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► **Towards greater
inclusivity and equality
in minimum wages:
The case of piece-rate
wages**

Kamala Sankaran

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Abstract

The Code on Wages, 2019 and the Draft Rules notified by the government are intended to universalize the coverage of minimum wages across India. This paper surveys the norms governing minimum wage fixation in India, and examines the continued exclusions and unequal treatment of different sections of workers under the new law. It focuses on the absence of norms in the fixation of piece-rated minimum wages in India and suggests criteria that could strengthen this overlooked normative area of piece-rated minimum wages.

Keywords: Minimum wage, piece-rate wages, discrimination, universalization, labour codes.



1. Introduction

The [Code on Wages, 2019](#) (CoW) and the Draft [Code on Wages \(Central\) Rules, 2020](#) (Draft Rules) circulated in 2020 by the Ministry of Labour and Employment has sought to reform the law relating to minimum wages. Together with the changes brought about by the three other labour codes, the CoW and Draft Rules represent significant shifts in labour policy in India.¹ Several commentators have written on the changes in the minimum wage component of the CoW – the introduction of a statutory floor wage and norms for fixation of a minimum wage, as well as the consolidation and the rationalization of the occupations for which minimum wages are to be notified.² This paper focuses on law relating to wage fixation in India, with particular focus on the need to develop norms for the fixation of piece-rate wages. The paper is arranged as follows: Part I examines the limitations of the CoW in its coverage to all wage workers in India and the impact of the exclusions from coverage. Part II lays out the context within which piece-rate wages continue to persist in India and discusses the norms and practices of piece-rate fixation in India. Part III discusses the issues of discrimination and problems arising from the absence of norms and elaboration of best practices that lead to a persistent disparity between time and piece-rated wages. In conclusion, I suggest a set of guidelines to strengthen the fixation of piece-rate minimum wage.



2. Universalization of minimum wages

The ILO's Convention No. 26 (and accompanying Recommendation No. 30) relating to the Minimum Wage- Fixing Machinery applies to workers employed in "certain of the trades or parts of trades (*and in particular in home working trades*) in which no arrangements exist for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally low." [*Emphasis supplied*]. The justification for determining minimum wages in these 'sweated' employments was the weak bargaining position of workers that depressed wages to low levels. These 'sweated' industries are, not unsurprisingly, ones where wages, traditionally and to a great extent even today, are determined by the piece rate and where women workers are to be found in large numbers.³ The soon-to-be-repealed Minimum Wages Act, 1948 (MWA) applies to only those employments listed in the Schedule. This limited coverage of the MWA was based on ILO Convention No. 26, which India had ratified decades ago. (It may be pertinent to add that ILO Convention 131(1970), which India has not ratified yet, had itself moved away from the restrictive application of minimum wages to sweated trades towards universal application of minimum wages to all waged occupations – all groups of wage earners).

1 The other three new Codes are the [Industrial Relations Code](#), the [Social Security Code](#) and the [Occupational Safety, Health and Working Conditions Code](#), all enacted in 2020, but yet to be enforced.

2 See for instance, Anoop Satpathy, Xavier Estupiñan, Bikash K Malick (2021), 'Wage Code and Rules: Impact on the Effectiveness of Minimum Wage Policy', *Economic and Political Weekly*, vol LVI no 9, pp. 66-73; Nivedita Jayaram (2019), 'Protection of Workers' Wages in India: An Analysis of the Labour Code on Wages, 2019', *Economic and Political Weekly Online*, Vol. 54, Issue No. 49; KR Shyam Sundar, What is Wrong with New Labour Codes. See: <https://www.newsclick.in/what-wrong-centre-new-labour-codes>.

3 See ILO General Survey: 2014, para 163 for countries which fix minimum wages on piece-rate. The employments where minimum wages are fixed on piece-rate basis in India today include: Handloom weaving establishment, Handloom silk weaving establishment, Mechanised fish catching, Toddy tapping, Tree climbing, Agarbati (incense stick) making, Loading and unloading (per basket), Synthetic gem cutting, Beedi manufacturing (per 1000 beedis), Stone breaking and crushing, Sweetmeats and Hair cutting saloons, Brick and Tile making, Tea plucking, Domestic work etc.

One of the goals underlying the codification exercise of recent years has been to undo the piece-meal and fragmented nature of labour laws and rationalise, consolidate and codify the multiple labour laws.⁴ However, the universalisation of labour law, particularly in minimum wages, was also an important policy consideration and one explicitly recommended by previous Commissions set up by the Government.⁵ For instance, studies have indicated that despite the MWA having extensive potential coverage, only around two-thirds of wage workers are covered by the minimum wage law (MWA)(Rani et al: 2013).⁶ Further, we must bear in mind that even within this regime of restricted *de jure* coverage of the law, *compliance*, in practise, is far lower.

The right to life, a dignified life, free from forced labour, requires the payment of minimum wages in waged work. Unless minimum wages have universal applicability, any constitutional right to life talk will become meaningless. Thus, the goal of universality was expected to be achieved by the CoW through removing the restriction of employment-centric coverage on the one hand and by extending it to all classes of wage earners.

2.1 Exclusion of MGNREGS

The CoW introduces restrictions to the goal of universal applicability of minimum wage norms in several ways. Moreover, the largest category of waged work in India, the wages paid under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), is explicitly kept out of the CoW.⁷ The average rate of wages under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) is currently set at a rate much lower than the minimum wages notified by various states under the MWA (even though it is higher than the non-statutory floor wage rates declared by the Central Government).⁸ The non-equivalence with other employments under the MWA is compounded by the fact that under the MGNREGA, the normal hours of work are seven hours a day (Sch 1), while under the R 6(3) of the Draft Rules, the normal eight hours of work may be reduced by the Central Government for agricultural employment; the Draft Rules are however silent on this matter. It is worth bearing in mind that the courts have held that initial 'food for work' programmes must comply with minimum wages. Otherwise, extracting work at wages lower than minimum wages could amount to forced labour (Sankaran: 2011).⁹ For these reasons, exclusion of MNREGS from the CoW raises concern.

2.2 Excluded occupations

The CoW and the Draft Rules have done away with the multiplicity of scheduled employment under the MWA by listing occupations and extending it to all wage-earning employees/workers. The introduction of a new schedule under the CoW enumerating occupations as unskilled, semi-skilled, skilled, and highly skilled for fixation of minimum wage rates brings a fresh set of problems. No doubt, there has been a rationalization of occupations compared to the listings of employment.

4 National Commission for Enterprises in the Unorganised Sector (NCEUS), *The Challenge of Employment* (2009), paras 7.66-7.70, based on the recommendations of the Report of the (Second) National Commission on Labour (2002).

5 See NCEUS, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007) para 3.95 which recommended "a national floor below which no trade or occupation based minimum wage should be set and a minimum package of social security".

6 See Rani, Uma; Belser, Patrick; Oelz, Martin; Ranjbar, Setareh. 2013. "Minimum wage coverage and compliance in developing countries", in *International Labour Review*, Vol. 152, No. 3-4, pp. 381-410. They measured coverage as the "proportion of wage-earning workers who are included within the scope of minimum wage regulations, and thus entitled to be paid at least the prescribed minimum" (p. 383).

7 Section 66, CoW.

8 The national floor level minimum wage has been fixed at Rs. 176 per day since 2017. See [Annual Report, Ministry of Labour and Employment, 2020-21](#), para 5.4. The [state-wise schedule of wages unskilled manual workers under the MGNREGA](#) are fixed higher than this. Yet, this wage rate is lower than state-wise minimum wages. For instance, in Andhra Pradesh, the [minimum wages monthly minimum wages and variable dearness allowance payable from 01-10-2019 to 31-03-2020](#) for loaders was Rs. 7795.60 which on a per day basis would still be higher than the MGNREGA wage rate of Rs. 237 per day for Andhra Pradesh.

9 *Sanjit Roy v. State of Rajasthan* AIR 1983 SC 328.

(Satpathy et al: 2021). An occupation-based listing that is not comprehensive runs the danger of excluding various occupations. The occupations listed in Schedule E of the Draft Central Rules) indicates that occupations such as domestic work (including care work) are excluded. While there is a gendering in these fresh exclusions, other occupations covered under the present MWA also stand excluded. These excluded categories are predominantly rural occupations, such as work on salt pans, beedi rolling or collection of non-timber forest produce/minor forest produce. Several forest-based workers drawn from marginalised communities earn their livelihood from collection of such non-timber forest produce, for which piece-rate wages have been fixed by the forest departments/state governments.¹⁰

The definition of “establishment” in the CoW also appears to exclude private households and work carried on there (often piece rated homework).¹¹ Occupations in tea plantations continue to be absent. Most of these excluded occupations also have a large proportion of piece-rated workers. Perhaps the most glaring exclusion is the rapidly expanding work of wage workers in the gig and platform economy who often work on piece rates (per trip / per delivery) and who find no mention in the Schedule of occupations attached to the Draft Rules. (Satpathy et al 2021)

The CoW has done away with the earlier restricted list of employments under the MWA and now lists occupations. Yet, it does not list all possible occupations - not even those routinely covered by studies and surveys by the Labour Bureau – and has once again limited the universality of the most basic law, the minimum wage component of the CoW. The list of unskilled occupations in the Draft Rules has a residuary clause that states “...and other categories by whatever name called which are of unskilled nature”. There are similar clauses in each of the skill-based occupations in the Draft Rules. Yet, this residuary clause will not sufficiently address the non-inclusive nature of the CoW until all working spaces such as dwelling houses are also covered, and the list of occupations is broadened to include (for example) homework and domestic work. Further, it also begs the question of how non-listed occupations will be identified and assessed for their skill level. Therefore, there is an urgent need to indicate in the CoW and Draft Rules that every occupation must be *deemed* to fall within the Schedule E.

2.3 Categorization of skills

Classifying occupations in the CoW as unskilled, semi-skilled, skilled and highly skilled poses another challenge.¹² The power to classify occupations based on skill levels is granted to a Technical Committee that is to be constituted by the central government.¹³ The lack of clear guidance to the Technical Committee by which to determine this skill-based categorization of occupations

¹⁰ Tendu/Kendu leaves used in beedi production is one of the most important minor forest produce for which piece-rate wages are fixed. See for instance, the EstBengal notification for wage rates for beedi leaf plucking in Circular No. 75/Stat/2RW/59/2002/LCS/JLC dated 30 June, 2021 available at https://wbcl.gov.in/sites/default/files/upload/minimum_wages/july-2021/T3,%203,%20Beedi%20Leaf%20Plucking.pdf and last accessed on 13 January, 2022.

¹¹ In the case of beedi work, the exclusions run deeper. The dwelling house where beedi work is largely carried out by homeworkers, a ‘private dwelling house’, has not been covered under the term ‘establishment’ as it was under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

¹² Rule 2 (v) of the Draft Rules states “**unskilled occupation**” means an occupation which in its performance requires the application of simply the operating experience and involves no further skills;

Rule 2 (t) states “**semi-skilled occupation**” means an occupation which in its performance requires the application of skill gained by the experience on job which is capable of being applied under the supervision or guidance of a skilled employee and includes supervision over the unskilled occupation;

Rule 2 (u) of the Draft Rules states “**skilled occupation**” means an occupation which involves skill and competence in its performance through experience on the job or through training as an apprentice in a technical or vocational institute and the performance of which calls for initiating and judgement;

Rule 2 (j) states “**highly skilled occupation**” means an occupation which calls in its performance a specific level of perfection and required competence acquired through intensive technical or professional training or practical occupational experience for a considerable period and also requires of an employee to assume full responsibility for his judgement or decision involved in the execution of such occupation;

¹³ Rule 4, Draft Rules indicates that the Technical Committee comprises mainly official members with two technical experts.

(except for stating that the national skills classification framework may be taken into account) is a critical omission, particularly for the kinds of traditional occupations to be found in rural areas and informal employment, and where wages are often piece-rated.

The issues relating to the categorization of skill levels are compounded by the absence of guidelines or norms for fixing wages for work done on a piece-rate wage (we discuss this in the next section). For instance, consider the case of agricultural work. Traditional agricultural occupations are restricted to unskilled and semi-skilled categories in the Schedule to the Draft Rules. Occupations such as harvesting, sowing, transplanting (performed largely by women) find a place in the list of *unskilled* occupations (Entry 47, Schedule E, Draft Rules). The CoW states that "*unskilled occupation means an occupation which in its performance requires the application of simply the operating experience and involves no further skills*". In short, those skills learned by 'doing' (not learned by training) and drawing upon generations of experience are not given their due recognition as skilled work. Only skills acquired by certified training or educational courses are treated as 'skilled' work and therefore capable of earning higher wages. Such a classification privileges some modern occupation/work forms over other more traditional forms. Similar instances of treating 'women's work' as 'unskilled and therefore, as low paying, is seen in the minimum wage fixation of wages for domestic work (Sankaran: 2013). Unless guidance is provided by the Technical Committee while categorising occupations across the skill-spectrum, discrimination of traditional skills or occupations dominated by women will continue to be treated as unskilled work.



3. The challenge posed by piece-rate wages

While most minimum wage norms are primarily centred around time rates, developing similar norms in the fixation of piece-rated wages poses a challenge. Various states have set out piece-rate wages across industries under the MWA. Therefore, it would be useful to cull out broad principles discernible from the experience of fixation of piece-rated wages gained under the MWA. We examine some of these below to develop criteria that could guide the Advisory Boards set up by the appropriate government under the CoW.

Early industries such as textiles, coal, ports and docks, and railways essentially had payment systems by the piece, which gradually transformed into time-rated wage systems.¹⁴ Notwithstanding the continuation of piece-rate wages, the overall trend appears to be one of the widespread uses of time-rated wages across the world of work today. For instance, the textile industry of the 1940s in India saw a "*drift towards a minimum wage for workers paid according to time*". (Chandravarkar: 2008, 201).¹⁵ The Royal Commission on Labour reporting on conditions of labour in colonial India (comprising present-day India, Pakistan, Bangladesh and Myanmar) reported that the railways, too by the 1920s, had moved by and large to a time-rated system of wages.

Surveys point to the decreasing yet significant number of workers paid by piece rates in the mining industries.¹⁶ In the case of *beedi* workers in the State of Madhya Pradesh, 81.5 per cent of the workers surveyed were paid on a piece-rate basis, and the remaining were on time-rate. (Labour

14 The Industrial Court set up under the Bombay Industrial Disputes Act, 1938 through an award had standardised wages for workers in textiles mills in Bombay, and the minimum basic wage was fixed at Rs. 30 per month along with a dearness allowance to neutralise 90 percent of the increase in the cost of living. This 'Standardisation Award' was confirmed by the Labour Appellate Tribunal in 1955 (*The Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh* decided on 17th January, 1955:1955 I LLJ 329). For details, see B.S. Narula: 1963, 149-155). This, and similar awards, standardised the minimum wage above which the wage structure of the entire industry in a region was developed. Another factor leading to the growth of time-rated system could perhaps be attributed to the decline of the jobber system (who operated as supervisors, and were critical in overseeing the work of piece-rated workers) in the textile mills of Bombay.

15 The trend toward time-rated wages in the Bombay textile industry in the 1940s following industrial adjudication has also been noted (Morris: 1965).

16 See the Labour Bureau Occupational Wage Survey for the Mining Industry Table 2.6 for the decrease in piece-rate workers in the coal mining industry from 1958 to 2005. Available at http://labourbureau.gov.in/OWS_Mining07%20Table_2p12345678.htm#t24 Last accessed on 6 May, 2021.

Bureau: 2003, Table 5.1).¹⁷ The number of piece-rated workers appears to have slightly *increased* in the survey conducted in 2014, and the piece paid around 89.54 per cent of the workers surveyed. (Labour Bureau: 2015, 28). Among *plantation* workers, the percentage of piece-rated workers is the highest in tea plantations. According to the Occupational Wage Survey conducted in 2006, of the estimated 8,11,854 tea plantation labour, 90.43 per cent of workers were piece-rated, and a mere 9.57 per cent were time-rated. In the rubber plantations, the picture was slightly different. Of the 61,270 plantation labour, 65.33 were piece-rated and 34.67 time-rated (we may note that the percentage of piece-rated among the sub-category of rubber tappers was slightly higher and stood at 72.99). In coffee plantations, of the 1,05,288 plantation labourers, 15.54 per cent were piece-rate workers, while 84.46 were time-rated. Across all these plantations, the percentage of women piece-rate workers was 56.26, with the highest proportion in coffee plantations in Karnataka state.¹⁸

3.1 Measurement of work and Supervision

Piece-rate wages, where the worker is paid by result or output, is often found in 'traditional' employments such as agriculture, fishing, handicrafts, in sectors such as coal mining, forestry, as well as in manufacturing industries such as garment and hosiery, beedi rolling, and automobile ancillaries. Time-rate wages are used alongside piece-rate wages in many sectors/employments, such as agricultural operations. (Baland *et al*: 1999, Royal Commission on Labour: 198) Even where most workers are paid on a daily or monthly basis, some specific niche workers such as loaders/unloaders in coal mining, forestry or agro-industries, or home-based garment/ beedi workers, pluckers in the tea industry continues to be paid by time-rated as well as piece-rated wages. These are industries where the output is readily measurable, and the tradition of piece-rate wages has had a long-standing.

Piece-rate systems appear to be used mainly in jobs or tasks that can be measured based on output, result, or time required. Piece-rate wages have an in-built incentive system since additional wages are payable above the standard norm. As a result, piece-rate wages are sometimes seen as enhancing quantity while compromising on quality. The trade-off between increased output and lowering quality is also addressed by deductions in the piece-rate payments for output rejected on quality parameters. Commentators have noted that piece-rate systems result in lower supervision costs through the production process (Baland *et al*: 1999). For instance, supervision of homework takes place at the end of the production process. However, it must also be kept in mind that the costs of supervision are transferred on to the workers themselves in such cases. This can take the form of the workers (e.g. beedi workers) absorbing the costs of production rejected at the supervision at the time of collection of output or the end of the day in the case of home-based workers. Courts have used the displacement of continuous supervision with supervision at the end of the process, as is the case with homework, to hold that piece-rate workers who work at home or as out-workers away from the factory continue to be workers/employees.¹⁹ There is a need to ensure that homeworkers are treated as 'workers/employees', keeping in mind the guidance provided in the ILO Employment Relationship Recommendation, 2006 (No. 198) in order that these workers are not denied statutory minimum wages.

3.2 Norms for fixation of wages - minimum wages generally

The CoW and Draft Rules have comprehensive criteria for determining minimum wages that include some coverage of food, rent, and miscellaneous expenditure of workers and their families. In the first instance, the wages so fixed are a time-rated wage which is fixed for a day and then can be computed on an hourly or monthly basis. The CoW and Draft Rules have incorporated the 'need-based minimum wage' norms proposed by the tripartite Indian Labour Conference in 1957 and has added 25% toward education, medical expenditure etc., mandated by the Supreme Court in a judgment delivered in 1991.²⁰ However, an important omission has been of criteria for

17 The Report is available at <http://labourbureau.gov.in/MW3ch5.htm>. Last accessed on 6 May, 2021.

18 Occupational Wage Survey (Sixth Round 2006) tables 2.2 and 2.4 available at <http://labourbureau.gov.in/OWS%20Table%202.2.htm> and <http://labourbureau.gov.in/OWS%20Table%202.4.htm>. Last accessed on 6 May, 2021. It may also be noted that some states have only time-rated workers in plantations: it is reported that surveyed rubber plantations in Karnataka and Tamil Nadu do not have piece-rated workers. (Labour Bureau: 2009, para 4.18).

19 *The Officer In-Charge, Sub-Regional Provident Fund Office & Anr v. M/s Godavari Garments Limited* (2019) 8 Supreme Court Cases 149.

20 *Workmen v. Management of Raptakos Brett & Co Ltd*, AIR 1992 SC 504.

determination of National Floor Wage which is to be declared by the Central Government since the need-based principles are not explicitly stated to be the basis for determination of Floor wage.

The basic needs that form the basis of minimum wages are determined, keeping in mind the requirements for each worker and also keeping in mind that the wage earner will have to support other non-earning members. Thus, recalibrating the minimum wage for these basic requirements based on the standard daily output of a piece-rate worker poses the real challenge in setting minimum wages on a piece-rate basis. The piece rate is contingent upon the time-rate minimum wage to determine if earnings on a piece rate are equivalent to a time-rated minimum wage based upon a notion of a 'normal' working day.

In the MWA, the Government was enjoined to set: a) a time rate, b) a piece rate for an employment, and c) "a guaranteed time rate," i.e. a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis. In the CoW, there is a similar provision in section 6(3). It prescribes that the appropriate Government shall fix a minimum rate of wages for securing employees who are on piece work a minimum rate of wages on a time-rate basis. Furthermore, the employer shall pay such person wages at not less than the minimum time rate; this mode of guaranteed time rate is especially crucial in employments where time work and piece work coexist.

3.3 Method of determination of piece-rate minimum wage

The ILO, in its survey of piece-rate wages across various countries, notes that piece-rate wages can use methods that "involve time and motion studies, individual or collective agreements approved by the Department or tripartite conference" (ILO: 1994, 37). However, in practice, rigorous time and motion studies have not been very common in India in fixing minimum wages on piece rates. Notwithstanding, Gujarat has recently revised its minimum piece-rate wages payable to brick-kiln workers following such time and motion studies.²¹

It may be useful to look at other jurisdictions that fix piece-rate wages. For example, the Philippines has issued detailed guidelines for conducting time and motion studies conducted by tripartite wage boards and productivity boards in 2013.²² The US Department of Labour (DOL) has exhaustive regulations for the determination of piece-rate wages. It provides for a Personal time, Fatigue, and Delay (PF&D) factor and requires that when determining piece rates, "appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9 - 10 minutes per hour) shall be used in conducting time studies."²³ The period of PF&D for which allowance is made will be more significant for persons with disabilities. The United Kingdom has provided clear rules for the fixation of piece-rated wages. Workers are paid at a fair rate, i.e. the rate at which an average worker produces output. The average speed is divided by a factor of 1.2 so that new workers who are not fast enough are not penalised for earning less than the minimum time rate.²⁴

While Time and Motion studies are used in a limited manner for setting piece rates minimum wages, they are conducted routinely by different states in India to determine the Schedule of Rates for work offered under the MGNREGA. The MGNREGA Act requires that the schedule of rates of wages for unskilled labourers should be so fixed that an adult person who worked for eight hours which includes an hour of rest, would earn a wage equal to the stipulated wage rate (Schedule 1, para 19(a) of the Act). The task (piece) rate is determined based on Task Rates/ Schedule of Rates determined by each state. We have already noted that the CoW does not cover the wage rates under the MGNREGA.

21 Gujarat Minimum wage notification in Brick Manufacturing Industry, 2021. See: https://labour.gujarat.gov.in/Portal/Document/1_403_1_notification_5_10.pdf

22 Department Order No. 125-13 Series of 2013 – Revised guidelines on the conduct of Time and Motion Studies (TMS), available at <https://nwpc.dole.gov.ph/issuances/department-order-no-125-13-series-of-2013-revised-guidelines-on-the-conduct-of-time-and-motion-study-tms/> last accessed on 6 May, 2021.

23 US Code of Federal Regulations, Regulations, 29 CFR Part 525.12(h)(2)(ii), available at https://www.ecfr.gov/cgi-bin/text-idx?SID=0b138602845eaf0f6b10386852d78c4b&mc=true&node=pt29.3.525&rgn=div5#se29.3.525_112 Also see US DOL, Field Operations Handbook ch 64i01 available at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch64.pdf last accessed on 6 May, 2021.

24 See <https://www.gov.uk/minimum-wage-different-types-work/paid-per-task-or-piece-of-work-done> last accessed 6 May, 2021.

Some industries in India have evolved methods to determine piece-rate wages. The example of piece-rate wages in the tea industry in Kerala is illustrative. Tripartite settlements between plantation owners, trade unions and the government are usually notified of the minimum wage. An examination of the notification issued by the Government of Kerala in 2016 after the recommendation by the Minimum Wages Advisory Board reveals interesting aspects of piece-rate wage fixation, as seen below.

PIECE-RATE WAGE RATES IN TEA PLANTATIONS IN KERALA

a) Standard output	(i) In the months of January, February and August – 16 kgs of leaves per day (ii) In the remaining months of the year, 21 kgs per day
b) Guaranteed Time-rate (Basic Wages)	(iii) Rs. 184.93
c) Minimum Piece-rate	Pluckers in the plantations shall be paid the following piece-rates over and above the guaranteed time-rates (i) Rs. 7.711 per kg for the 16 kg of harvested leaves during a day in January, February and August (ii) Rs. 5.875 per kg for the first 21 kg of leaves harvested a day in the other months of the years (iii) 80 paise per kg for the first 14 kg over and above the standard output and 110 paise per kg for the next 14 kg and 150 paise per kg thereafter
d) Adjustment of piece-rates	Where the plucking average for an estate over a month is found to be less than the standard output, the wages for the month shall be paid at a revised piece-rate calculated based on the actual average for the month, which should be taken as the standard. The rate should be such that after deducting 10% from the revised standard output, the remaining quantity will be the standard output of the worker and an amount equal to the difference between the minimum wages and the guaranteed time rate of the worker shall be paid. A plucker shall be entitled to receive this rate for the leaves harvested every day that month up to the revised standard daily output for the month.

Source: Notification G.O (P) 24/2021/LBR dated 16 February 2021, Labour and Skills (E) Department, Government of Kerala.²⁵

In the other major tea producing state, Assam, the Government has increased the interim wage by Rs. 50 per day pending the finalization of the minimum wages under either the Minimum Wages Advisory Board or under the Code on Wages, 2019.²⁶

In agricultural operations/plantations, where the output can vary for reasons beyond the control of the workers or managements, a provision for revision of the standard output is in-built in the notification for the tea industry in Kerala, as indicated above. Another feature of the settlement of piece-rate wages is that the rate of wages above the standard norm is not a fixed rate but a steeply increasing piece-rate as output increases, aimed at exponentially rewarding the more efficient worker through an incentive pay system. The guaranteed time rate is paid even if the standard output is not achieved. Thus, the earning of a below-average worker will consist of the guaranteed time rate plus the piece-rate determined for the lowest slab of output, i.e. less than 16 kg/21 kg according to the month s/he works. Such a mix of a guaranteed wage with a built-in incentive seen in plantation wages could be incorporated in norms for setting piece wages across other industries and regions.

²⁵ Available at <http://www.lc.kerala.gov.in/images/pdf/minwages/plantation-2021.pdf> and last accessed 6 January, 2021.

²⁶ Government of Assam, GLR(RC) 178/2014/Pt/406 dated 23 February, 2021 available at https://labourcommissioner.assam.gov.in/sites/default/files/swf_utility_folder/departments/coi_labour_uneecopscloud_com_oid_14/menu/document/notification_of_interim_wages_for_plantation_workers.pdf and last accessed on 6 January, 2022.

3.4 Payment of piece-rated wages: seasonal and group wages

The CoW (like the MWA) indicates the maximum time limit for payment of wages to be a month. However, certain industries have wage payments at the end of the season. This is particularly the case in seasonal operations such as brick kilns, salt manufacture and certain agricultural operations like sugarcane cutting. Work in brick kilns and salt manufacture is done by an entire family where different members (including often children) work on different aspects such as moulding, transporting to the kiln, firing the kiln and arranging bricks in the case of brick kiln manufacture. The workers' presence is ensured by payment of an advance and small weekly payment to the workers and their families to take care of expenses, with the remaining wages being paid at the end of the season based upon the output. A net result is a form of neo-bondage since the worker cannot leave mid-season and seek employment elsewhere. (Guerin, Venkatasubramnian:2009, Prakash: 2009). Ensuring that seasonal workers have a shorter periodicity of payment, as prescribed in the ILO's Protection of Wages Convention (1955) No. 95, continues to be a challenge.

There are several industries and processes where workers work in groups, and wage payments are made to the head of the group for the work done by the group. Historically, piece-rate wages in the coal industry in India were paid to the family-as-a unit, with the man cutting the coal face and the woman transporting the coal to the surface. The practise of working in teams continues in the coal industry. Under the National Coal Wage Agreement X entered into in 2017, loader, stackers, trammers who push the tubs of coal as part of teams are paid individually.²⁷

Another kind of group wages had been in existence in the brick-kiln, construction, sugarcane harvesting and other employments. The payment was made to the headman on the basis of the measurement of work done by the group. The payment for individual workers within the group often was done on-time rates and was based on the number of days worked by each worker. The difference between the piece-rate wages received and the amount disbursed to individual workers in the group represented the profits of the headman. (Study Group for the Construction Industry, National Commission on Labour, 1968: 23). This practice of group piece-rate wages being paid to the head of the group has declined, and the contractor directly pays individual workers based on time/piece rates in many of these employments. Yet, the system of group wages has not completely disappeared and continues in the form of collective measurement systems for assessing the work completed by a team. For instance, under MGNREGA, work is measured under the Schedule of Rates in each state and payment is made on the basis that a person working for seven hours would normally earn a wage equal to the minimum wage rate. However, commentators have pointed out that the nature of work involving manual earth work consists of persons working as a coordinated group and measurement of the work completed by the group. (Khera: 2009).

Group work and, therefore, group wages is also seen in the brick kiln industry. A pair of workers do the task of mixing clay and moulding bricks. The task of loading and fixing bricks in the kiln is also done by workers operating in pairs. In some states in India, the minimum wages for the brick manufacture industry acknowledge this work practice and notify the wage rate applicable "for a pair of workmen".²⁸ The determination of piece-rate wages may need to factor in such group/teamwork and equitably and transparently assign shares to members of the group/team.

27 Memorandum of Agreement (Xth Wage Agreement for Coal India Limited and Singareni Collieries Co. Ltd, 2017), Clause 3.2.0 read with Annexure III A,B and C. Available at <https://scclmines.com/scclnew/arti.asp?rt=NCWA-X.pdf> and last accessed on 6 January, 2022.

28 See for instance the minimum wage notification in the state of Andhra Pradesh for the Brick Kiln industry G.O.Ms. No.84, LET&F (Lab.II) Dept., dated 22 November, 2006, available at <https://labour.telangana.gov.in/minimumWages.do> last accessed 6 January, 2022.



4. Time rate versus piece-rate workers: Issues of Discrimination

The lack of attention paid to the fixation of piece-rate minimum wages results in unfair treatment of piece-rated workers vis-a-vis time rated workers earning a minimum wage. This form of discrimination among workers earning minimum wages takes many subtle forms that we examine below.

4.1 Value of accommodation, cost of lighting, equipment, rejected produce

The wages of homeworkers do not adequately compensate the worker for the use of space, lighting and tools provided by the homeworker. For instance, the piece-rate minimum wages notified for garment workers in certain states in India indicate the same rate whether the place of work is a factory or the home. This lacuna in the piece-rate wage-setting process has been highlighted by studies, pointing out that time taken for preparatory work, tool repair and the costs for the provisioning of working space, lighting etc., need to be taken into account by the wage-fixing machinery. (NCEUS: 2006, ETI: 2013). In the case of gig- workers or platform workers who often are paid by the piece/product, computers, internet connection or phone charges are not factored in in payments made to them. "Dead time" as the time required for preparation – logging on to computers in the case of teleworkers (Huuws and Podro:1995), collection of raw material, and cleaning of premises in the case of homeworkers etc. also need to be factored in into the time required for the completion of the tasks.

Most homeworkers are paid by the piece. Beedi workers receive the tendu leaves, tobacco and thread from contractors/sub-contractors. Studies indicate that the majority of beedi rollers need to go to the premises fixed by the contractors to obtain the raw materials. However, the raw materials supplied are often not adequate or are of poor quality. The contractor or sub-contractor may reject around 5-50 per cent of the beedis rolled, and payment is made for the rest. (Jhabvala et al: undated, 10, 14; Mishra:2000, 26; SEWA 2000:9). The contractors often insist on an additional 50 beedis to be supplied for every 1000 beedis rolled (SEWA: 2000, 9). (It may be pointed out that in the case of factory workers, the maximum amount of fine cannot exceed three per cent of the wages under the CoW). However, the rejected beedis are collected by the contractors and later sold in the market, and the workers are denied their wages (Mishra: 2000, 26). Thus, the notional wage of rejected pieces taken away by the sub-contractors also needs to be included in the piece wage rate fixation. This is, of course, in addition to the need to include homeworkers in the list of occupations in the CoW, as already discussed earlier.

Another model of fixing piece-rate wages is seen in some industries in India. The calculation of piece-rate wages in certain sectors such as stone crushing and loading is determined by deducting various costs from the price at which the worker's daily output is sold to determine the residual wage rates. The labour department of one state indicates this method in its submissions to the court, which is recorded in the judgement: "*The Stone Breaking and Stone Crushing is scheduled employment, for which the minimum rate of wages, as fixed/revised by the Haryana Govt., is Rs. 13.69 per day, which is applicable to the workers employed by the quarry in question. A truck load of stone on an average is a produce of one day of two labourers for which Rs. 71/- are paid. After deduction of expenses towards blasting, drilling, earth removal etc., the net income/- wages of two workmen comes to Rs. 39/- which if divided into two, will come to Rs. 19.50 per workman per day.*"²⁹ The workers undertake to blast and drill the rocks retaining the residual amount, which should amount to the minimum wages. Such persons are not treated as independent contractors but as workers who are employed. In all

²⁹ *HB Verma v. Union Of India And Others* (1993) 1 LLJ 39 Del.

such cases, the explicit provisioning to compensate the piece-rate worker for such costs borne on the employer's account would need to be incorporated in the norms for piece-rate wage fixation.

4.2 Overtime wages

Section 14 of CoW states that when minimum wages have been fixed on a time-rated basis and a worker works on any day in excess of the number of hours constituting a normal working day, the employer shall pay an overtime rate which shall not be less than twice the normal rate of wages. The absence of a similar provision for piece-rate wages is required to be incorporated so that there is no discrimination against workers paid by the piece-rate. The provision indicating that there is an equivalence of time and piece-rated wages under the CoW would not suffice since the hours of work and 'normal' output over a normal working day has not been addressed. In the case of piece-rated workers, unless there is a previously set benchmark of what can be produced in a normal working day, the payment of double the piece-rate wages for the extra production cannot be made. Therefore, it is essential that the fixation of piece-rate wages must also indicate the 'normal' output expected during a 'normal' working day based on scientific assessments carried out by committees set under the CoW. The minimum notification must also clearly stipulate that production beyond the normal output of a working day must result in payment of piece-rate wages at the double the rate.

4.3 Increases in costs of living

The minimum wage notified consists of a basic wage together with a variable allowance that compensates for increases in the cost-of-living index. Most minimum wage notifications indicate that piece-rate workers are eligible for dearness allowance. However, an analysis of some of the minimum wage notifications issued by states in India indicates that the rate of increase in wages for increases in prices (dearness allowance) is not uniform for time-rated and piece-rated wages.

The additional payment to compensate for price increases (termed dearness allowance (DA)) for garment workers specifies that workers are entitled to payment based on the completion of their stipulated norms of work ('work turn over') only *"when the work allotted to them are completed. The work turn over in a week may be reckoned and DA shall be paid at the rate of 1 DA per one days' work load subject to a maximum of 1 DA for a day and 6 DA for a week."*³⁰ The minimum wage notification in the cashew industry in Kerala, where wages are fixed on a piece-rate basis, states that *"The piece-rate employees are eligible for full Dearness Allowance on completion of the workload allotted to them for eight hours. If the workload specified is not completed, they are eligible for proportionate Dearness Allowance."*³¹ Piece-rate workers whose output is lower than the standard expected output obtain lower wages as well as a lower DA, thereby affecting their earnings which may result in sub-minimum wages on a time basis. The payment of a time rated wage is only applicable when a piece-rated wage is not been fixed. Thus, where a piece rate has been fixed, the slower worker stands to lose both the wage and corresponding DA. This adversely discriminates the piece-rated worker as compared to the time-rated one. This form of discrimination between these two categories of workers needs to be addressed in norms developed by the appropriate bodies under the CoW.

4.4 Absent Social protection

As noted above, the CoW and Draft Rules in a welcome move have explicitly recognised that medical requirements are to be included while calculating minimum wages. However, social protection in the form of old-age benefit, accident benefit, disability benefit or other forms of social protection is usually not considered a component of minimum wages. The lack of social protection is particularly acute for workers in the informal economy. A worker's eligibility to social protection

³⁰ Government of Kerala, Notification (MS) No. 132/2010/LBR dated 6 November, 2010 available at <http://www.lc.kerala.gov.in/images/MWN/garment.pdf> last accessed on 6 January, 2022.

³¹ Government of Kerala Notification G.O. (P) No.21/2015/LBR dated 21st February, 2015 available at <https://cashew-corporation.com/right-to-information/minimum-wage-notification-2011/> last accessed 7 May, 2021

is often taken as a crucial marker for identifying a person in informal employment (ILO, 2013: 4), irrespective of whether s/he is employed in a formal or informal enterprise. The minimum wage fixed in certain industries expressly indicates an additional inclusion of a special allowance to compensate for social security/ medical/ welfare benefits if the worker is not otherwise eligible for or covered by such benefits. For instance, the minimum wage notification for the Bricks and Tiles Manufactory (consisting largely of piece-rate wages) in the state of Tamil Nadu in 2017 states, "... The employees employed in Bricks and Tiles manufactory who are not governed by the Factories Act, 1948 (central Act LXIII of 1948) and other Labour enactments and who do not enjoy leave benefits, sickness benefits or holidays under the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (Tamil Nadu Act 33 of 1958) and Provident Fund and Employees State Insurance benefits, shall, in lieu of those benefits, be paid an additional wage of Rs.36.65 per day in respect of employees falling under Group I and Group III and Rs.31.42 per day in respect of employees falling under Group II and Group IV".³² The payment of such as additional special allowances does not appear to be very common in the piece-rate wage notifications for workers in informal employment. It would be necessary to have such a component incorporated in the Draft Rules to ensure that the earnings of those on piece-rate wages in establishments covered by social protection and those excluded are made equivalent.

4.5 Absence of Fall back/guaranteed wages

Workers in the factories, mines and plantations have provisions entitling them to lay-off compensation when the employer cannot provide work for reasons attributable to shortage of raw materials or power and related causes. In addition, piece-rate minimum wages in certain industries have a feature of a 'fall back wage', which the worker is entitled to if s/he is unable to work due to lack of electricity, raw materials or equipment for which the employer is responsible. For example, in the brick and tiles manufactory minimum wage notification noticed above, workers are entitled to 50% of the wages which they usually would have earned on the completion of the work, if after commencement of the work the workers are forced to stop the work on account of rain during the rainy season. In some industries, to be eligible for such fallback wages, the worker may be required to undertake alternate work offered by the employer.

The minimum wage notification issued by the Kerala government for workers in the plantations sector (most of whom are on piece-rate wages) has a clause dealing with 'full employment', which states: "*The minimum rates of wages notified above are based on the assumption that employers in Tea and Rubber Plantation will provide work for their Workers though out the year, failing which the workers shall be given their minimum wages for the days on which they are voluntarily unemployed. But the obligation of the employers is only to offer some kind of work connected with the plantation and worker who refuses to accept that work will automatically forfeit his claim to the wages also...*" (Kerala Gazette: 2014). Such a guarantee to offer employment is unusual. Moreover, it is broader than fallback wages because it casts a duty upon the employer to provide alternate employment with wages year-round.

The definition of an employee under the MWA includes outworkers.³³ This definition is broad enough to include a homemaker. (Unfortunately, the CoW has not made this explicit.) However, homeworkers are not entitled to fall back wages if there is a lack of electricity or failure of equipment within their homes/premises within which they work or which they are expected to provide and maintain. This renders the piece-rate worker, a homemaker, particularly vulnerable as earnings fall below minimum wage rates. In the case of beedi, the minimum wage notification for

³² Government of Tamil Nadu, Notification G.O. G.O.(2D) No. 70 dated 13 November, 2017 available at http://www.stationeryprinting.tn.gov.in/gazette/2018/1_II_2.pdf and last accessed on 6 January, 2022.

³³ Section 2 (i), MWA states: "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.

workers paid by the piece-rate indicates a guaranteed minimum wage per week for beedi rollers, provided they roll a minimum number of beedis per week. Workers are entitled to this if the raw materials supplied are inadequate to roll this number. However, the guaranteed minimum wage will not be payable where the failure to roll minimum beedis is attributable to the worker. (Labour Bureau: 2015, 37, 38).³⁴

The case of outworkers who work at premises other than that of the employer (and this category includes homeworkers) and who work on a 'putting out' system of production for the manufacturer also fail to obtain a 'fall back' wage if there is a lack of electricity or failure of equipment that such outworkers are to provide/maintain if they are to obtain work.

Section 3(2)(c), of the MWA dealing specifically with piece-rated workers, states the government can fix a 'guaranteed time-rate' which is "*a minimum rate of remuneration to apply in the case of employees employed on piece-work for the purpose of securing such employees a minimum rate of wages on a time work basis.*" The Karnataka High Court in *Jyoti Home Industries v. State of Karnataka and Others* 1983 I LLJ 201 held: "*Where a person employed in scheduled employment has worked he is entitled to wages but if the same person in the scheduled employment does not work or could not work for the reasons stated in the Act, he is entitled to remuneration. This is clear from the other provisions like Sections 13 and 20...It is clear that the appropriate government under Section 3 can fix minimum wages for hours actually worked by the employee and if he is not in a position to fulfil his part of the contract on account of the fact that the employer does not offer him the necessary raw material to work on his job, he would be entitled to remuneration under Section 3(2)(c).*"

Section 12 of the CoW provides that where a person is employed on piece-work for which a minimum time-rate and not piece-rate has been fixed, then the employer is obliged to pay such a person wages at not less than the minimum wage rate; a form of a guaranteed time wage. Thus, where a worker is to be paid on a piece-rate, and no piece-rate has been fixed, s/he needs to be paid the equivalent time rate.³⁵ Such provisions of the law will apply where : (a) an employee is employed on piece-work; (b) for which minimum time-rate is fixed; and (c) no minimum piece-rate is fixed. This has been used in certain cases where piece-rate wages have not been fixed.³⁶ However, as pointed out earlier, the CoW is silent on how the day's work should be assessed for fixation of piece-rate.

A specific 'guaranteed wage' could be provided in industries with seasonal or irregular work. For instance, in the fishing industry where piece rate wages are based on the 'catch', the Kerala government provides for a 'guaranteed minimum wage' and that "The employer shall pay a guaranteed minimum wage of Rs. 200 per day to the employees who are engaged in fishing work if no fish was caught or if the proportionate share of sale proceeds falls below Rs. 200 per day."³⁷ In the coal industry, piece rate wages are provided with an additional payment if their work is in a coal seam that is less than 1.5 metres in thickness. The Xth Coal Wage agreement of 2017 indicates that where workers are assigned to work on a seam that is less than 1.5 meters in thickness, a 'Thin seam allowance' is payable to piece-rated workers. The agreement also stipulates that such workers shall not be made to work on seams less than 1 metre in thickness for the duration of the wage agreement.³⁸

34 See the Minimum Wage Gazette notification for the Tobacco including Bidi industry in Madhya Pradesh dated 12 December, 2014 and available at http://www.labour.mp.gov.in/KnowledgeSharing/Public/View_Document.aspx?id=186, last accessed on 6 May, 2021.

35 For instance, Section 17, MWA states: "Minimum time-rate wages for piece-work. —Where an employee is employed on piece-work for which minimum time-rate and not a minimum piece-rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time-rate."

36 *Somiben Mathurbai Vasava v. Lalji Hakku Parmar Leather Works* (1984) II LLJ 381 Guj.

37 Kerala Government G.O. (Ms.) 113/2011/LBR dated 9 August, 2011 available at <http://www.lc.kerala.gov.in/images/MWN/mechanisedfishcatching.pdf> and last accessed on 6 January, 2022.

38 Memorandum of Agreement (Xth Wage Agreement for Coal India Limited and Singareni Collieries Co. Ltd, 2017), Clause 5.2.6.1, available at <https://scclmines.com/scclnew/arti.asp?rt=NCWA-X.pdf> and last accessed on 6 January, 2022

A guaranteed minimum wage of Rs. 90 per day is also provided to piece-rate workers in the garment industry in Kerala.³⁹ In addition, the government in Kerala provides an additional sum in the form of income support to workers in coir, handloom, fisheries and khadi industries so that they get a sum equivalent to the minimum wage per working day. This form of cash benefit appears to be an unusual, novel way to help workers achieve minimum wages in uneconomical sectors.⁴⁰

A provision for a fall-back wage when the employer/contractor cannot provide work for those earning on piece-rate wages (on lines similar to lay-off compensation for time-rated factory workers) also needs to be considered under the CoW.

4.6 Accounting for Skill and experience

The Draft Rules indicate 4 skill categories, Yet, piece-rate rated wages where notified do not indicate different rates for each skill level. As already pointed out in Section 1.3 above, there is a need for the Technical Committee to be set up under the CoW to determine skill levels in a non-discriminatory manner. Attention needs to be paid that there is no downward 'push' in those occupations which are predominantly performed by women or deemed "traditional" or which are paid on a piece-rate basis to be all treated as unskilled.

The requirements flowing from Convention No. 100 (Equal Remuneration, 1951), which India has ratified, requires each country "to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value." (Article 1) The Convention requires a system of objective appraisal of jobs on the basis of work to be performed. The Technical Committee would need to keep these requirements in mind while categorising occupations on the basis of skill levels.

Some minimum wage notifications make express provisions for a mark-up in minimum wages depending on the worker's experience. This kind of 'service weightage' is seen in the minimum wage notification for tea, coffee, rubber and cardamom plantation in the Indian state of Kerala. For instance, in the case of daily rated workers, who have under 5 years experience get a nil weightage; those who have between 5 and 10 years experience get 70 paise additional wage; between 10-15 years' experience an additional 100 paise; between 15 and 20 years obtain 130 paise and those with more than 20 years experience get 165 paise additionally as service weightage.⁴¹ However, such weightage is given only to time-rated workers and not those working on a piece-rate. The expertise of piece-rate workers is expected to reflect their increasing adeptness in performing their tasks and, therefore, increased output and wages. Thus, piece-rate workers have to demonstrate that their experience translates into greater output to obtain higher wages. In the case of time-rated employees, the increased wages come automatically. If the piece rated and time-rated workers perform the same work or work of equal value, this will amount to a form of discrimination discussed earlier.

4.7 Dispute redressal

Cases raised by workers contesting the classification of their skill level, incorrect fixation of minimum wages in not including components such as the cost of tools, their repair, provision of space, lighting by homeworkers or the rejection of output on quality considerations are not common in matters coming before courts/administrative agencies dealing with minimum wage enforcement

The early ILO Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30) was prescient in that it states that *"In cases where the workers are not in general in a position individually to enforce, by*

39 Kerala Government G.O. (MS)132/2010/LBR dated 6 November, 2010 available at <http://www.lc.kerala.gov.in/images/MWN/garment.pdf> and last accessed on 6 January, 2022.

40 Kerala Government G.O. Rt No. 582/2012/ID, Thiruvananthapuram dated 31.03.2012 regarding the Khadi industry which also refers to budgetary support for fisheries, coir and handloom workers.

41 Notification G.O (P) 24/2021/LBR dated 16 February, 2021, Labour and Skills (E) Department, Government of Kerala.

judicial or other legalised proceedings, their rights to recover wages due at the minimum rates in force, such other measures should be provided as may be considered effective for preventing infringements of the rates."

The most common of cases reaching courts is regarding non-payment of minimum wages. This is because the non-payment of minimum wages to the employees constitutes a breach of statutory rights and constitutional rights in some cases. For instance, the Indian Constitution includes a fundamental right against exploitation. Moreover, the Court has held that where a person provides labour or services to another for a lower remuneration than the minimum wage, the labour or service provided by such worker falls within the scope of 'forced labour'.⁴² As a result, cases of non-payment of minimum wages can also be taken to the constitutional courts.

There is an urgent need to place piece-rate wage fixation on a more scientific basis and test the wage rates empirically through field studies to ensure that workers obtain earnings higher or at least equivalent to a minimum wage. While disputes concerning minimum wages on-time rates usually relate to non-payment or underpayment of wages, the disputes with regard to piece-rate wage can also relate to undervaluing of the contribution to infrastructure by a homemaker/ outworker, low setting of the standard norm, lack of a guaranteed/fall back wage, or the lack of quality-related norms for rejecting the output of piece-rated workers. That such disputes of piece-rate wage fixation rarely reach the courts or arbitration reflects the vulnerable position of most piece-rated workers.

4.8 Representation of piece-rated workers in bipartite and tripartite bodies

As already noted, the ILO requires that each country set up an appropriate wage-fixing machinery for determining minimum wages. However, workers on piece rates often represent the lowest-paid workers or those with the least voice (contract workers, loaders/unloaders, manual workers, tea pluckers) in many industries. Therefore, their concerns may not be reflected adequately in the collective agreements determining the piece-rate wages in many industries. The ILO had long ago (see Recommendation No. 30) recognised the potential lack of voice for workers in sweated industries as indicated in its requirement that women working in home trades should have a seat at the table when wages are being fixed. The strike in the tea plantations in Kerala in 2015 by tens of thousands of women tea pluckers also was highlighted their right to be heard in negotiations with employers (Bhowmik: 2015). Therefore, the appropriate government must seriously consider including workers engaged in piece-work in tripartite advisory boards that determine minimum wage rates.

⁴² *People's Union for Democratic Rights v. Union of India* LLJ-II1982 454. Also see *Bandhua Mukti Morcha v. Union of India and Others* AIR 1984 SC 802



5. Conclusions

Minimum wage fixation needs to ensure universal coverage, and the CoW and rules offer a valuable opportunity to ensure this to all who are wage workers in India. The constitutional duty to ensure equality and non-discrimination, whether between men and women, contractual or regular workers, or those on time-rate or piece rated wage rates at all working persons, is a mandate that the CoW must seek to fulfil. Since piece-rated workers are largely in informal employment, the transition to formalising the situation of such workers requires greater attention to be focused on developing norms for piece-rate wage fixation so that it is fair, non-discriminatory and transparent. Since the CoW is largely silent about the norms and procedures to be followed in the fixation of piece-rate minimum wages, this paper has sought to develop some guidelines drawing upon the experience gleaned from the functioning of the MWA. The challenge for minimum wage fixing is to set a rational, justifiable piece rate that fairly assesses the output of an average worker over a normal working day. This piece-rate wage must be equivalent to a time-rated minimum wage for the same period of work performed. Piece-rate minimum wage setting norms need to focus on the following:

- ▶ It is important to extend the policy goal of universalisation of minimum wages, which will bring into the ambit of CoW many occupations currently included in MWA (workers in the households, out workers), thus extending the protection to piece-rated workers.
- ▶ The CoW and the Technical Committee under it needs to make explicit the criteria that needs to be kept in mind while determining piece-rate minimum wages, in order that the most vulnerable of the informal workers drawing piece-rated wages do not 'self-exploit' and are paid wages which are equivalent to time-rated minimum wages.
- ▶ The assessment of skill levels for workers engaged in piece-rated work should be done scientifically.
- ▶ Draw from the rich experience of Time and Motion Studies in MNREGA and best practices available in some of the piece wage rate fixations in certain employments under the existing MWA to set piece-rate work and ensure parity of time and piece work.
- ▶ "Guaranteed Time wage" by which the piece-rate workers are guaranteed the time rate of the minimum wages be incorporated in the Draft Rules by including the need to indicate the average output expected of a piece-rated worker during a 'normal' working day.
- ▶ The employment relationship of workers on piece rates, including homeworkers, gig and platform workers, must be made explicit, and their status as workers recognised. The guidance of the ILO Employment Relationship Recommendation, 2006 (No. 198) can be used to determine the existence of an employment relationship brought into or added to the schedule of Draft Rules of CoW.
- ▶ Recognise different forms of piece rated payments (group, seasonal) and ensure transparency in payment to ensure that minimum wage protection is extended to individuals and in parity with time rated workers.
- ▶ The standard output for a piece-rate worker must be calibrated for age, experience, disability, and gender to prevent direct or indirect discrimination. In addition, it should include testing or timing production under different environments, which may occur under suboptimal conditions.
- ▶ Piece-rate wages for homeworkers must have additional expressly stipulated components for the costs of space, lighting, tools, etc., provided by the homeworker.
- ▶ Wages need to reflect an in-built component for weekly rest, leave with wages, and an additional component for social protection. In addition, a fall-back wage must be provided to ensure earnings are in accordance with minimum wage rates.

- ▶ Ensure that piece-rated workers are represented in wage boards/councils where minimum wages are determined, and studies should be undertaken to ensure that earnings to the piece-rate worker are non-discriminatory and equivalent to the minimum time-rate wages
- ▶ Wage disputes must pertain to non-payment of minimum wages and the rate fixation, the classification of jobs as skilled/unskilled, setting quality norms for rejection of output, etc.



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Contact details

International Labour Organization
Route des Morillons 4
CH-1211 Geneva 22
Switzerland

Inclusive Labour Markets,
Labour Relations and Working
Conditions Branch

E: inwork@ilo.org