: own account worker, employer, worked as helper in household enterprise (unpaid family worker) and the industry at 2 digit level of National Industrial Classification 2004.

production⁷⁶ on the basis of given or laid product-specifications of the ‘employer’⁷⁷. When a person procures the order/contract from the ‘employer’ for his or her household enterprise to supply goods, normally an implicit or explicit specification of the product, written or oral, is laid by the ‘employer’. Sometimes, the whole activity is carried out under the specifications of the ‘employer’, or a part under the specifications of the ‘employer’ and rest of his own specification (NSSO definition). It can be observed from the data presented in Table 3.8 that one-fifth of formal sector workers and quarter of the informal sector workers worked under a given specification. Although this phenomenon is relatively higher among informal sector workers, but majority of the workers in both formal and informal sector did not work under any given specification.

Table 3.8
Worked under given specification in non-farm sector (percent)

Specifications ⁷⁸	Formal sector	Informal sector	Total
Wholly	16.31	27.8	18.52
Mainly	6.18	9.4	6.79
Partly	6.39	6.5	6.42
No	67.81	54.9	65.33
Not known	3.31	1.4	2.94
Total	100	100	100

Source: NSSO, 2009-10

Further, Table 3.9 shows that only one-fourth of the formal sector worker and one-tenth of the informal sector workers, who are self employed and working wholly or mainly under the given product specification, mentioned about written specifications. However, majority

⁷⁶ goods and services

⁷⁷ The term ‘employer’ means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

⁷⁸ Wholly- If the production of the whole range of products/services corresponding to the activity of the self-employed person is carried out according to the product specification of the ‘employer’. Mainly- if majority of the production, in terms of value of output (i.e., more than or equal to 50 per cent), is carried out according to the product specification of the ‘employer’. Partly- if only a part of the production is carried out according to the product specification of the ‘employer’. No- If the self-employed person does not work under the product specification of any ‘employer’.

of the informal and the formal sector workers had oral specifications for work. Across sector, most of the informal sector workers had written and oral specification.

Table 3.9
Type of specifications in non-farm sector

	Formal sector	Informal sector	Total
Written	25.2	10.3	11.3
Oral	61.2	80	79
Not known	13.6	9.5	9.7
Total	100	100	100

Source: NSSO (2009–10), Note: Formal/informal distribution is given in brackets.

From Table 3.9, it can be concluded that a separate and classical pattern of sub-contracting is occurring in relation to other incidental or ancillary work. Most of the industries are outsourcing their ancillary activities to avoid direct connection between employer and employee relations. In such cases, workers would work for lower pay and under worst working conditions and at the same time there's an absence of effective trade unions and the workers are not covered under any of the national legislations.

3.2.7 Nature of employment

The nature of employment (permanent/temporary)⁷⁹ in formal and informal sector was prevalently permanent in 2009–10. There were relatively higher permanent jobs in formal sector than in informal sector. However, nature of employment is defined solely based on regular workers in both formal and informal sector, hence no major difference (Table 3.10) can be found in type of jobs between formal and informal sector.

Table 3.10
Type of jobs by formal and informal sectors in non-farm sector

	Formal sector	Informal sector	Total
Permanent	64.7	59.6	63.55
Temporary	34.3	40.4	35.17
All	100	100	100

Source: NSSO (2009–10)

⁷⁹ Nature of employment was collected for workers in the principal status and also for workers in subsidiary status with or without principal status work. It will be considered as permanent if the person is, in normal course, likely to continue in the same employment.

3.2.8 Employment breaks and quitting

At times when workers are denied their rights at work, probably breaking or quitting the job may be the only option left to them. Hence, reasons for break in job or quitting the job are an important aspect to discuss in the current context.

In both formal and informal sectors, the reasons for break in jobs were mainly reported by casual workers due to lack of work in the respective areas. Further, few workers (Table 3.11) mentioned that the reason for the break in job was because of quitting their earlier job, loss of jobs, and unit closed down⁸⁰, etc. Loss of earlier job included cases where the person was removed from service or work due to temporary nature of work contract, on disciplinary grounds, retrenchment, retirement and all such involuntary breaks other than those covered. However, there are workers who have left the earlier job on their own volition, may be owing to compelling circumstances. The reason for doing so may include non-remunerative, unpleasant environment, employer's harsh attitude, etc. (Table 3.12). Workers laid off without any pay constitute 1.5 per cent in the formal sector compared to 0.4 per cent in informal sector. These workers are included in the 'failure/refusal/inability of an employer to give employment to a workman whose name is registered on the master rolls and who has not been retrenched'.⁸¹ Such workers did not avail any pay, workers in such arrangements are found more in the formal than the informal sector. In the case of informal sector, workers who were included in 'lay off without pay' were very few as the employee security is less and employer may expel them at any point of time. Among the total number of workers who were covered in break in job, 15.5 per cent of the workers were working in the enterprises as self-employed. Overall, lack of work was the main reasons for break in the jobs.

⁸⁰ If the unit in which the person was working has closed down due to lack of demand, difficulties in running the unit or any other reason and consequently person is thrown out of employment

⁸¹ As per NSSO definition those laid-off with some pay are treated as employed and those laid-off without any pay considered as unemployed and the latter workers included in this category.

Table 3.11
Reason for break in job by formal and informal sector in non-farm sector

SI No.	Reasons	Formal sector	Informal sector	Total
1	Loss of job	4	6.1	5.4
2	Quit earlier job	8.9	7.5	7.9
3	Lay-off without pay	1.5	0.4	0.8
4	Unit has closed down	3.7	2.1	2.6
5	Lack of work in the enterprise (SE)*	2	15.5	11.2
6	Lack of work in the area (for casual labour)**	45.5	48.7	47.7
7	Others***	34.4	19.7	24.4
	Total	100	100	100
	Number (in millions)	0.72	1.51	2.24

Source: NSSO (2009-10)

Note: *For those who were self-employed and are now out of job as there is lack of work in the enterprise due to fall in demand, scarcity of raw materials, etc. Persons who are engaged as self-employed in the seasonal enterprises and are unemployed during the off-season owing to lack of work in the enterprise will also be included. However, if such an enterprise is closed down permanently, then it included in unit has closed down.

**lack of work in the area (for casual labour) is distinguished from those casual labours employed in enterprises with some regularity and coming under reasons 1, 2, 3 or 4.

***may include in search of better employment, in pursuit of higher education, settling in unpaid domestic work in the family.

Both in formal and informal sector, workers are quitting their earlier jobs due to various reasons, as shown in Table 3.12. In the informal sector, more than half of the workers (57.3%) quit their jobs due to lack of proper remuneration mechanism⁸². Further, almost 15 per cent of the workers in the informal sector quit their job due to employer harassment. On the other hand, around one-third (29.3%) of the formal sector workers also mentioned that the work was not adequately remunerative and around one-tenth (9.2%) of them also reported employer harassment. Unpleasant environment and health hazard were other reasons of quitting job. However, the magnitude of workers who quit their jobs was not very large as 0.18 million workers reported about quitting their jobs.

⁸² Which means that they were not getting enough wage or salary to sustain

Table 3.12
Reason for quitting job by formal and informal sector in non-farm sector

SI No.	Reason	Formal sector	Informal sector	Total
1	Work was not remunerative enough	29.3	57.3	47.2
2	Unpleasant environment	8.8	2.4	4.7
3	Employer harsh	9.2	14.7	12.7
4	Health hazard	8.4	2.8	4.6
5	To avail benefits of VR	0.1	0	0.1
6	Others	44.2	22.7	30.5
	Total	100	100	100
	Number (in millions)	0.06	0.11	0.18

Source: NSSO (2009-10)

Note: Unpleasant environment excludes the factors mentioned for SI No. 3 and 4. In case more than one reason is applicable, the reason that appears first in the reason list is included (NSSO definition).

3.3 Self employment

Since half of the working population depend on self-employment, perceptions of remunerative income from self-employed person⁸³ are important. In Table 3.13, according to the NSSO definition the current earning from self-employment is regarded as remunerative if total earnings from self-employment are able to meet the desired level of income of the individual under the existing situation with respect to type of activity, scale of operation of the business(s), market condition, location of the business, etc. If the actual earnings from the self-employment activities fall short of the desired level, the employment may not be regarded as remunerative.⁸⁴

⁸³ Self-employed member of the household included either in the principal status or in the subsidiary status. The earning of the individual is to be judged considering all his/ her farm and non-farm businesses together in which he/ she is engaged in self-employment capacity during the last 365 days, either in principal status or subsidiary status or in both the status.

⁸⁴ It may be noted that the situation for the ‘helpers’ may be judged in the similar manner as for the ‘own account workers’ or ‘employers’ and no distinction should be made for them in this regard. If the owners of the enterprise are from the same household, earning will be judged by considering equal distribution of income among all the owners including the helpers irrespective of the shares hold by the individual member. If the owners of the enterprise are from the different households, earning from the partnership business will be distributed first, according to the agreement (verbal or written), among the partner households. Then, the share of the earning from self-employment hold by a household will be distributed among its owners including the helpers equally.

Around half of the self-employed, in both formal and informal sectors, were involved in remunerative activities⁸⁵. Such productive or remunerative jobs were relatively higher in the formal sector than the informal sector.

Table 3.13
Is the self employment job remunerative in non-farm sector

	Formal sector	Informal sector	Total
Yes	53	52.1	52.2
No	47	47.9	47.8
Total	100	100	100

Source: NSSO (2009-10)

Further, workers, in both formal and informal sector, involved in non-remunerative self-employment activities (Table 3.14) were interested in earning more than the average amount of Rs. 3,000 per month jobs while the minimum daily wage⁸⁶ of Rs. 100 is equivalent to a monthly income of about Rs. 3,000.

Table 3.14
Amount required in non-farm sector

	Formal sector	Informal sector	Total
Less than or equal to Rs.1,000	7.3	3.4	3.7
Rs. 1001-1500	5.2	4.8	4.8
Rs. 1,501-2000	9.3	6.6	6.8
Rs. 2,001-2,500	5.5	5.4	5.5
Rs. 2,501-3,000	7	9	8.8
More than Rs. 3,000	65.7	70.8	70.4
Total	100	100	100
Number (in millions)	7.18	89.93	97.11

Source: NSSO (2009-10)

⁸⁵ If the owners were from different households, earning from the partnership business was distributed first according to the agreement among the partner households. Then, the share of each household was to be distributed among its owners including the helpers equally. The perception about remunerative income is assessed on the basis of individual share of such income.

⁸⁶ Revised floor-level minimum wage

A monthly income of up to Rs. 3,000 was reported to be remunerative by 29.6 per cent of the self-employed workers. Hence, the perceptions of remunerative income were lower than the national minimum daily wage of Rs. 100 in the case of 29.6 per cent of the self-employed.

3.4 Conclusions

There are various factors that determine the overall quality of employment, particularly at macro level shift in employment, status of employment and conditions of employment are some of the major factors that influence quality of employment. Overall, shift in employment is towards the informality, even the formal sector is filled with informal employment, which leads to the issue related with reduction in employment security and social protection. At the same time, an analysis of data on specification for work as well as type of job contract shows that there is a trend towards informalisation and casualisation of work. This informalisation of work has been resulted in quit and breaks in employment. The presence of larger employment of women in informal sector is another concern that needs to be addressed. This is applicable both in agriculture sector as well as in non-agricultural sector. This gender issue is extended further in conditions of employment where only a tiny percentage of women employees are benefitted compared to the male employees.

More concerted efforts are required in addressing the concerns in informal employment. The present study documents various gaps existing in informal sector and such gaps needs to be filled in order to have a comprehensive coverage of FPRW.

CHAPTER IV

Core Fundamental Conventions: Rights and Practices

4.1 Introduction

Rights at work are one of the main components in the labour laws and labour policies that are historically rooted to various workers' movements and initiatives taken up by both the state and organisations such as the ILO globally. FPRW, thus, is a holistic instrument that attempts to address all key aspects of worker's rights. The range of rights contained in core fundamental conventions are inter-related and issues, such as the right to freedom of association and collective bargaining; elimination of forced labour, child labour and minimum age for employment, discrimination in respect of employment and equal remuneration, are crosscutting and have repercussions. For example, rights stipulated in Convention No. 98 on right to collective bargaining and Convention No. 87 on right to freedom of association are inextricably linked with each other as freedom of association renders collective bargaining meaningful. For analysing the fundamental conventions in the national context, it is important to examine the status of the four ratified conventions and at the same time possibilities need to be explored for ratification of the non-ratified conventions (Nos. 87, 98, 138 and 182). The present chapter explores rights at work related to core fundamental conventions as well as existing practice on discrimination with respect to employment, remuneration to workers, trade union membership, child labour, forced labour and other factors in more detail.

4.2 Existing Trends and Status of Ratified Fundamental Conventions (Convention Nos. 29, 105, 100 and 111) in India

4.2.1 Abolition of Forced Labour (Convention Nos. 29 and 105)

The Constitution of India has provided the basic labour rights in regard to the Conventions Nos. 29 and 105 in Part III and Part IV of the Constitution. Part III of the Indian Constitution deals with Fundamental Rights that are legally binding and justiciable in nature, whereas, Part IV of the Constitution contains the Directive Principles of the State Policy that are non-justiciable in nature but they provide guiding principles

to states to follow for the welfare of the people.⁸⁷ Article 23 of Part III of the Constitution of India prohibits different forms of forced labour. For instance, Article 23(1) states that “traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”. The Indian Constitution uses the expression “traffic in human beings” that includes a prohibition not only of slavery but also of traffic in women or children for immoral or other purpose. Various judicial pronouncements have upheld the definitions under Article 23(1) of the Constitution of India.⁸⁸ Hence, trafficking in person is strictly prohibited under criminal laws and special laws.

In 1976, Bonded Labour System (Abolition) Act was enacted with the object of abolition of bonded labour system with a view to prevent economic and physical exploitation of the weaker section. The bonded labour system under the law is defined as “the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that:

- (1) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, on such advance, or
- (2) in pursuance of any customary or social obligation, or
- (3) in pursuance of an obligation devolving on him by succession, or
- (4) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- (5) by reason of his birth in any particular caste or community,

⁸⁷ Constitution of India, Ministry of Law and Justice. Available at: lawmin.nic.in/coi/

⁸⁸ “Traffic in human beings” includes traffic in women and children, for immoral or other purposes (*Shama v. State of M.P.*, Allahabad 57) “Begar” means “labour of service exacted by government or a person in power without giving remuneration for it” (*Vasudevan v. Mittal*, Bombay 53(67); *Suraj v. State of Madhya Pradesh*, Madhya Pradesh 303). “Forced Labour”: Labour may be “forced” not only owing to physical force but also on account of a legal provision such as imprisonment or fine in case the employee fails to provide the service, but also owing to hunger and poverty which compels him to accept employment for remuneration which is less than the statutory minimum wage (*Peoples Union v. Union of India*, Supreme Court 1473; *Sanjit v. State of Rajasthan*, Supreme Court 328).

he would:

- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely throughout the territory of India, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor". (Bonded Labour System (Abolition) Act 1976)

4.2.1.1 Abolition of forced labour in practice

Bonded Labour (System) Abolition Act is strictly enforced by various law enforcement authorities by way of awarding punishment by the competent court of law. Thus, the law covers all kinds of the forced and compulsory labour and prohibited discrimination on the ground of race, society, nationality, religion and so on. In this context an analysis of the exercise carried out by the Government of India to identify bonded labourers and those subsequently rehabilitated till 31 March 2010 will help in understanding the national practices to curb this menace.

Table 4.1
Bonded Labour in India

S. No.	State	Identified and released till 31 March 2010	Rehabilitated
1	Andhra Pradesh	37,988	31,534
2	Bihar	14,615	13,797
3	Karnataka	63,437	57,185

4	Madhya Pradesh	13,317	12,392
5	Orissa	50,029	46,901
6	Rajasthan	7,488	6,331
7	Tamil Nadu	65,573	65,573
8	Maharashtra	1,404	1,325
9	Uttar Pradesh	28,946	28,946
10	Kerala	823	710
11	Haryana	591	89
12	Gujarat	64	64
13	Arunachal Pradesh	3526	2,992
14	Chhatisgarh	124	124
15	Punjab	69	69
16	Uttarakhand	5	5
	Total	2,87,999	2,68,037

Source: Director General, Labour Welfare, Ministry of Labour, GOI & Annual Report 2009-10, Ministry of Labour & Employment, GOI

Table 4.1 shows the incidence and pattern of bonded labour in India and those subsequently identified and rehabilitated till 31 March 2010. It reflects that bonded labourers were identified in almost all the states in India and number of identified and relieved is more in southern states. Out of southern states, Tamil Nadu alone accounts for 65,573 bonded labourers who were identified and relieved, followed by Karnataka (63,437) and Andhra Pradesh (37,988). Orissa, Uttar Pradesh, Bihar and Madhya Pradesh have also identified and relieved bonded labourers and Orissa alone has a high proportion with a total of 50,029.

With regard to the number of bonded labourers rehabilitated, Tamil Nadu was successful in rehabilitating almost all the bonded labourers who were identified and relieved. This is followed by Karnataka and Orissa with 57,185 and 46,901 labourers respectively. Most of the states have rehabilitated almost all the identified bonded labourers. This shows the result of the concerted effort by Government of India. Table 4.2 shows the downward trend of incidence of bonded labour reported after 2003-04.

Table 4.2
Incidence of Bonded Labour Reported

Year	Incidence of bonded labour reported (number)	Year	Incidence of bonded labour reported (number)
1997-98	6,000	2004-05	866
1998-99	5,960	2005-06	397
1999-00	8,195	2006-07	197
2000-01	5,256	2007-08	716
2001-02	3,929	2008-09	543
2002-03	2,198	2009-10	364
2003-04	2,465	2011-12	(up to 30.09.2012) 763

Source: Annual Report (2011-12), Ministry of labour & Employment, GOI

Nevertheless, new forms of worker exploitation or forced or bonded labour is still exist in different forms, namely, the 'Sumangali' system⁸⁹ in garment, stone crushing or brick kilns⁹⁰ with family labour, etc. in certain extend in different places. There are various studies that are critical of the government reports and that also discussed that these governmental processes have impacted positively on the 'unfree' status of labour in traditional agriculture but the incidence of bonded labour still remains in some segments of informal sector and in the relatively modern segments of agriculture in some areas⁹¹. However, the sensitisation and supervision of the issues related to bonded labour has outreached and made a considerable decline on incidence.

Immoral Trafficking (Prevention) Act 1956 also prohibits forced labour in India by abolishing immoral trafficking of women and girls for the purpose of prostitution. In India, labour as a subject falls under Concurrent List⁹², wherein states also have the power to enact their own labour legislations to protect the workers from exploitation. States' labour laws that address forced labour are Karnataka's Devadasis (Prohibition of

⁸⁹ Veeravalli D S (2010)

⁹⁰ Mallika Kapur (2011 March 20)

⁹¹ Srivastava Ravi S. (2004)

⁹² Which allow both the Centre as well as State to enact or implement labour regulation as per their own jurisdiction.

Dedication) Act 1982⁹³, Andhra Pradesh Devadasi (Prohibiting Dedication) Act 1989 and Goa's Children's Act 2003⁹⁴.

Under Convention No. 29, compulsory labour of convicted persons does not constitute forced or compulsory labour, provided that it is "carried out under the supervision and control of a public authority" and that such persons are not "hired to or placed at the disposal of private individuals, companies or associations" [Article 2(2c)]. In India, except compulsory labour of convicted persons, no legal sanction exists for compulsory work. Even in the cases of convicted persons, only convicted persons of certain crimes for which court of law awards the sentence with labour is compelled to work in the prisons.⁹⁵ Prisoners do not work for private companies/economic development, also work done by the prisoners is duly remunerated.

Besides Constitutional Provisions there are many national and state Laws as mentioned above that are enacted to combat forced labour in the country. However, the Child Labour (Prohibition and Regulation) Act 1986 is one of the most outstanding among these legislations. Under Minimum Wages Law⁹⁶, wherever the rate of wages is fixed on the basis of production, a minimum guarantee wage is also fixed so the workers are not obliged to work beyond normal working hours for earning minimum wages. Moreover, payment of wages below the minimum wages is punishable with imprisonment for a term, which may extend to six months, or with fine, which may extend to Rs. 500 or with both.⁹⁷ In addition, the Inter-State Migrant Workers' Act⁹⁸ is meant to regulate factors such as working conditions and wages of migrant workers and attempts to eliminate any kind of abusive practice by the employers.

The Government of India has instituted appropriate legal and judiciary mechanisms to address all forms of forced or compulsory labour as defined in Article 1 of Convention No. 105. Slavery or slavery

⁹³ *Devadasi* is a religious practice in which girls, before puberty, are offered to deities; this system forces the girls to become prostitute and become sexually available for community members. The Acts asserts Devadasi system illegal and punishable.

⁹⁴ Enacted to protect the children from physical, mental and sexual exploitation.

⁹⁵ Rigorous Imprisonment: The prisoners who are sentenced to rigorous imprisonment have to do labour for 8 hours daily in the jail. (Criminal law)

⁹⁶ Minimum Wages Act (1948)

⁹⁷ Section 22 of the Minimum Wages Act 1948

⁹⁸ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

like practices⁹⁹ are also monitored by the Statutory Vigilance Committees constituted at district and sub-divisional level. At the same time district revenue authorities, police officials, labour enforcement authorities, senior judiciary and Human Right Commission at state and national level, parallel High Courts and Apex Court of India, i.e. Supreme Court, take cognizance of the violation.

4.2.2 Equity, Non-discrimination and Equal Remuneration Conventions (Convention Nos. 100 and 111)

The purpose of Conventions Nos. 100 and 111 is to protect all persons against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending its protection against discrimination on the basis of other grounds. Both these conventions, thus, apply to all workers, both nationals and non-nationals, in all sectors of activity, in the public and private sectors, and in the formal and the informal economy.

The Equal Remuneration Act was enacted by the Indian Parliament in 1976. Under the Equal Remuneration Act of 1976, employers are obliged to pay equal remuneration to workers of both sexes for same work or for work of a similar nature. The Act of 1976 was amended by the Equal Remuneration (Amendment) Act 1987. This amendment extended the scope of the Act to other aspects of personnel administration, such as recruitment, promotions, training and transfer. Moreover, various provisions in the Constitution also support these conventions, for instance Article 39(d) of the constitution mentions the principle of equal pay for equal work and Article 14 guarantees equality for all before the law. As per Equal Remuneration (Amendment) Act 1987, concept of equal remuneration implies “equal remuneration for the same work or work of a similar nature”. Significant progress has been made towards the implementation of the principle of equal remuneration for the systematic implementation of the national programmes, such as Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA), to ensure equality in employment by facilitating equal rate to both men and women as well as by ensuring employment for rural unskilled labour (employment for a minimum of 100 days).

Government of India has taken various measures for the supervision and enforcement of the equal pay principle. The labour ministries of the

⁹⁹ Illegal forms of compulsion to work or imposition of forced labour on workers in most vulnerable groups, etc.

central government and state governments are responsible for regulations. Each of these ministries have set up their own offices to manage industrial dispute, maintain industrial peace and enforce labour laws, such as the Equal Remuneration Act. Equal Remuneration Act provides for appointment of inspectors, who have the power to investigate any establishment, summon employers or their representatives and impose sanctions in cases of non-compliance. The Central Advisory Committee has been set up under the Equal Remuneration Act to advise the government with regard to increasing employment opportunities for women. Most state governments and administrations of union territories have also set up similar committees.

4.2.2.1 Equal remuneration and discrimination in respect of employment in practice

Average daily earnings (wages/salary) of all workers show an increase from Rs. 167.50 to Rs 216.76 per day from 2004–05 to 2009–10. A comparison of wage rates among casual workers vis-à-vis regular wage rates shows the disparity in the ratio 1:3.4, i.e. casual workers receive wage little above one-third of the regular worker's wage. The regular-casual worker's wage differential is almost stable in the last decade. As per Table 4.3, male-female workers' wage disparity in both regular and casual workers has decreased over these years. In case of regular workers, NSSO 2009–10 shows 1:1.1 wage¹⁰⁰ differentials across male female workers and 1:3 wage differential across unorganised and organised sectors.

Table 4.3
Average daily wages by sector, status and gender (Constant Prices 2004–05)

		2004–05			2009–10		
		Male	Female	Total	Male	Female	Total
Formal sector	Regular	238.42	171.58	225.72	292.57	230.99	281.45
	Casual public	67.20	54.32	63.14	65.85	56.84	61.69
	Casual other	72.77	44.86	66.82	78.28	52.53	72.16
Informal sector	Regular	85.97	53.73	79.75	109.15	66.65	101.37
	Casual public	98.50	49.52	78.79	65.12	58.65	62.95
	Casual other	56.10	34.94	49.19	69.17	45.70	62.71
Total	Regular	177.74	124.17	167.50	226.81	171.43	216.76
	Casual public	81.39	51.69	70.76	65.55	57.36	62.14
	Casual other	58.00	35.60	50.94	70.46	46.52	64.00

Source: NSSO 2004–05, 2009–10

¹⁰⁰ Average daily wage by daily status of employment

In both formal and informal sectors, wages paid to SCs and STs workers are lower than wages paid to workers in OBCs and general category, as Table 4.4 reflects. It is also clear that wage differentials are more for regular workers than casual workers. However, since majority of the casual workers belongs to SCs and STs social group, there is less wage differential across these social groups. Regarding regular wages, comparison between formal and informal sector shows that the formal sector has more wage differential than the informal sector. It is mainly because most of the women workers from SCs and STs work as either attached labour with big landlords or in menial jobs with big contractors and these workers are counted as regular workers though they get lower wages than even daily casual workers.¹⁰¹

Table 4.4
Average daily wage by social group and status

Sector	Social group	Employment status		
		Regular	Casual Other	Total
Formal sector	ST	353.7	89.2	190.8
	SC	317.4	108.1	226.4
	OBC	362.6	114.7	268.4
	Other	483.9	114.6	428.6
	Total	409.6	108.9	310.3
Informal sector	ST	117.0	74.8	79.0
	SC	115.2	93.5	96.2
	OBC	134.7	99.0	105.4
	Other	181.7	101.4	128.6
	Total	147.5	94.6	104.3
Total	ST	265.8	87.7	108.3
	SC	236.2	94.5	128.5
	OBC	274.3	92.2	155.9
	Other	388.2	105.6	269.0
	Total	315.5	93.8	171.8

Source: NSSO 2009-10 (current prices)

The industry wise structure of daily wages (Table 4.5) shows that the wage differentials across the formal and the informal sectors are higher in case of regular workers as opposed to casual workers. During 2009-10

¹⁰¹ Anoop Karan etc. at al., 2008

higher wages are reported among services sectors especially in finance, business, real estate, etc. followed by electricity, gas, water supply, mining and quarrying, etc. Comparison between formal and informal sector shows a wide differential in case of all sectors especially for regular workers than casual workers.

Table 4.5
Average daily wage by industry and status

	Formal sector			Informal sector			All		
	Regular	Casual	Total	Regular	Casual	Total	Regular	Casual	Total
Agriculture, etc.	321.0	80.4	93.3	90.7	81.6	82.0	121.8	81.5	82.7
Mining & quarrying	396.0	129.8	289.1	306.5	130.2	148.8	387.9	130.0	240.3
Manufacturing	304.3	106.4	254.8	144.5	105.9	125.1	249.9	106.1	198.1
Electricity, gas & water supply	493.6	106.3	462.0	472.2	111.5	339.3	492.6	107.5	454.2
Construction	378.1	124.8	139.2	158.3	128.0	126.3	293.7	127.2	130.4
Trade, hotel & restaurants	237.8	120.7	223.7	137.2	109.5	129.7	165.5	111.4	154.0
Transport, storage & communication	432.6	127.7	384.5	172.5	129.7	154.6	294.3	129.4	242.2
Finance, business, real estate, etc.	603.1	114.8	602.8	249.4	159.5	236.3	534.4	142.9	526.1
Public administration, health, education, etc.	436.3	107.1	430.4	135.3	78.9	120.5	371.9	84.1	348.6
Total	409.6	108.9	310.3	147.5	94.6	104.2	315.5	96.6	171.8

Source: NSSO 2009-10 (current prices)

Given the diversity of the Indian population¹⁰², the Constitution developed a multi-pronged concept of equality based upon the principle of providing all persons “equality before the law” and “equal protection of the law” under Article 14 of the Constitution. State could not discriminate against any citizen only on the basis of caste, sex, religion, race, place of birth or any of them [Article 15(1)], with a further elaboration that all citizens have equality of opportunity in matters relating to employment or appointment or office under the State [Article 16(1)]. The enforcement

¹⁰² Not only in castes and tribes, but also in religious, linguistic, and cultural differences.

of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.¹⁰³ Moreover, non-discrimination and equality of opportunity have been seen as means to ensure diversity in public employment and to ensure the enjoyment of diverse cultural rights of religious and linguistic minorities. Indian law provides a quota system where a percentage of seats are reserved in government employment and in the Public Sector Units (PSU) and in all public and private educational institutions. The reservation policy is also extended to SC/ST for representation in Parliament of India. A reservation of 3 per cent seats is given to physically challenged persons in government jobs.

To promote equality and to tackle discrimination further, the Government of India has adopted various proactive policy measures thereby ensuring the effective enactment of laws and realisation of the objectives of various legislations enacted for the purpose. For instance, National Policy for the Empowerment of Women was adopted in 2001 to bring about gender justice and make de jure equality into de facto equality.¹⁰⁴ In accordance with the Supreme Court’s directives, the National Commission on Women has formulated a Code of Conduct for preventing Sexual Harassment at the Workplace (1997). Recently, Government of India passed (2013) the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill to ensure a safe environment for women working in both public and private sectors. Under this law, employers have to set up grievance committees to investigate all complaints and the definition of employee covers regular/temporary/ad hoc/daily wage employees, whether for remuneration or not and can also include volunteers. However, National crime Record Bureau (2012) reported that crimes against women (10.2 percent of total IPC crimes) are still a major problem.

With a view to combat discrimination based on pregnancy and maternity, the Government of India provides maternity benefit under the Maternity Benefit Act 1961. However, Annexure C regarding social security benefits shows that 6.7 per cent female workers benefit from the health care and maternity benefits among the total female workers availing social security benefits. Hence, there are major concerns on the practical application of these legislations to workers.

¹⁰³ Part III, Fundamental Rights, Articles 15 and 16, The Constitution of India, Ministry of Law and Justice.

¹⁰⁴ Government of India (2001), National Policy for the Empowerment of Women 2001, Ministry of Women and Child Development.

4.3 Existing Trends and Challenges for Non-Ratified Fundamental Conventions (Convention Nos. 87, 98, 138 and 182) in India

4.3.1 Freedom of Association and Collective Bargaining Rights

Indian Constitution guarantees right to organise and civil liberty as “fundamental rights”. Under Article 19 the Constitution of India provides seven basic rights, i.e. “(a) to freedom of speech and expression; (b) to assemble peacefully and without arms; (c) to form association or union; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (g) to practice any profession, or to carry on any occupation, trade or business.”¹⁰⁵ The scope of right to association covers variety of rights, which includes right to start or continue an association.¹⁰⁶ Apart from these constitutional provisions, there are more central labour legislation that promotes collective bargaining and right to association in India. Among these Trade Union and Industrial Disputes Acts are core labour regulations or platform for collective bargaining and promotes trade unions.¹⁰⁷ The Trade Union Act 1926 defines, promotes and safeguards trade unions in India. According to the Act, trade union means

“any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.”¹⁰⁸

The Act also protects trade union and its members from anti-union discrimination.¹⁰⁹ The trade union Act 1926 amended from time to time and the most important is the trade union (Amendment) Act 2001 to bring more transparency and support to trade unionism in India.

Collective bargaining in India is absolutely free and voluntary and respects the principle of autonomy of the parties. For public servants,

¹⁰⁵ The Constitution of India

¹⁰⁶ Basu, Durga, and Das (2006)

¹⁰⁷ ILO (2009)

¹⁰⁸ Trade Union Act, 1926

¹⁰⁹ ILO (2009)

collective bargaining forum exist in the forms of Joint Consultative Machinery and collective bargaining takes place at unit, industry and at national level. State laws for recognition of workers' organisation and Code of Discipline ratified by Indian Labour Conference provide various methods such as check-off system, secret ballot and verification of records of the union. Secret ballot system allows non-unionised workers to participate in the process of recognition.

For settlement of collective disputes, a proper legal system is provided under the Industrial Disputes Act 1947. The Act provides for various authorities, such as Conciliation Officers, Labour Courts and Tribunals, Board of Arbitrators, for settlement and adjudication of industrial disputes. For monitoring and evaluating industrial relations, a code of discipline was adopted in 15th Indian Labour Conference in 1959. Indian laws do not make any distinction based on nationality or residence while providing benefits of trade union activities. In India registration of organisations is not compulsory; however, registered organisations have some immunity under civil and criminal laws. Registered organisations are recognised as separate legal identity under the law. For the registration of a trade union a minimum 10 per cent of the workers of the establishment or 100 workers, whichever is least, are required for registration of trade union. There is no restriction for joining more than one trade union.

Rights of workers' and employers' organisations to draw up their constitutions and rules, to elect their representative in full freedom and to organise their administration and activities are ensured through law. Workers' and employers' organisation have the right to organise their activities in full freedom and to formulate their programmes with a view to defend the occupational interests of their members, while respecting the law of the land. This includes, in particular, the right to hold trade union meetings, the right of trade union officers to have access to places of work and to communicate with management, the right to organise protests as well as certain political activities. Workers' right to protect their interest through strikes with reasonable restrictions is provided in the law. In short, most of these rights are guaranteed by the Constitution of India as well as the central laws described in Table 4.6.

Table 4.6
National legal regulatory frame work of Freedom of Association and Collective Bargaining Rights

Constitutional frame work
<ul style="list-style-type: none"> • The right of citizens of the country to form and join associations and unions is a fundamental right guaranteed under Article 19 (1)(c) of the Constitution of India • Article 19(1)(a) guarantees to all citizens of the country the freedom of speech and expression. • The right to information has been held to be a facet of the freedom of speech and expression protected by Article 19(1)(a). • Article 19(1)(b) protects the right of citizens to assemble peacefully without arms. • Article 14 guarantees to all citizens equality before the law and the equal protection of the laws. • Article 21 provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. • Article 21 and Articles 21(1) and (2) guarantee protection against arbitrary arrest and detention.
Relevant central laws
<ul style="list-style-type: none"> • The right to organise is regulated by Trade Unions (TU) Act 1926. The TU Act legalises the formation of trade unions and provides adequate safeguards for trade unions' activities. It defines a "trade union" as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more trade unions. • The Industrial Disputes Act 1947 recognises the collective bargaining rights of workers. It recognises the right to strike of workers and the corresponding right of employers to resort to lock outs. It provides for the resolution of disputes between workers and employers by the processes of conciliation, adjudication and arbitration. <p>During the pendency of such proceedings, the Act requires the concerned employer to refrain from altering the conditions of service of the concerned workers in respect of any matter concerned with the dispute, in a manner prejudicial to them or from punishing them for any misconduct connected with the dispute, without the express permission in writing of the authority before whom the proceedings are pending.</p>

In the case of misconducts not connected with the pending dispute, the employer is required to make an application for approval of the action taken, to the authority before whom the proceedings *are* pending. In the event of a proposed change in the conditions of service of the workers, the Act requires the employer to give prior notice of a minimum of 21 days of the proposed change, to the concerned workers.

The Act also stipulates the conditions *to* be followed in the event of lay off or retrenchment of workers and the closure of establishments covered by the Act. In the case of establishments where more than 100 workers are employed, the Act requires the employer to obtain the permission of the government prior to affecting the lay off or retrenchment of workers or closure of the concerned establishment.

Article wise observations on the various provisions of the non-ratified conventions vis-à-vis present status of most of the conventions in the country shows existing law and practice is in full conformity with respective non-ratified conventions. Some of the examples are given below.

Article 2 of Convention No. 98¹¹⁰ is in full conformity with Industrial Disputes Act (Section 25-T), which prohibits the commission of unfair labour practices. Part I of the 5th schedule to the Act enumerates various unfair labour practices on the part of the employer. It includes the discharge or dismissal of workmen, the change of their seniority rating and the denial of promotion to workmen on account of their trade union activities. Article 3¹¹¹ is also mentioned in the Industrial Disputes Act, which recognises the right of workers and their unions to collectively bargain with employers and enter into collective agreements with them. This right is evident from Sections 2(p), 18 and 19 of the Act and also the 5th schedule to the Industrial Disputes Act, which sets out the acts described as unfair labour practices on the part of employers and their organisations and also on the part of workers and their trade unions. As per item 15 in Part I of the 5th schedule, any refusal on the part of the employer to bargain collectively in good faith with the recognised trade union is an unfair labour practice. Moreover, Sections 2(p), 13(1), 19, 23(c) and 29 of

¹¹⁰ States that workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

¹¹¹ States that machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

the Act recognise the sanctity of collective agreements or settlements, arrived at voluntary negotiations between workers and their organisations and employers and their organisations. Article 4¹¹² is same as per Section 18(1) of the Industrial Disputes Act, which states that a settlement arrived at by bilateral negotiations between the employer and workman shall be binding on the parties to the agreement. As for the Government employees, the JCM facilitates voluntary negotiations or collective bargaining between government employees and the government.

Article 5¹¹³ also can be explored in the Industrial Disputes Act, which applies to workers in both industries in the private sector and the public sector or Government owned undertakings. The application of the Act is, however, restricted to workers defined as “workmen” under Section 2(s) of the Act. The term “workman” has been defined to mean a person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Employees in the armed forces, police service and prisons are expressly excluded from the coverage of the Act. The Act also expressly excludes managerial employees and supervisory employees discharging functions mainly of a managerial nature from its scope. Article 6¹¹⁴ is also in conformity with Constitution of India, which guarantees job security, social security and fair working conditions and fair wages to the government servants. Government servants also have been provided with alternative grievance redressal mechanisms, such as Joint Consultative Machinery, Central Administrative Tribunal, etc. They can also approach the administrative tribunals and seek redress of their specific service-related grievances.

¹¹² States measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

¹¹³ States that the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

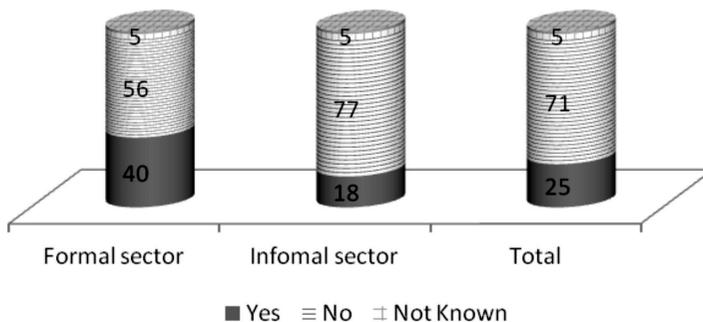
¹¹⁴ States that this Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

4.4 Collective bargaining and unionism in practice

Union/association means any registered/recognised body whose membership is open to a section of those engaged in a specific activity or trade and whose main objective is to look into the interests of its members.¹¹⁵ Thus, besides the usual trade unions, union/association includes association of owners, self-employed persons, etc. The presence of union in the formal sector is almost more than double compared to its presence in the informal sector. This indicates that the formal sector have relatively more options to exercise collective bargaining compared to the informal sector since they are more secure and are availing all kinds of benefit.

Information asymmetry¹¹⁶ is also another important aspect that needs to be studied in both formal and informal sectors workers as 5 per cent of the total workers were not aware about the union's presence at their work place or sector (Figure 4.1). Nearly 85 per cent of the casual labourers, 81 per cent of the self-employed persons and 58 per cent of the regular wage/salaried employees were not members of any union/association.¹¹⁷ As half of the total workers are depending on agriculture, its meagre (8 per cent) presence of union is really an unsatisfactory aspect. This may be the cause of various problems existing in case of farmers given their poor collective bargaining.

Figure 4.1
Distribution of presence of union in non-farm sector



Source: NSSO (2009-10)

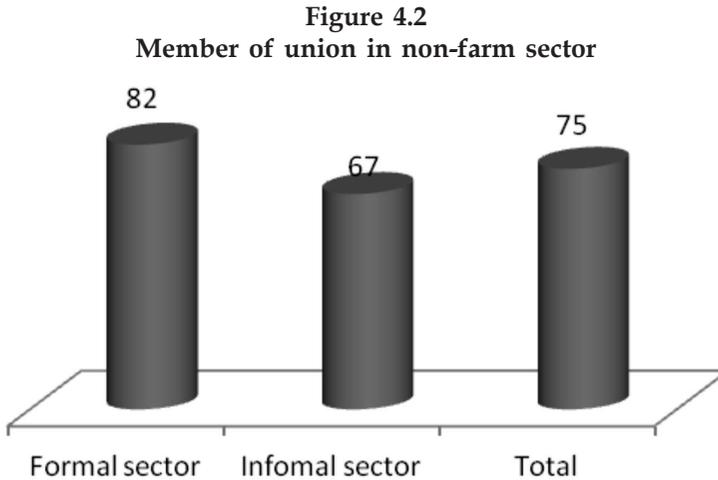
Note: industry divisions 01-99 of NIC 2004

¹¹⁵ Employment and Unemployment Situation in India (2009-10), NSS Report No. 537(66/10/1)

¹¹⁶ Condition in which at least some relevant information is known to some but not all parties involved.

¹¹⁷ NSSO, 2012

If union exists in the sector (Figure 4.2), most of the workers in both formal and informal sectors (87 per cent of the formal sector and 67 per cent of the informal sector) availed its membership.



Source: NSSO (2009-10)

In specific, considering the growth of registered trade unions and their membership (Table 4.7) it can be seen that both the number of registered trade unions and the total membership have increased over these years. It shows the importance of the existence of the union for collective bargaining process. At the same time, it is observed that the membership of women in the trade union is very less as compared to men over these years and also there is a slight increase in the women membership in absolute figures.

Table 4.7
Growth of registered trade unions and their membership, 1996-2008

Year	No. of registered trade unions	Men number ('000)	Percentage to total	Women number ('000)	Percentage to total	Total membership ('000)
1996	58,988	4,250	75.9	1,351	24.1	5,601
1997	60,660	6,504	87.8	905	12.2	7,409
1998	61,992	6,104	84.2	1,145	15.8	7,249
1999	64,817	5,190	81	1,218	19	6,407
2000	66,056	4,510	83.2	910	16.8	5,420

2001	66,624	4,392	74.8	1,481	25.2	5,873
2002	68,544	5,102	73.2	1,871	26.8	6,973
2003	74,649	4,854	77.3	1,423	22.7	6,277
2004	74,403	2,954	87	443	13	3,397
2005	78,465	6,334	73	2,385	27	8,719
2006	88,440	7,754	87	1,206	13	8,960
2007	95,783	5,751	73	2,126	27	7,877
2008	84,642	7,420	77.5	2,154	22.5	9,573

Note: The figures of Trade Unions are exclusive of Federations in all the Statements. Figures in Col.2 are estimated by incorporating the latest available information of the non responding States. The data is bases on the returns received. Source: Labour Bureau (2008)¹¹⁸

4.5 Reasons for Non-ratification of the Conventions

The main cause for non-ratification of the Convention No. 98 till now is that due to certain technical reasons, allowing public servants discharging sovereign functions to form associations is not desirable in the present scenario of the country. However, Article 6 of the ILO Convention No. 98 states that the Convention does not deal with the position of public servants engaged in the administration of the state so that our government can apply these provisions in a manner that excludes large group of public employees from coverage by No. 98. At the same time, Government of India is not in a position to ratify Convention No.87 as this contains certain provisions related to affiliating with foreign organisations. Simultaneously, there are some technical reasons related to certain categories of informal workers, such as small farmers, domestic workers, teachers and SEZ¹¹⁹ employees, to apply the Industrial Dispute Act and Trade Union Act to ensure collective bargaining and freedom of association rights.

4.5.1 The Minimum Age Convention No. 138 and Worst Forms of Child Labour Convention No. 182

In India the enactment of labour legislation with regard to child labour and its related issues can be traced from the Colonial Period. The first act that addressed the issue of protecting children was The Factory Act of 1881, which led the provisions for minimum age and hours of work.¹²⁰ Another

¹¹⁸ http://labourbureau.nic.in/Trade_Unions_2008.pdf

¹¹⁹ Special Economic Zone

¹²⁰ The Factory Act of 1881. This Act was basically designed to protect children and to provide few measures for health and safety of the workers.

factory act was passed in 1891 that extended to the factories employing 50 or more workers and subsequently the new Factories Act 1948 was passed to strengthen the position of workers working in the factory across India and also imposed restriction of employment of children¹²¹ on dangerous machines. Other central act that addresses child labour and its related issues is the Employment of Children Act 1938 that laid down certain provisions with respect to child labour. However, the real development in this regard came after the enactment of Child Labour (Prohibition and Regulation) Act 1986. It prohibits employment of children in certain specific occupations that are hazardous in nature and also regulates the conditions of work where children are not forbidden from working.

Following the Supreme Court order in 1981, the Child Labour Act also prohibits employment of children in building and construction industry.¹²² In particular it is aimed at: (i) banning employment of children, i.e. those who have not completed their 14th year, in 18 specified occupations and 65 processes; (ii) laying down a procedure to make additions to the schedule of banned occupations or processes; (iii) regulating working conditions of children in occupations where they are not prohibited from working; (iv) laying down penalties for employment of children in violation of the provisions of this act and other acts that forbid the employment of children; and (v) bringing uniformity in the definition of child in related laws.

The Children (Pledging of Labour) Act 1933 is one of the acts in India that target the issue of trafficking of migrant children. Section 3 of the Act deems any such contract or agreement void in which pledging of child labour takes place. Under Section 4, the Act provided provision for punishment to the parents or the guardians for making any such agreement or contract that contains pledging the labour of a child and also provided the provision for punishment to a person who employs a child whose labour has been pledged.¹²³

There are many legislations that deal with the prohibition of employment of child labour, i.e. below the age of 14 years, such as the Pledging of Children Act 1933, the Factories Act 1948, the Mines Act 1952, the Merchant Shipping Act 1958, the Motor Transport Workers Act 1961, the Beedi and Cigar Workers (Conditions of Employment) Act 1966, the

¹²¹ "child" means a person who has not completed his fifteenth year of age

¹²² Bakshi P M (2000)

¹²³ The Children (Pledging of Labour) Act, 1933

Child Labour (Prohibition and Regulation) Act 1986 and the Shops and Commercial Establishments Act enacted at the state level. Section 24 of the Beedi and Cigar Workers (Conditions of Employment) Act 1966 affirms that that “no child¹²⁴ shall be required or allowed to work in any industrial premise”¹²⁵. Section 14 of The Plantation Act of 1951 provides provisions for education to children. Section 19 of this Act affirms that no adult worker shall work in any plantation more than 48 hours a week and no adolescent or child for more than 27 hours a week.¹²⁶ In India, along with central legislation there are labour legislations that have been enacted by the state governments to tackle the problem of child labour.¹²⁷ A score of other laws dealing with employment in factories, mines, plantations, etc. have clauses prohibiting or regulating employment of children. The Immoral Traffic (Prevention) Act¹²⁸ (ITPA) supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings, including children, and lays down severe penalties. The ITPA prohibits prostitution, i.e. sexual intercourse with a child (below the age of 16 years). The ITPA amounts such an act to rape and attracts the prescribed penalties in the IPC. Besides contemplating specialised machinery for its enforcement, the ITPA also envisages a comprehensive scheme for rescue, protection and corrective treatment of prostitutes.

Moreover, the Constitution of India has many provisions related to child labour and associated issues. Article 24 forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations. Article 39(e) directs the state to safeguard the tender age of children, forced by economic necessity, from entering into jobs unsuited to their age and strength. Article 39(f) directs the state to secure facilities for healthy development of children and to protect children and youth against exploitation and moral and material abandonment. With the insertion of Article 21(a), the state has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6–14 years.¹²⁹

¹²⁴ For the purpose of this Act, “Child” means a person who has not completed 14 years of age.

¹²⁵ The Beedi and Cigar Workers (Conditions of Employment) Act 1966, Pg. 6.

¹²⁶ Ibid.

¹²⁷ The Goa’s Children’s Act 2003.

¹²⁸ The Immoral Traffic (Prevention) Act 1986.

¹²⁹ 86th Amendment Act.

Government of India formulated National Policy on Child Labour in August 1987. The National Child Labour Policy has both long-term perspective as well as short-term action plan. It aims to tackle the problem of child labour from the perspective of demand and supply factors. A multipronged strategy has been formulated to involve strong enforcement of legal provisions relating to child labour and also simultaneous efforts towards rehabilitation of children. It also makes efforts to raise the income levels of parents through linkages with the employment and income generation programmes and other poverty alleviation programmes of the government. To translate policy into action, National Child Labour projects were launched in 1988. Specific projects are operational in child labour concentrated area, mainly for rehabilitation of children from employment. National Child Labour Projects (NCLP) was initiated with nine projects in the beginning but now 271 NCLP projects are spread over 20 states of the country. Till now 7,311 special schools are in operation under NCLP scheme and 8.52 lakhs children have been mainstreamed into the formal education system.¹³⁰ At the same time, India has ratified both the UN Convention on the Rights of the Child and on the elimination of all forms of discrimination against women. The Convention on the Rights of the Child enjoins the state to protect these rights and to help every child enjoy the right to be free from all forms of sexual abuse, exploitation and trafficking.

4.6 Prohibition of Child Labour and Minimum Age in Practice

Prohibition and elimination of worst forms of child labour has been one of the main agenda of the Government of India for the last few years. Even though it involves economic, social and cultural issues and complete elimination is a very complex process, Government of India has taken multifaceted time-bound programmes to tackle it and have proved to be effective. Because of these efforts the magnitude of child labour has decreased alarmingly by almost 54 per cent from 2004–2005 to 2009–10, which is a significant increase in a very short span of time as compared to the previous years (Table 4.8). As discussed legislation, enforcement, education, and support for the children and their families are the major objectives that the Government of India has chosen for the effective abolition of child labour.

¹³⁰ Ministry of Labour & Employment, available at: <http://labour.nic.in/content/division/nclp.php>

Table 4.8
Estimate of the Magnitude of Child Labour (in millions)
in India (1983 to 2009-10)

Year	Boys	Girls	All
1983	12.06	9.49	21.55
1987-88	9.51	7.43	16.94
1993-94	7.35	6.51	13.86
1999-00	5.37	4.76	10.13
2004-05	4.76	4.31	9.07
2009-10	3.02	1.92	4.94

Source: NSSO various surveys

Even if child labour is reducing significantly, for the universal elimination of child labour it would be important to find out the segmented details by state, sectors and caste for initiating or for concentrating for more strategic measures to abolish child labour. Child workers are more involved from the under privileged groups, SCs and STs as shown in Table 4.9. Children are forced in to labour because of economic condition and this situation has worst effects on this group. Child labour and poverty are directly connected and the effects are more pronounced in this group. Even though child labour has declined drastically over these years the distribution of child workers by caste (Table 4.9) shows the workforce participation rate is declining for SCs and STs but it is still more prevalent in these underprivileged groups when compared to other social groups. Even if it is declining in total, comparative share of number of children from SCs and STs is a major concern for further study on the inequality in society. Over these years from 1993-94 to 2009-10, in all the age group there is a declining trend of child labour except in 5-9 age group in 2009-10.

Table 4.9
Child Workforce Participation Rates (%) by caste, all India (1993-94 to 2004-05, 2009-10)

Age group (in years)	STs	SCs	OBCs	Others	All
1993-94					
5-9	2.85	1.13	NA	0.86	1.09
10-14	24.2	13.9	NA	10.06	11.88
5-14	12.32	6.97	NA	5.33	6.24

1999-00					
5-9	1.43	0.5	0.56	0.27	0.54
10-14	14.87	8.87	7.96	5.17	7.79
5-14	7.71	4.5	4.14	2.74	4.08
2004-05					
5-9	0.45	0.22	0.19	0.1	0.2
10-14	7.31	5.26	5.21	3.93	5.12
5-14	3.79	2.8	2.87	2.03	2.74
2009-10					
5-9	0.70	0.24	0.39	0.11	0.31
10-14	5.75	3.46	3.44	2.66	3.46
5-14	3.24	1.91	1.97	1.44	1.94

Source: NSSO (various surveys)

As per the NSSO rounds (2004-05 and 2009-10), the trend on the magnitude of child labour is not uniform across the country. The rate of decline accelerated dramatically from 2004-5 to 2009-10 and this trend is almost same in all the states in India except Assam, Haryana and Gujarat. It is also noted in many previous studies¹³¹ that there is a general increasing trend in the magnitude of child labour in the North-East region of the country. Overall, NSSO data show a decreasing trend in the magnitude of child labour in most of the major states in India. Percentage share of child labour across the states depicts that Uttar Pradesh account for a larger share of about 35 per cent of all child workforces in India followed by West Bengal, with 11 per cent and Rajasthan with 8.3 per cent and so on. Even though Uttar Pradesh accounts for larger share, when we look into absolute figure, there is a decline in the magnitude, which is a positive sign.

Table 4.10
Estimate of child workforce (in 1000s) in major Indian states

States	(2004-05)			(2009-10)		
	Rural	Urban	All	Rural	Urban	All
Andhra Pradesh	1,052	140	1,201	185	43	229
Assam	124	8	133	181	12	193
Bihar	333	30	364	275	15	290

¹³¹ Abolition of Child Labour in India: Strategies for the Eleventh Five Year Plan, Report submitted by National Commission for the Protection of Child Rights (NCPR) to Planning Commission, India.

Chhattisgarh	225	31	263	12	1	12
Delhi	0	9	9	0	17	17
Goa	3	2	6	0	0	0
Gujarat	220	77	302	352	34	386
Haryana	36	1	37	39	32	72
Himachal Pradesh	83	14	99	5	2	7
Jharkhand	167	38	206	83	5	88
Karnataka	510	41	571	204	24	228
Kerala	7	4	11	1	3	4
Madhya Pradesh	414	68	491	125	67	192
Maharashtra	664	84	783	198	64	263
Orissa	413	22	440	96	43	139
Punjab	23	21	101	24	25	48
Rajasthan	714	110	821	357	54	411
Tamil Nadu	95	79	173	16	3	19
Uttar Pradesh	1,620	459	2,074	1,535	217	1,753
Uttaranchal	59	3	64	22	6	28
West Bengal	488	217	690	475	67	542
All India	7,445	1,525	9,075	4,195	753	4,947

Source: NSSO (various surveys)

Although children are working in different sectors across the country (Table 4.11), the majority of working children were found in the agricultural sector (68 per cent). This is followed by manufacturing (13.4 per cent) and trade, hotel and restaurant (8.5 per cent). Rest of the working children are concentrated in construction, transport and public administration. Satisfactory trend is that child labour in mining and quarrying has reduced substantially as part of prohibition of children from hazardous occupations. At the same time, girls outnumber boys in many sectors, especially in agriculture and manufacturing. More concentration of children working in agricultural sector is mainly because the Child Labour (Prohibition and Regulation) Act 1986¹³² is silent on children working in agricultural sector and it also does not regulate the conditions of work if children are engaged to work by the family.

¹³² Prohibits child labour in certain occupations and processes alone and their conditions of work are regulated in the rest.

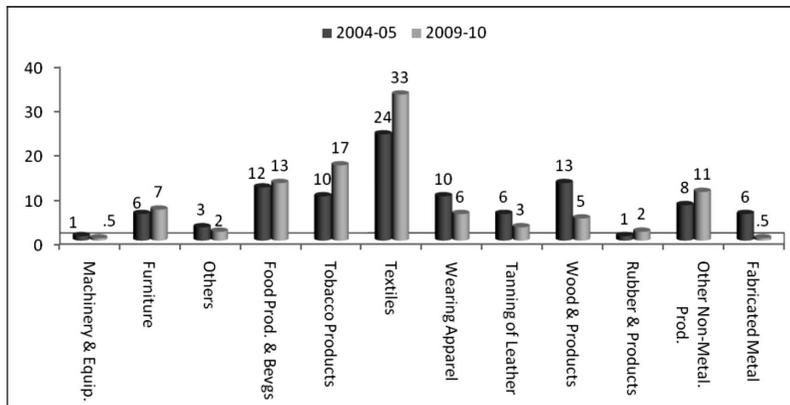
Table 4.11
Magnitude of child labour sector wise, rural-urban and male-female, 2009-10

Sector	Rural			Urban			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Agriculture, etc.	75.87	83.76	79.11	4.69	11.67	6.58	62.94	76.13	68.07
Mining & quarrying	0.60	0.66	0.62	0.00	0.00	0.00	0.49	0.59	0.53
Manufacturing	8.10	12.07	9.73	28.15	50.69	34.25	11.73	16.16	13.46
Construction	5.49	0.21	3.32	11.23	1.34	8.55	6.54	0.33	4.12
Trade, hotel & restaurants	5.59	1.28	3.82	40.32	19.73	34.74	11.90	3.23	8.53
Transport, storage & communication	1.14	0.11	0.72	4.64	0.00	3.39	1.78	0.10	1.12
Finance, business, real estate, etc.	0.00	0.00	0.00	0.45	0.00	0.33	0.08	0.00	0.05
Public administration, health, education, etc.	3.21	1.91	2.68	10.52	16.57	12.16	4.54	3.46	4.12
Total	100	100	100	100	100	100	100	100	100

Source: NSSO 2009-10

By comparing 2004-05 and 2009-10 data (Figure 4.3) on the distribution of child labour in the manufacturing sector, children employed in manufacture of textile products has increased from 24 per cent to 33 per cent. Apart from meagre increase in sectors such as furniture, food, beverages, tobacco products and other non-metallic products, there is substantial reduction of child labour in sectors such as fabric metals, rubber and products, wood and products, tanning of leather wearing apparel, etc. However, the engagement of child labour in production processes is an important concern.

Figure 4.3
Distribution of child labour in the manufacturing sector (2004-05, 2009-10)



Source: NSSO 2009-10

Under Convention No. 138 on minimum age, the minimum working age was set at 15 years (13 years for light work) and for dangerous work the Convention set the bar for admission to employment at 18 years (16 years under certain conditions). Hence, both the abolition of child labour and the minimum age conventions coupled together leads to the universalisation of child education. As far as fundamental conventions are concerned, apart from the age group of 5–14 years, working children in the age group of 5–18 years also have to be considered for analysing child labour in certain contexts. Table 4.12 shows that the working and non-school attending children rates are very low in 5–14 years of age group as compared to 5–18 years age group. The working children are more among the age group of 5–18 years. To address this issue, Government of India¹³³ recently proposed the Child and Adolescent Labour (Prohibition) Act that aims to have a blanket ban on employing anybody below 18 years in hazardous occupation.

Table 4.12
Schooling and labour force (UPSS)

5–14 years			
	Attending school	Not attending school	All
Working	0.7	12.5	2.0
Not working	99.3	87.5	97.97
All	100.00	100.0	100.00
5–18 years			
Working	1.4	40.2	8.7
Not working	98.6	59.8	91.3
All	100.0	100.0	100.0

Source: NSSO 2009–10

As mentioned earlier, the incidence of child labour is declining, due to the enforcement mechanism of various central and state government agencies. Table 4.13 shows the enforcement status of labour laws in violations of child labour norms over the past few years and prosecutions against defaulters. Due to initiatives of various agencies, the awareness on the child labour issues is on the rise and coupled with Right to Education (RTE), the incidence of child labour is coming down. Even though there is an increase in the number of convictions from 2007 to 2010, the conviction rate decreased sharply in the year 2011.

¹³³ The Union cabinet of India approved the Child & Adolescent Labour (Prohibition) Act

As on date 7,311 special schools are in operation under NCLP scheme and about 8.52 lakhs children have been mainstreamed into the formal education system. A total of 250 districts have been covered in 21 states.¹³⁴ Number of child labourers rescued, rehabilitated and mainstreamed through National Child Labour Project scheme during the last three years (see Annexure D) is the result of the awareness generation, convergence and concerted efforts of the central and state governments.

Table 4.13
Enforcement figures on child labour

Year	Inspections	Violations	Prosecutions	Convictions
2007	3,51,279	9,979	12,705	617
2008	3,55,629	2,709	11,149	742
2009	2,95,572	1,719	11,033	1,312
2010	2,13,544	2,219	8,854	1,226
2011	39,963	1,258	3,904	366
Total	12,55,987	17,884	47,645	4,263

Source: Ministry of Labour and Employment, GOI

Government of India is examining the feasibility for ratification of Convention No. 182 concerning Worst Forms of Child Labour in consultation with the concerned central ministries and state governments. This has also been discussed in different tripartite forum with the participation of the employers and workers representatives.

4.7 Conclusion

As discussed above, various legislative and policy measures have been taken by the Government of India to promote the eight Fundamental Principles and Rights at Work. Most of these legislative measures follow the existing laws and practices in full conformity with the provision of the conventions. Collective bargaining and right to association may be considered as the basic rights of workers that provide a platform to the workers to bargain for their rights. Hence, this is to conclude that the informal section of the workforce cannot be said to have been deprived of the rights at work per se; but the analysis of rights vis-à-vis practice have depicted certain gaps in the existing national practices of implementation.

¹³⁴ Ministry of Labour, <http://labour.nic.in/content/division/nclp.php>

CHAPTER V

Concluding Observations and Policy Recommendations

Government of India has been proactive in ensuring the rights at work especially Fundamental Principles and Rights at Work enshrined in the FPRW conventions. In order to take care of the informal workers, Government of India initiated various legislative measures and implemented welfare schemes and programmes.¹³⁵ The legislative measures include the Minimum Wages Act 1948, the Workmen's Compensation Act 1923, the Maternity Benefit Act 1961, the Bonded Labour System (Abolition) Act 1976, the Trade Union Act 1926, the Contract Labour (Regulation & Abolition) Act 1970, the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, the Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act 1996, the Child Labour (Prohibition and Regulation) Act 1986, the Factories Act 1948, the Plantation Labour Act 1951, and others. Even though various measures have been extended, the significance of the current status of rights at work, considering the large unorganized informal economy in India, is still a major concern. Major observations and conclusions drawn from this study are given in this chapter.

5.1 Major Observations from the Study

1. Workers with regular wage pay or salaried jobs constitute around 16.6 per cent of all workers and this segment has regular jobs with security, relatively better earnings and social security. However, the increase in the number of informal workers, from 29.14 million to 44.77 million (2004-05 to 2009-10), i.e. an increase of 15.63 million workers, within the formal sector is an important matter of concern. An increase in the share of informal employment in the formal sector means an overall deterioration in the quality of employment in terms of wages, regularity of employment, conditions of employment, job and social security benefits. Quality of employment is always linking with the rights at work or workers rights since rights deficiency is the reason for the low quality of employment.

¹³⁵ As discussed in detail in Chapter IV

2. Distribution of workers across social groups in formal and informal sector indicates a different picture with relatively higher people from socially backward group employed in informal sector. This being more pronounced for the scheduled tribes as a social group.
3. The presence of larger employment of women in informal sector is another concern that needs to be addressed. This is applicable to both agriculture sector as well as non-agriculture sector. Majority of the women in the informal economy are self-employed, or casual workers or unpaid workers. This gender issue is extended further in conditions of employment where only a tiny percentage of women employees are benefitted as compared to male employees. Thus, women remain over-represented in insecure and lower-paid work.
4. Even though the right of domestic workers to form trade unions and to collectively bargain has been recognised by the Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill 2008, only six states has extended minimum wages to domestic workers. It is pertinent to mention here that women, largely migrant women, are engaged in such employment activity.
5. Another important issue observed in the study is that the majority of the employees were not entitled to paid leave. Among the employees who were not eligible for paid leave, 96.4 per cent of the workers were among casual labour and 47.4 per cent were among regular wage/salaried employees are a serious matter of concern. Increase in holidays seems to have appreciable effects in increasing productivity of workers by means of refreshing.¹³⁶ Hence, it can be interpreted that employment relations are not completely subjected to national labour legislation, social protection or entitlement to certain employment benefits¹³⁷.
6. The reasons provided for break in jobs in the formal and the informal sector in non-farm sector show that broadly flexibility in the labour market has increased substantially. Despite the existence of restrictive labour laws, factors for loss of job and

¹³⁶ Reader (1959), Owen (1976), etc.

¹³⁷ Like paid annual or sick leave, etc.

quitting earlier job are common. In addition, because of closure many units resulted in loss of employment of thousands of workers due to absence of bargaining capacity through workers' collectives and various other internal and external exigencies.

7. Even though there are restrictive labour practices aiming at the welfare of employees, the loss of jobs due to compelling circumstances, such as non-remuneration, unpleasant environment, employer's harsh attitude and others, has been prevalent in the labour market.
8. Even though the total magnitude of workers who quit their jobs was not very large (0.18 million), 29.3 per cent of the formal sector workers and 57 per cent of the informal workers also mentioned that reason behind quitting their job as their work was not adequately remunerative.
9. Because of the increased tendency to outsource, offload or subcontract in the Indian labour market, 61.14 per cent, i.e. more than half, of the informal sector workers and 31 per cent of the formal sector workers among all the workers (regular wage/salaried employees and casual labourers) in the non-agriculture sector have no written job contract. Among those who have written job contracts, majority are on more than three-year contract in the formal sector and one-year or less in the informal sector. Thus, it is ascertained that most of the workers engaging in regular salaried/wage and casual labour are not protected under national legislations, with respect to the duration of employment with his or her employer.
10. Further, those who are self-employed under the given product specification, majority of the informal and formal sector workers had oral specification for work. This instance was found to be relatively high in the informal sector. It is mainly because most of the industries are outsourcing their ancillary activities to avoid direct employer-employee relations. In such cases, workers would work under low pay and adverse working conditions; and at the same time absence of effective trade unionism provides no scope for collective bargaining. These workers were not covered under any of the national legislations.
11. A comparison of wage rates among casual workers vis a vis regular wage rates shows that the casual workers receive a little

more wage than one-third of the regular worker's wage. Both in formal and informal sector, wages paid to SCs and STs are lower than OBCs and general category. In the Indian labour market, existence of differential minimum wages on men and women in agriculture as well as wage differentials across male and female among regular workers are also prevalent.

12. The presence of unions in the formal sector is almost more than double compared to the informal sector. It is also observed that the membership of women in the trade union is very less as compared to men over the years. Women in trade union leadership, however, remains a critical issue that needs to be further delved upon.
13. Information asymmetry¹³⁸ is also another important aspect that needs to be studied in both formal and informal sector workers as 5 per cent of the total workers were not aware about the union's presence at their work place or sector.
14. Even though child labour, per se, has declined drastically over the years, the distribution of child workers by caste reflects that although the workforce participation rate is declining for SCs and STs, child labour is still more prevalent in these underprivileged groups as compared to other social groups.
15. Concentration of children working in agricultural sector is mainly because the Child Labour (Prohibition and Regulation) Act 1986¹³⁹ is silent on children working in agricultural sector as well as it does not regulate the conditions of work if children are engaged to work by the family.

5.2 Policy Recommendations

1. As discussed in the foregoing chapters, for the successful ratification of Convention No. 98 on collective bargaining rights, Government of India may apply Article 6 of the ILO Convention No. 98 provisions in a manner that excludes large group of public employees from the coverage. The supervisory bodies of the ILO have observed on a number of occasions that in

¹³⁸ Condition in which at least some relevant information is known to some but not all parties involved.

¹³⁹ Prohibits child labour in certain occupations and processes alone and their conditions of work are regulated in the rest.

some countries governments have applied these provisions in a manner that excludes large groups of public employees from coverage by Convention No. 98. Concurrently, other issues are related to certain categories of informal workers, such as private teachers, SEZ workers and small farmers.

2. Several categories of workers in the informal sector are excluded from the Industrial Dispute Act 1947, as they are not considered as “workmen” in this act. These workers are excluded from the coverage of this Act by reason of the definition of the term “industry” and so it may be difficult to establish a clear employer–employee relationship in such cases. At the same time, they are not entitled to right to collective bargaining. Hence, for the implementation of FPRW there is a need to extend the rights granted under the Industrial Dispute Act 1947 to large sections of the informal workers.
3. Government of India has adopted various national plans for eliminating child labour. But at the same time implementation of credible and verifiable measurement tools are essential to evaluate programme results for the successful nationwide elimination of child labour.
4. With respect to elimination of child labour awareness programmes, survey and identification of child labour should be strengthened. Monitoring mechanism at national, district, state and block levels should be strengthened by integrated approach. At the same time, the performance of the NCLP implementing agencies should be reviewed and inspected for the successful implementation of the programme. An assessment of the effectiveness of the rehabilitation efforts under the NCLP should be carried out.
5. There is need of speedy enforcement of labour laws pertaining to the prohibition of employment of child labourers, discrimination with respect to employment and equal remuneration, abolition of forced labour, and other factors pertaining to FPRW. Labour justice systems in many cases reveal procedures that are time consuming and inconsistent.
6. Special Economic Zones Act 2005 empowers the central government to exempt any Special Economic Zones (SEZ) from any of the provisions of the act made thereafter especially laws relating to trade unions, industrial and labour disputes, conditions

of work, etc. The Government may issue directions to modify or to amend the application of law in relation to any SEZ.

7. For the effective implementation of equal remuneration, considering the heterogeneity of jobs existing in India, there is a need to develop Gender Neutral Job Evaluation Systems to avoid prejudices or stereotype based on sex.
8. Government of India should take certain FPRW awareness generating mechanism of the principles in a manner that is meaningful to a variety of audiences. There remain large numbers of citizens who have little or no information about FPRW.
9. Inclusion of curriculum on FPRW into educational systems would provide an introduction on rights at work at an early stage. It would definitely widen the knowledge about the rights thereby strengthening a democratic environment regarding rights at work.
10. With regard to the implementation of the workers rights, an important drawback is that most of the workers as well as the trade unions or the NGOs dealing with the informal workers are not aware of the rights at work related laws and procedures. For example: As per Minimum Wages Act [Section 2 (20)] registered trade unions also have the same power to inspect denial of minimum wage in any of the establishment. Most of the trade unions in India have not concerned themselves with this matter so far and have not come out with compliance. The same is the case with the Maternity Benefit Act, wherein only 1.3 per cent of female workers were availing health care and maternity benefits. As this act covers all the workers, the gaps in practice are a serious matter of concern. Moreover, Maternity Benefit Act 1961, Section 23 clearly states that trade union/voluntary organisation/inspector may file a complaint regarding the commission of an offence under this act. However, voluntary organisations dealing with women issues have not yet taken care of such issues seriously. Hence, the rights are not enforced effectively because of the unawareness of complicated legal terminologies in the usage of written law. Legislative provisions pertaining to rights at work should be simplified for the common man to understand that would in turn strengthen their awareness of rights.

11. The extension of Rashtriya Swasthya BimaYojana (RSBY) to domestic workers is an appreciable initiative but certain concerns need to be addressed at the implementation level. Under the scheme, the smart card-based cashless health insurance cover of Rs. 30,000 per annum is provided to a family of five on a family floater basis. At the practical level, enrolment of a domestic worker to RSBY scheme is a complex phenomenon for the non-literate and economically disadvantaged to get procedural formalities (sign) either from union, police department or residence association. Hence, people-friendly approach is required for certain sections of the society to benefit from governmental schemes. Absence of domestic work in the scheduled list of employment under minimum wages act 1948 at the national and in many states level is another major concern given the presence of women from marginalised community.
12. There is a need to promote activities to advocate for rights of workers of the informal sector focussing on advocacy and sensitisation, technical cooperation programmes, including training activities, research and analysis. Also, undertaking various research studies on fundamental principles and rights at work to analyse the ground level sector wise studies for further implementation is required.
13. Legislative and institutional reforms related to the enforcement of FPRW should be strengthened.

Ratification of the remaining four conventions would ascertain India's commitment towards labour standards. FPRW would help to address issues in employment, particularly in informal sector. FPRW would also address the socio-economic security vis-à-vis the socio-economic indicators, which is vital for India to establish the link between social progress and economic growth. Observance of FPRW is government's commitment towards employees for having better work satisfaction and dignity of labour. The role of trade unions in observing effective enforcement and implementation of FPRW would be very crucial as far as the universal coverage of FPRW is concerned. Better coordination among trade unions and stakeholders would ensure that workers' rights are adequately protected in consonance with the labour standards. This will automatically translate into better working conditions and enhanced productivity and quality of work.

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Annexure B

Type of contract (in millions)

		Formal sector			Infomal sector			All		
		Male	Female	Total	Male	Female	Total	Male	Female	Total
Farm	<i>No written job contract</i>	5.41	3.17	8.59	6.23	1.42	7.65	11.64	4.59	16.24
	<i>Written job contract for 1 year or less</i>	1.07	1.23	2.3	0.08	0.06	0.15	1.15	1.29	2.45
	<i>1-3 years</i>	0.007	0	0.007	0.03	0.01	0.05	0.04	0.018	0.05
	<i>More than 3 years</i>	0.37	0.37	0.74	0.01	0.002	0.01	0.38	0.37	0.75
	Total	6.87	4.77	11.65	6.36	1.5	7.86	13.23	6.28	19.51
Non-Farm	<i>No written job contract</i>	32.25	8.2	40.45	53.67	9.97	63.64	85.92	18.18	104.1
	<i>Written job contract for 1 year or less</i>	1.38	1.53	2.91	0.69	0.18	0.87	2.07	1.71	3.79
	<i>1-3 years</i>	1.42	0.42	1.84	0.28	0.1	0.38	1.7	0.53	2.23
	<i>More than 3 years</i>	17.85	4.02	21.87	1.28	0.32	1.61	19.14	4.34	23.48
	Total	52.91	14.18	67.1	55.94	10.58	66.52	108.9	24.77	133.62
All	<i>No written job contract</i>	37.66	11.38	49.05	59.9	11.39	71.29	97.57	22.77	120.35
	<i>Written job contract for 1 year or less</i>	2.45	2.76	5.22	0.77	0.25	1.03	3.23	3.01	6.25
	<i>1-3 years</i>	1.42	0.42	1.85	0.31	0.12	0.44	1.74	0.55	2.29
	<i>More than 3 years</i>	18.22	4.39	22.62	1.3	0.32	1.62	19.52	4.71	24.24
	Total	59.78	18.96	78.75	62.3	12.09	74.39	122.1	31.06	153.14

Annexure C

Social security

	Formal sector			Informal sector			All		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
	FARM								
Only PF/ pension (i.e., GPF, CPF, PPF, pension, etc.) -1,	28.5	2.6	31.1	9.2	-	9.2	37.7	2.6	40.3
Only gratuity	23.6	-	23.6	7.8	-	7.8	31.3	-	31.3
only health care & maternity benefits -3	34.6	71.0	105.6	12.4	-	12.4	47.0	71.0	118.0
only PF/ pension and gratuity	9.2	0.8	9.9	4.0	-	4.0	13.1	0.8	13.9
only PF/ pension and health care & maternity benefits	7.9	-	7.9	2.2	0.3	2.6	10.2	0.3	10.5
only gratuity and health care & maternity benefits	3.4	-	3.4	15.9	-	15.9	19.3	-	19.3
PF/ pension, gratuity, health care & maternity benefits	116.0	40.2	156.2	9.0	-	9.0	125.1	40.2	165.2
not eligible for any of above social security benefits	6,660.7	4,662.8	11,323.5	6,307.8	1,510.9	7,818.7	12,968.5	6,173.7	19,142.2
Total	6,883.9	4,777.3	11,661.2	6,368.2	1,511.3	7,879.5	13,252.2	6,288.6	19,540.8
	NON FARM								
Only PF/ pension (i.e., GPF, CPF, PPF, pension, etc.) -1,	6,643.8	1,190.3	7,834.0	523.6	135.3	658.9	7,167.4	1,325.6	8,493.0
Only gratuity	610.8	102.1	712.9	208.4	89.4	297.8	819.2	191.5	1,010.7
only health care & maternity benefits -3	860.9	246.2	1,107.1	227.8	112.7	340.5	1,088.7	359.0	1,447.7

only PF/ pension and gratuity	1,645.3	290.8	1,936.1	75.2	37.1	112.3	1,720.5	327.9	2,048.4
only PF/ pension and health care & maternity benefits	1,648.2	488.1	2,136.2	148.9	32.5	181.4	1,797.1	520.6	2,317.7
only gratuity and health care & maternity benefits	985.0	171.0	1,156.0	92.0	9.9	101.9	1,077.0	180.9	1,257.9
PF/ pension, gratuity, health care & maternity benefits	14,602.4	3,259.8	17,862.2	535.3	134.6	669.8	15,137.7	3,394.4	18,532.1
not eligible for any of above social security benefits	25,912.8	8,458.4	34,371.2	54,145.0	10,036.6	64,181.7	80,057.9	18,495.0	98,552.9
Total	52,909.2	14,206.7	67,115.8	55,956.2	10,588.3	66,544.5	108,865.4	24,794.9	133,660.3
ALL									
Only PF/ pension (i.e., GPF, CPF, PPF, pension, etc.) -1,	6,672.3	1,192.8	7,865.1	532.8	135.3	668.1	7,205.1	1,328.2	8,533.2
Only gratuity	634.4	102.1	736.5	216.2	89.4	305.6	850.5	191.5	1,042.0
only health care & maternity benefits -3	895.4	317.3	1,212.7	240.2	112.7	353.0	1,135.7	430.0	1,565.7
only PF/ pension and gratuity	1,654.4	291.6	1,946.0	79.2	37.1	116.3	1,733.6	328.7	2,062.3
only PF/ pension and health care & maternity benefits	1,656.1	488.1	2,144.2	151.1	32.9	184.0	1,807.2	520.9	2,328.1
only gratuity and health care & maternity benefits	988.4	171.0	1,159.4	107.9	9.9	117.8	1,096.3	180.9	1,277.2
PF/ pension, gratuity, health care & maternity benefits	14,718.5	3,300.0	18,018.4	544.3	134.6	678.9	15,262.7	3,434.6	18,697.3
not eligible for any of above social security benefits	32,573.6	13,121.2	45,694.8	60,452.8	11,547.6	72,000.4	93,026.4	24,668.8	117,695.1
Total	59,793.1	18,984.0	78,777.0	62,324.4	12,099.6	74,424.0	122,117.5	31,083.6	153,201.1

Source: NSSO 2009-10

Annexure D
Number of child labourers rescued, rehabilitated and mainstreamed

S. No.	State	Number of children mainstreamed		
		2009-10	2010-11	2011-12
1	Assam	3685	274	227
2	Andhra Pradesh	13689	1858	13202
3	Bihar	7998	8552	19673
4	Chhattisgarh	1063	5164	4914
5	Gujarat	1437	2129	609
6	Haryana	1354	1293	1895
7	Jammu & Kashmir	Nil	43	184
8	Jharkhand	1816	1015	2216
9	Karnataka	3217	135	3761
10	Maharashtra	5,150	5113	4532
11	Madhya Pradesh	9,692	13344	17589
12	Orissa	10,585	14416	13196
13	Punjab	1,023	123	168
14	Rajasthan	12,326	4415	1020
15	Tamil Nadu	6,321	6325	5127
16	Uttar Pradesh	40,297	28243	29947
17	West Bengal	13,187	2215	7456
	Total	1,32,840	94,657	125716

Source: Press Information Bureau, Government of India, Ministry of Labour & Employment
Note: Number of children through National Child Labour Project Scheme.

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