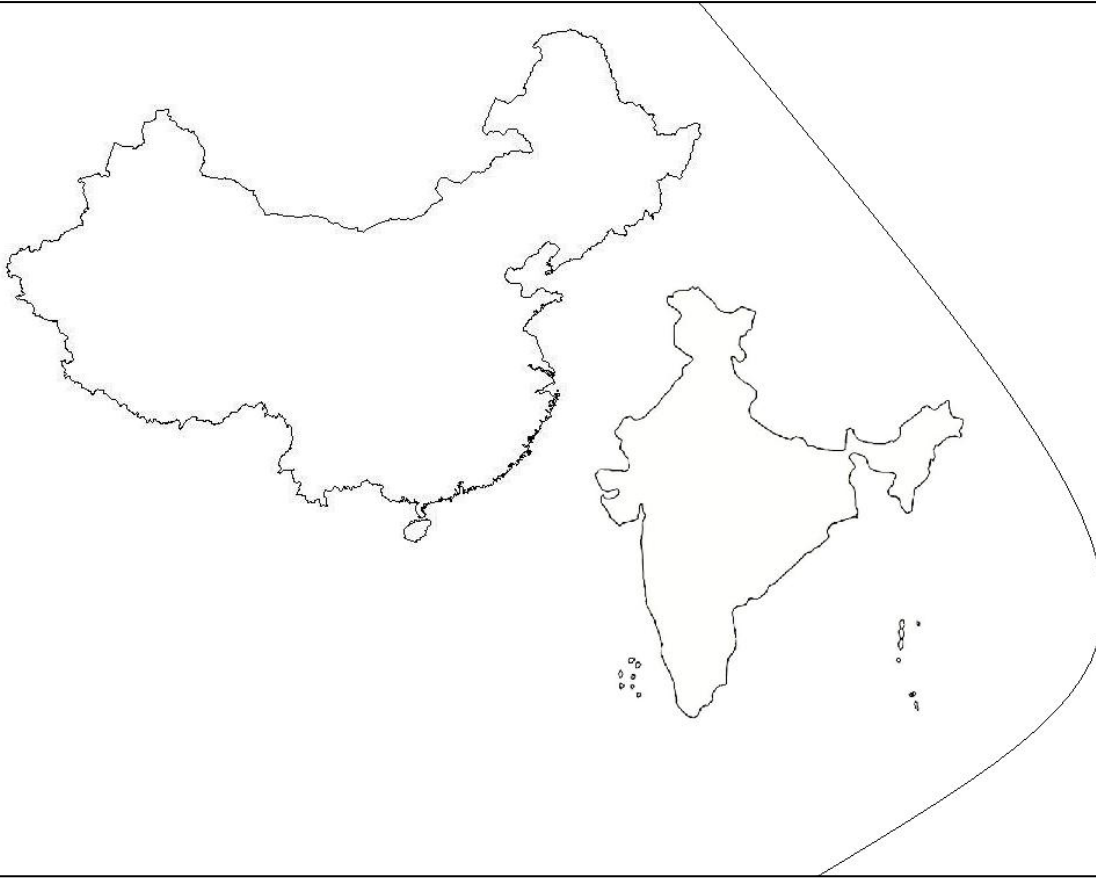


# The Work, Family, and Equity Index



*Setting the  
Global Floor:  
a comparative  
study of  
labour  
standards in  
India and  
China*

Baijayanta Mukhopadhyay  
Chunbao Liu  
Jody Heymann



## **About the Institute for Health and Social Policy**

The Institute for Health and Social Policy at McGill University was created to conduct and support world class research into the impact of social conditions on health and to lead programs designed to translate research findings into policies and programs on national and global scales that change the social conditions under which the worst off live. Among other initiatives, the Institute is committed to the creation of a unique health and social policy data center that can be used by researchers and policymakers alike to examine the effects of social and economic policies on health worldwide. The Institute is also committed to building collaborations with policymakers and to developing model programs in order to address health needs.

## **About the Work, Family, Equity Index**

The Work, Family, and Equity Index (WFEI) has been developed by the Project on Global Working Families to measure governmental performance around the world in meeting the needs of working families. The indicators in the WFEI were selected to provide an evidence-based assessment of policies crucial to the needs of working families in general and low- and middle-income working families in particular. In compiling the WFEI, data were gathered on labour practices from 180 countries, representing a wide range of political, social and economic systems. These include maternity, paternity and parental leave; infant and toddler care; breastfeeding breaks at work; paid leave to meet children's health and educational needs; maximum hour limits, overtime limits, annual leave, mandatory day of rest and other standards; paid leave and flexibility for health care support for adult family members, family events and other extraordinary circumstances; and paid leave and flexibility for workers' own health needs.

## **Acknowledgements**

The authors would like to thank the McGill India Strategic Research Initiative for its support. We would also like to thank Gonzalo Moreno Ruiz de Elvira and Talia Bronstein for their invaluable help in preparing the report for publication, through tireless hours of formatting and reference checks.

© Project on Global Working Families  
Montreal, QC; Boston, MA  
All rights reserved.

The Project on Global Working Families  
The Institute for Health and Social Policy  
1130 Pine Avenue West, Montreal, QC. H3A 1A3  
[www.mcgill.ca/ihsp](http://www.mcgill.ca/ihsp) Tel: +1(514) 398-2027

## Table of Contents

<b>Abstract</b> .....	4
<b>Introduction</b> .....	5
<b>Methods</b> .....	9
<b>Results</b> .....	10
<b>Discussion</b> .....	21
<b>Future Directions</b> .....	23

## List of Tables

<b>Table I:</b> Hour restrictions in shops and establishments in Indian states studied.....	12
<b>Table II:</b> Overtime hours and conditions in Indian states studied.....	13
<b>Table III:</b> Annual leave in selected Indian states.....	14
<b>Table IV:</b> Sick leave conditions in Indian states studied.....	15
<b>Table V:</b> National standard of the maximum period of sick leave in China.....	16
<b>Table VI:</b> Maximum period of sick leave in Shanghai.....	16
<b>Table VII:</b> Discretionary leave in Indian states studied.....	17
<b>Table VIII:</b> Length of paid paternity leave as awards for childbirth after age 24 in Chinese provinces.....	17
<b>Table IX:</b> Length of paid maternity leave as awards for childbirth after age 24 in Chinese provinces.....	19
<b>Table X:</b> Length of paid maternity leave as awards for single-child parents in Chinese Provinces.....	20

## **Abstract**

The integration of China and India into the world economy has had an important impact on the world's labour market. The redistribution of global industry, resulting from increased competition for capital, has heightened attention to Indian and Chinese labour standards.

This study examines labour standards in India and China. We examine labour laws at the national and sub-national levels in both countries and compare them to global standards.

Many of China's standards are recent and demonstrate a single overarching approach to all employment contracts in the country. India's approach is older and less centralized, covering different industries and sectors through different laws. However, internal debates within both countries mean that the response to workers' well-being is evolving over time.

International legal standards that are not met include the ILO's Reduction of Hours Recommendation (India), the ILO's Holidays with Pay Convention (many Indian states and a large segment of Chinese workers), and the 14-week maternity leave standard (India and China). Examples of rights that have been legislated include mandatory day of rest and compensation for overtime. Sub-national variation is detailed in the article.

Although legislated standards clearly indicate what can be attained for workers within India and China, legislation alone is only a first step. For workers in both countries, implementation of laws both countries have already passed is an essential next step.

## Introduction

In the past few decades, we have witnessed a growing concern about working conditions in emerging economies, such as China and India. China's labour market has greatly expanded since the launch of economic reform in 1978;<sup>1</sup> between 1978 and 2006, its total workforce increased from 401.5 million to 764.0 million and the number of registered employees in urban sectors increased from 95.0 million to 280.0 million, largely due to population growth and rapid urbanization.<sup>2</sup> A majority of these new jobs were created by state-owned enterprises and collective-owned enterprises before 1995.<sup>3</sup> However, employment in these enterprises experienced a drastic drop, from 144.1 million workers in 1995 to 71.9 million workers in 2006.<sup>4</sup> More than two thirds of workers who left these enterprises were reportedly absorbed by rapidly expanding private and foreign-funded enterprises.<sup>5</sup> In rural areas, although each farmer is granted access to a piece of land, an increasing number of residents have been seeking off-farm work. In 2006, 172.8 million workers were employed in local township and village enterprises, as well as in the private sector, and 131.8 million more found jobs in cities.<sup>6</sup> However, most migrant workers have long faced discrimination, without de facto access to social protections.<sup>7</sup>

Ever since the issue of the first Draft Labour Contract Law in 2006, there has been an intense debate amongst government officials, industrial leaders, intellectuals and the public on whether labour standards and working conditions should be improved.<sup>8</sup> The draft was proposed primarily to ensure that contracts are in place to affirm the employment relationship, thereby

---

<sup>1</sup> For an overview of China's labour market development, see ILO & Ministry of Ministry of Labor and Social Security (P.R.C.), *An Employment Agenda for China: Background Paper for the China Employment Forum* (2004), available at <http://www.ilo.org/public/english/chinaforum/download/original.pdf>; Ran Tao, *The Labour Market in the People's Republic of China: Development and Policy Challenges in Economic Transition*, in *Labor Markets in Asia: Issues and Perspectives* at 519 (Jesus Felipe & Rana Hasan eds., 2006).

<sup>2</sup> National Bureau of Statistics of China, *Zhongguo Tongji Nianjian* [China Statistics Yearbook] ( 2007 ) .

<sup>3</sup> Angang Hu, *Economic Growth and Employment Growth in China (1978–2001)*, 3 *Asian Econ. Papers* 166 (2004).

<sup>4</sup> National Bureau of Statistics of China, *supra* note 3.

<sup>5</sup> This absorption was demonstrated by the fact that the majority of those who left these enterprises did not end up unemployed. Recent surveys find that between 1996 and 2002 the unemployment rate among urban residents averaged about 8 per cent. Fang Cai, *Zhongguo Chengzhen youmeiyu Jiuye zengzhang?* [Is There Employment Rate Increase among Urban Residents in China?] available at <http://www.macrochina.com.cn/zhtg/20040624065743.shtml>.

<sup>6</sup> National Bureau of Statistics of China. Di'erci Quanguo Nongye Pucha Zhuyao Shuju Gongbao (diyihao) [Communique on Major Data of the Second National Agricultural Census of China (No.1)] (Feb. 21, 2008).

<sup>7</sup> Peilin Li & Wein Li, *Economic Status and Social Attitudes of Migrant Workers in China*. 15 *China & World Econ.* 1 (2006).

<sup>8</sup> For an overview of the recent development of China's labour law, see Ronald Brown, *Understanding Labor and Employment Law in China* (2009); *Law and Labour Market Regulation in East Asia* (Sean Cooney et al. eds., 2002); Aaron Halegua, *Getting Paid: Processing the Labor Disputes of China's Migrant Workers*, 26 *Berkeley J. Int'l L.* 254 (2008); Virginia Ho, *From Contracts to Compliance? An Early Look at Implementation under China's New Labor Legislation*, 23 *Columbia J. Asian L.* 34 (2009).

making it easier for workers to claim their rights.<sup>9</sup> The main argument against the draft was that it might negatively affect China's appeal as a destination for foreign investment, thereby reducing employment. The law was unanimously approved by the Standing Committee of the National People's Congress (SCNPC) on June 29, 2007. In theory, this law would significantly improve working conditions in China, in particular for hundreds of millions of migrant workers, although the effects of its implementation remain to be seen.

In contrast with the trends towards formalisation apparent in China, and despite robust economic growth in the past two decades, evidence demonstrates that India's labour force remains largely in the informal economy, which is not effectively covered by labour regulations.<sup>10</sup> India's labour force consisted of about 430 million persons in 2005, growing annually at about 2 per cent. The main driver of India's high growth has been the IT sector, which constituted 7% of GDP in 2008; however, the workforce in this sector will remain at 1.5 million, which is a miniscule proportion of India's population.<sup>11</sup> Similar to China, agriculture has traditionally borne the brunt of India's economy, but its share of the workforce has declined, from 70 per cent in 1980 to 55 per cent in 2005. During the same period, industry's share in the Indian workforce rose by some 2 per cent, mostly in construction. The last two decades have seen a shift in formal manufacturing employment into the small factory and informal sectors. The majority of former agricultural workers have found jobs in informal service sectors.<sup>12</sup> Estimates show a range of proportions of formal sector workers in India depending on the industry involved, with 35% to 45% of rural Indians and 45% to 53% of urban Indians working in the formal sector.<sup>13</sup>

Even if India's workers in the informal economy are not covered, the absolute number of Indian workers protected by the country's labour laws still reaches into the hundreds of millions, emphasising their importance. 88% of Indians working in the education sector, 82% of those working in the mining sector and 75% of those working in the manufacturing sector in India are covered by legislation. The most striking gap in Indian labour law is in agriculture, where only 5% of workers have their conditions regulated.<sup>14</sup> Furthermore, many laws in India's patchwork of labour legislation either extend or have the potential to extend to the informal sector; for example, the federal Minimum Wages Act allows government to regulate working hours and overtime conditions for any categories of worker it chooses. The Maternity Benefits Act could also be applied to women in unregulated jobs. Legislation passed in 2008 extended social security including paid maternal leave to the informal sector nationally. Some states have

---

<sup>9</sup> Kinglun Ngok, *The Changes of Chinese Labour Policy and Labour Legislation in the Context of Market Transition*. 73 Int'l Lab. & Working-Class Hist. 45 (2008).

<sup>10</sup> Elangikal Thomas Mathew, *Employment and unemployment in India: emerging tendencies during the post-reform period* (2006).

<sup>11</sup> Diana Farrell et al., *Ensuring India's offshoring future*, McKinsey Q. 74 (2005).

<sup>12</sup> Rayaprolu Nagaraj, *Labour Market in India: Current Concerns and Policy Responses* (2007), available at <http://www.oecd.org/dataoecd/54/25/38355655.pdf>

<sup>13</sup> Arup Mitra, *The Indian Labour Market: An Overview* (2008).

<sup>14</sup> National Commission for Enterprises in the Unorganised Sector. *Contribution of the Unorganised Sector to GDP: Report of the SubCommittee of a NCEIUS Task Force* (2008), available at [http://nceuis.nic.in/Final\\_Booklet\\_Working\\_Paper\\_2.pdf](http://nceuis.nic.in/Final_Booklet_Working_Paper_2.pdf)

further regulated conditions for certain sectors of informal workers, particularly in southern states such as Andhra Pradesh, Kerala and Tamil Nadu.<sup>15</sup>

Provisions under Indian labour law are important to study, both because of the hundreds of workers they cover in India currently in the formal economy and because they are seen as a model to extend to workers otherwise currently uncovered in the country. Previous labour commissions in India have suggested the importance of developing a uniform framework that would cover employees both in informal sector and in formal sector.<sup>16</sup> Jha and Golder point out that there is no evidence to suggest that improving working conditions in India will have a negative impact on its economic growth.<sup>17</sup>

The integration of China and India into the world economy has had an increasingly important impact on the world's labour market.<sup>18</sup> The IMF finds that the effective global labour supply quadrupled between 1980 and 2005, with much of the increase coming from China and India. However, new entrants into the global economy brought relatively little capital with them.<sup>19</sup> This smaller capital-labour ratio might have led to workers competing to attract capital by accepting lower wages and/or inferior working conditions. Indeed, media has argued that in OECD countries skilled and unskilled jobs are being lost to emerging economies while average wages are flat or even falling.<sup>20</sup>

The redistribution of global jobs brings Indian and Chinese labour standards under scrutiny. Critics in high-income countries point out that unfair labour conditions exist in India and China, and that appropriate trade policies are needed to offset them in order to "level the playing field."<sup>21</sup>

Developing economies themselves have shown more concerns about their capacity to compete with each other to attract foreign investment. In India, concerns about the country's capacity to compete with its neighbour have dominated discourse.<sup>22</sup> In particular, analysts have argued that India's labour laws are too inflexible compared to those of China.<sup>23</sup> China too fears

---

<sup>15</sup> National Commission for Enterprises in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods for Enterprises in the Unorganised Sector* (2007), available at [http://nceus.gov.in/Condition\\_of\\_workers\\_sep\\_2007.pdf](http://nceus.gov.in/Condition_of_workers_sep_2007.pdf).

<sup>16</sup> Second National Commission on Labour, *The Second National Commission on Labour Report* (2002), available at [http://labour.nic.in/lcomm2/nlc\\_report.html](http://labour.nic.in/lcomm2/nlc_report.html)

<sup>17</sup> Praveen Jha & Sakti Golder, *Labour Market Regulation and Economic Performance: a critical review of arguments and some plausible lessons for India* (2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed.../wcms\\_113926.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed.../wcms_113926.pdf).

<sup>18</sup> David T. Coe, *Globalization and Labour Markets: Policy Issues Arising from the Emergence of China and India*, (OECD Social Employment and Migration Working Papers No. 63, 2007).

<sup>19</sup> International Monetary Fund, *World Economic Outlook: Spillovers and Cycles in the Global Economy* 161 (2002).

<sup>20</sup> *More Pain than Gain: many workers are missing out on the rewards of globalization*, *Economist*, Sep. 14, 2006, at 6.

<sup>21</sup> Matthias Busse, *Do Labour Standards Affect Comparative Advantage in Developing Countries?* 30 *World Dev.* 1921 (2002).

<sup>22</sup> Meine Peter van Dijk, *Different effects of globalization for workers and the poor in China and India, comparing countries, cities and ICT clusters*, 97 *Tijdschrift voor economische en sociale geografie* 503 (2006).

<sup>23</sup> Anita Chan & Robert J.S. Ross, *Racing to the bottom: international trade without a social clause*, 24 *Third World Q.* 1011 (2003).

that improvement of domestic labour standards would reduce its competitive edge, although authors have argued persuasively that the implied relationship between regulation of working conditions and deteriorating growth is too generic a proposition to explain economic prognoses in today's dynamic global economy.<sup>24</sup> However, while there has been a considerable number of studies on comparative advantages between India and China, little existing literature focuses on the point of labour market regulations.<sup>25</sup>

Comparison of labour standards between the two countries is thus overdue, in order to understand the impact policy may have on the future role of each country in the global economy. Over the past decade, our team has built a database on social protections for workers and their families in countries worldwide.<sup>26</sup> In 2007, we began an initiative to collect detailed provincial- and state-level data from China and India to see how workers fare in the context of diverse labour regimes. This systematic comparison has, to the best of our knowledge, not been previously carried out. In this article, we first provide an overview of the key labour policies applied in these jurisdictions, and then we analyze the relative strengths and weaknesses of each.

Both India and China have challenges in the implementation of public policy, so why look at the legal framework in these two countries if it is not fully implemented? The legal framework tells us the goals that can be achieved in the world's two largest labour forces if the legislated mandates are fully implemented. Legislation is the clearest indicator of recent and potential advances in the area of labour standards.

This study is important as both nations are confronting pressures to compete in a global economic downturn. Ensuring that workers do not bear the brunt of the costs of competition requires a careful analysis of the legislative frameworks that protect them from the abuses that may result from these pressures. Perceived costs of maintaining labour standards are often at the core of contention when it comes to competition in the global economy. However, improving labour standards may actually prove to be beneficial to emerging economies, as the costs of raising and enforcing labour standards may actually be offset by the productivity gains won through that process. In addition, some studies have suggested that labour standards are associated with generally better governance standards.<sup>27</sup>

---

<sup>24</sup> Shangheon Lee et al., *The World Bank's "Employing Workers" Index: Findings and critiques – a review of recent evidence*, 147 Int'l Lab. Rev. 416 (2008).

<sup>25</sup> A few examples are: Jahangir Aziz et al., ed., *Learning from Each Other: Reforms and Policies for Sustained Growth* (2006); and *Labor Markets in Asia: Issues and Perspectives* (Jesus Felipe & Rana Hasan eds., 2006).

<sup>26</sup> See Jody Heymann & Magda Barrera, *Addressing Poverty in a Globalised Economy* (2008); Jody Heymann et al., *Work, Family, and Equity Index: How Does the U.S. Measure Up?* (2007); Jody Heymann et al., *Work, Family, and Equity Index: Where Does the United States Stand Globally?* (2004).

<sup>27</sup> Yana van der Meulen Rodgers & Gunseli Berik, *Asia's race to capture post-MFA markets: a snapshot of labor standards, compliance and impacts on competitiveness*, 23 Asian Dev. Rev. 55 (2006).



# Methods

## *Legislation examined*

Countries employ varying degrees of devolution of power to subnational governments. Different policy areas may also be treated differently as well. In Canada, for instance, labour policy is almost solely determined by provincial governments, while communications policy is under federal responsibility.

India and China have developed differing systems to deal with labour policy. In India's 1950 constitution, labour is found under what is called the Concurrent List, which enables both the central (federal) and state governments to enact legislation in this area. What this joint jurisdiction, in combination with the Indian practice of industry-specific regulation, means in practical terms is that there is a plethora of considerations to take into account to understand local policy environments. In practical terms, Indian labour law is easiest to understand by considering federal law on labour as applying to large industrial establishments, through such acts as the Factories Act, the Mines Act and the Employees' State Insurance Act. India has many labour laws, each governing the working conditions of particular groups of workers, such as journalists, plantation workers and dockworkers. However, we consulted the laws that were the most comprehensive in their coverage. Also, states can formulate labour law through their respective Shops & Commercial Establishments Acts, which regulate working conditions for smaller businesses, including restaurants and cinemas.

China, on the other hand, recognises the supremacy of national law in labour. However, under this national law Chinese provinces do have the discretion to promulgate individual regulations, although they must follow its general guiding principles. In this context, simply consulting provincial regulations of the overarching Chinese national labour code was sufficient to understand labour policy in the country.

## *Data sources*

We followed parallel steps in gathering data on the relevant laws from China and India. Our initial aim was to find accessible sources of centralised data on labour policy in all jurisdictions in each country. We thought this data would be available for these two emerging economies as they would both need it to attract foreign direct investment. We wanted to know if businesses would have access to information prior to investment in the countries, to help them understand the local context of their state of choice.

We thus searched government agency and legal database sites online for these sources. Where this step proved insufficient, we proceeded to contact state or provincial government offices themselves for further information, and also consulted printed legal material. One multilingual country expert focused on each nation.

# Results

## *Data accessibility*

The first step of online research proved sufficient for gathering Chinese data. Our primary data sources in this case included labour laws, regulations and decrees promulgated by the SCNPC, the State Council, the Ministry of Human Resources and Social Security (MOHRSS), twenty-two provinces, five autonomous regions, and four centrally administered municipalities. The single most comprehensive source of Chinese national labour legislation was the Policy and Law Database maintained by the MOHRSS. All local labour authorities, except for that of the Tibet Autonomous Region, operated corresponding databases containing local legislations. As for Tibet legislation, we consulted Lawinfochina, a comprehensive legal database run by Beijing University. Understanding the implementation of the Labour Code led to our second step, checking regulations and decrees promulgated by the Chinese State Council and the MOHRSS. Although rules in these documents were more specific and concrete than those in the Labour Code, they still occasionally left space for provincial governments to adjust national policy in accordance with local circumstances. We thus moved on to examine regulations made by all the provinces, autonomous regions, and centrally administered municipalities. This data was all available online.

Online consultation was only marginally useful for Indian data. Kerala's law was the only one found reliably on a state website.<sup>28</sup> A federal government site also gave links to some state labour departments but only the laws for Delhi, Himachal Pradesh and Punjab were reliably found in this manner.<sup>29</sup> The laws of Karnataka were also found on a subscription-based Indian online legal database.<sup>30</sup> Fieldwork was thus necessary for Indian data, first visiting government agencies and legal booksellers in the capital, New Delhi. For Indian federal law, we relied on updated volumes of national labour laws purchased in legal bookstores in New Delhi. Laws for Punjab and Haryana were also found in a similar manner. Contacts in the private sector provided us with the laws from Jharkhand, Uttar Pradesh and Maharashtra. Contacts at the ILO provided a copy of the Tamil Nadu laws, purchased in Chennai. Laws from Andhra Pradesh, Bihar and West Bengal were purchased in bookstores in the respective capitals of Hyderabad, Patna and Kolkata.

---

<sup>28</sup> Kerala Shops and Establishments Act, 1960, No. 34, Kerala Acts, 1960, available at [http://www.kerala.gov.in/dept\\_lab/act6.pdf](http://www.kerala.gov.in/dept_lab/act6.pdf).

<sup>29</sup> See Ministry of Labour (India), <http://labour.nic.in/> (last visited Apr. 1, 2009); Punjab Shops and Commercial Establishments Act, 1958, No. 15, Punjab Acts, 1958, available at [http://pblabour.gov.in/pdf/acts\\_rules/punjab\\_shops\\_and\\_commercial\\_establishments\\_act\\_1958.pdf](http://pblabour.gov.in/pdf/acts_rules/punjab_shops_and_commercial_establishments_act_1958.pdf); Delhi Shops Act, 1954, No. 7, Delhi Acts, 1954, available at [http://www.delhi.gov.in/wps/wcm/connect/doi\\_labour/Labour/Home/Acts+Implemented/Details+of+the+Acts+Implemented/The+Delhi+Shops+Act%2C+1954/](http://www.delhi.gov.in/wps/wcm/connect/doi_labour/Labour/Home/Acts+Implemented/Details+of+the+Acts+Implemented/The+Delhi+Shops+Act%2C+1954/).

<sup>30</sup> See Indlaw, <http://www.indlaw.com> (last visited Mar. 1, 2008); Himachal Pradesh Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1969, No. 7, Himachal Pradesh Acts, 1970 [hereinafter Industrial Establishments]; Himachal Pradesh Shops and Commercial Establishments Act, 1969, No. 10, Himachal Pradesh Acts, 1970; Karnataka Shops and Commercial Establishments Act, 1961, No. 8, Karnataka Acts, 1962.

Given the difficulty in getting an overview of all Indian states similar to the one we found for Chinese provinces, we selected Indian states to include in our analysis. Six of the states analysed include the largest by population, accounting for more than 50% of India's population with the figures from the 2001 census.<sup>31</sup> These states are Uttar Pradesh, Maharashtra, Bihar, West Bengal, Andhra Pradesh and Tamil Nadu. Furthermore, to encompass the geographical and socioeconomic diversity of India, data from the following additional states were included, each exemplifying unique aspects of India's social, political and economic context: Delhi was included as the national capital territory; Gujarat as one of the leaders in economic growth in India's industrialised western region; Karnataka as the epicentre of India's hi-tech boom; Jharkhand, as a newly-created state in 2000 in India's poor but resource-rich eastern region, where indigenous peoples are in the majority; and Kerala as an example of the model of social development in India. Punjab has traditionally been the engine of economic growth in India due to its position as the agricultural heartland of the country. Haryana's new status as a bedroom state for the Delhi metropolis has also included increasing numbers of major corporations choosing the town of Gurgaon as their site for their India headquarters. Himachal Pradesh remains a rugged, rural mountainous state largely dependent on agriculture and particularly tourism for its economic wealth.

### ***Mandatory day of rest***

In both India and China, national labour laws require employers in all categories to provide a day of rest during the week.<sup>32</sup> Indian state laws confirm the mandatory day of rest. All of the states in this report have a 6-day week, apart from West Bengal where 1.5 days of closure are required by law.<sup>33</sup> Chinese provinces show no variation. In both countries, if an employee is requested to work on his/her scheduled days of rest, compensation by an alternate day of rest should be provided. In China, a wage premium of 200% is required according to Article 44 of the Labour Law.<sup>34</sup>

### ***Working hours***

In India, national laws and all the states in this report limit the regular workweek to 48 hours. Indian state laws are however very specific as to the manner in which these work hours

---

<sup>31</sup> See Census Reference Tables, Census of India (2001), [http://www.censusindia.gov.in/Census\\_Data\\_2001/Census\\_data\\_finder/A\\_Series/Total\\_population.htm](http://www.censusindia.gov.in/Census_Data_2001/Census_data_finder/A_Series/Total_population.htm); 2001 census population numbers (per cent of total Indian): Uttar Pradesh 166,197,221 (16.2%), Maharashtra 96,878,627 (9.4%), Bihar 82,998,509 (8.1%), West Bengal 80,176,197 (7.8%), Andhra Pradesh 76,210,007 (7.4%), Tamil Nadu 62,405,679 (6.1%).

<sup>32</sup> For India, see Mines Act, 1952, No. 35, Acts of Parliament, sec. 28, 1952, or Factories Act, 1948, No. 63, Acts of Parliament, sec. 52, 1948; for China, Laodong Fa (promulgated by the Standing Comm. Nat'l People's Cong., Jul. 5, 1994, effective January 1, 1995), arts. 41-42, 1994(PRC) available at <http://trs.molss.gov.cn/was40/mainframe.htm.1994> [hereinafter Labour Law]

<sup>33</sup> West Bengal Shops and Establishment Act, 1963, No. 13, West Bengal Acts, Sec. 5, 1963.

<sup>34</sup> Labour Law, supra note 32.

may be assigned, by defining maximum hours per day, maximum hours without rest, and the maximum total spread of hours within which work and rest must be included.

**Table I. Hour restrictions in shops and establishments in Indian states studied.**

	Hours per day	Hours without rest	Spread over
Andhra Pradesh	8	5	12
Bihar	9	5	12
Delhi	9	5	12
Gujarat	9	5	12*
Haryana	9	5	12
Himachal Pradesh	9	5	10
Jharkhand	9	5	12
Karnataka	9	5	12
Maharashtra	9	5	12**
Punjab	9	5	10
Tamil Nadu	8	4	12
Uttar Pradesh	8	5	12
West Bengal	8.5	5.5	10.5

\* The spread over increases to 14 hours for restaurants and eating establishments but decreases to 11 hours for theatres and other establishments of public entertainment in Gujarat.

\*\* The spread over decreases to 11 hours for theatres and other public entertainment venues in Maharashtra.

Indian labour laws generally impose a ban on night work for women, although some states, such as Karnataka and Andhra Pradesh, have lifted this ban for enterprises in information technology.<sup>35</sup> Tamil Nadu has no ban on night work for women in its shops and commercial establishments.<sup>36</sup>

Chinese labour law stipulates that standard working periods shall not exceed eight hours in one day and 44 hours in a week on average.<sup>37</sup> One year after this law came into effect, the State Council issued a decree on hours of work, which provides that the total hours worked in one week shall not exceed 40, except as otherwise provided. This change brings China in line with international norms.<sup>38</sup>

<sup>35</sup> *Women journalists can work on night shifts*, Hindu, May 11, 2007, available at <http://www.hindu.com/2007/05/11/stories/2007051108570400.htm>.

<sup>36</sup> Tamil Nadu Shops and Establishments Act, 1947, No. 36, Tamil Nadu Acts, 1947.

<sup>37</sup> Labour Law, supra note 32, Art 36.

<sup>38</sup> Guowuyuan guanyu Xiugai Guowuyuan Guanyu Zhigong Gongzuo Shijian de Guiding de Jueyi [State Council Regulations on Staff and Worker's Hours of Work], (promulgated by the St. Council, Feb. 17, 1995, effective May 1, 1995), Art. 3, 1995 (P.R.C), available at <http://www.people.com.cn/item/flfgk/cyflfg/c021.html>

## ***Overtime***

Both countries limit the amount of overtime that is possible, and both legislate that any overtime should be compensated with a wage premium.

In India, none of the states has a generalised ban on mandatory overtime. They note that employers may require employees to work in excess of regular hours, for periods of stock-taking or account preparation. However, the states do limit the hours of overtime possible on a given day, a given week or over a longer period (see Table I). Federal laws such as the Factories Act and the Mines Act require a 100% wage premium for any overtime work done.<sup>39</sup>

**Table II. Overtime hours and conditions in Indian states studied**

	50% overtime wage premium	100% overtime wage premium
3 hours maximum a week	Gujarat	--
50 hours maximum a quarter	--	Haryana; Himachal Pradesh; Karnataka; Kerala; Punjab
6 hours maximum a week	--	Andhra Pradesh; Bihar; Delhi; Jharkhand; Maharashtra; Tamil Nadu; West Bengal
12 hours maximum a week	--	Uttar Pradesh

In China, an employer may require an employee to work in excess of his/her normal schedule after consultation with the trade union and the employee. Overtime should not exceed one hour per day in general and be no more than three hours per day if such overtime is due to specific reasons and under the condition that the health of the employee is guaranteed. As a result, China has no generalised ban on mandatory overtime. Nevertheless, overtime should not exceed 36 hours in one month. These rules governing overtime can be suspended in order to deal with special cases, such as to ensure the continued delivery of essential public services and to carry out urgent repair work to the employer's equipment.<sup>40</sup> The overtime rate of pay should be no less than 150 per cent of the employee's regular wage rate for all hours that exceed the standard hours of work (eight hours a day and 40 hours a week).<sup>41</sup> The national standard of overtime premium has been reaffirmed by all the provincial regulations on payment of wages that have passed in the last five years.

---

<sup>39</sup> Mines Act, supra note 32, Sec. 33; Factories Act, supra note 32, Sec. 59.

<sup>40</sup> Labour Law, supra note 32, Arts. 41-42.

<sup>41</sup> Id. Art. 44.1.

## ***Annual leave***

India and China both require that employers provide employees with vacation. Adults working in Indian factories are allowed one day off for every twenty they work.<sup>42</sup> Indian states in this report guarantee between two and three standard weeks of paid annual leave for employees at establishments (see Table II). The wage replacement rate varies between the wage rates at the day preceding leave, to the daily average wage rate for the preceding three months (excluding overtime pay). While most states require that the employee give a certain period of adequate notice and that the employee have a certain period of tenure at the employer, often 240 days, Bihar's law automatically disqualifies any employee who has been involved in an illegal strike from access to annual leave during the year.<sup>43</sup> Indian states do not generally specify whether accrued leave may be paid out in equivalent wages instead, although some states do require this compensation if an employee is dismissed. Andhra Pradesh allows an employee to cash up to eight days of any accrued annual leave.<sup>44</sup>

**Table III. Annual leave in selected Indian states**

2 working weeks	Andhra Pradesh; Kerala; Tamil Nadu
14 days	West Bengal
15 days	Delhi; Uttar Pradesh
one day every 20 employed	Bihar; Haryana; Himachal Pradesh; Jharkhand; Karnataka; Punjab
3 working weeks	Gujarat; Maharashtra

In China, by comparison, annual leave is guaranteed under the Regulations on Paid Annual Leave for Staff and Workers. However, the duration of leave allowed is tied to seniority. Employees who have worked more than one year and less than 10 years are entitled to five days of annual leave. Those who have worked at least 10 years but less than 20 years are entitled to 10 days. Finally, employees are entitled to 15 days once they have worked for at least 20 years.<sup>45</sup> If an employer cannot arrange for an employee to take annual leave because of workplace demands, then the employer may carry over the untaken leave to the following year, but this may only be done once. Nevertheless, if the employee agrees, a Chinese employer may pay a worker 300 percent of the employee's daily wage for each day of annual leave accrued but not taken.

---

<sup>42</sup> Factories Act, supra note 32, Sec. 79.

<sup>43</sup> Bihar Shops and Establishments Act and Rule, 1953, No. 8, Bihar Acts, 1954.

<sup>44</sup> Andhra Pradesh Shops and Establishments Act, 1988, No. 20, Andhra Pradesh Acts, 1988.

<sup>45</sup> Zhigong Daixin Nianxiujia Tiaoli [Regulations on Paid Annual Leave for Staff and Workers] (promulgated by the St. Council, Dec. 7, 2007, effective January 1) Art. 3, 2007 (P.R.C.), available at <http://trs.molss.gov.cn/was40/mainframe.htm>

## ***Sick leave***

In India, paid sick leave is mandated nationally through the Employees' State Insurance Act. It is currently only applicable to employees earning less than Rs. 10,000/month in certain establishments and in certain (mainly urban) districts of most states, but it does not yet apply to anywhere in Arunachal Pradesh, Manipur, Mizoram, Nagaland, Sikkim or Tripura. The benefits are 50% pay for a maximum of 91 days of sick leave in one year. The same act requires the payment of amounts to offset the cost of necessary treatments for the employee and his/her dependent family. At the end of March 2006, the scheme covered approximately 8.4 million Indian workers and their families.<sup>46</sup>

State sick leave laws apply only to the shops and commercial establishments they cover, and not the large federally-regulated industries. Maharashtra is the only state where sick leave is not explicitly mentioned in state law. Himachal Pradesh has an additional law that extends sick and casual leave benefits to industrial establishments that are otherwise covered by federal rules in these regards.<sup>47</sup> Table IV provides more details.

**Table IV. Sick leave conditions in Indian states studied**

	half-pay	full-pay
none specified	Maharashtra.	
7 days	--	Gujarat; Himachal Pradesh; Haryana; Punjab
12 days	Bihar; Jharkhand	Andhra Pradesh; Delhi; Karnataka; Kerala; Tamil Nadu
14 days	West Bengal	--
15 days	--	Uttar Pradesh

Chinese labour law refers to the entitlement to sick leave by stipulating that an employee shall not be dismissed in the duration of statutory sick leave.<sup>48</sup> In 1994, the MOHRSS promulgated detailed rules for sick leave, providing that an employee is entitled to take paid sick leave up to a maximum of three months to twenty four months, depending on the length of their working life and the period they have served the current employer, as shown in Table V.<sup>49</sup> The

---

<sup>46</sup> Employees' State Insurance Act, 1948, No. 34, Acts of Parliament, 1948, available at <http://esicdelhi.org.in/esiact.php>.

<sup>47</sup> Industrial Establishments, *supra* note 30.

<sup>48</sup> Labour Law, *supra* note 32, Art. 29.

<sup>49</sup> Qiye Zhigong Huanbin huo Feiyingong Fushang Yiliaoqi Guiding [Regulations on Period of Sick and Non-Industrial Injury Leave for Enterprise Workers] (promulgated by the Ministry of Labour, Dec. 1, 1994, effective January 1, 1995), Art. 3, 1994 (P.R.C.), available at <http://trs.molss.gov.cn/was40/mainframe.htm>

rate of wage payment for an employee on sick leave shall be no less than 80 per cent of local minimum wage.<sup>50</sup>

**Table V: National standard of the maximum period of sick leave in China**

Working Life	<10 years		>10 years				
Firm-specific tenure	< 5 years	> 5 years	< 5 years	5-10 years	10-15 years	15-20 years	> 20 years
Sick Leave	3 months	6 months	6 months	9 months	12 months	18 months	24 months

The national standard for entitlement to sick leave has been followed by most provincial governments, with only a few exceptions. The calculation of maximum length of sick leave in Shanghai departs slightly from the national standard, which is solely based on the service period with the current employer.<sup>51</sup> In Shanxi, the rate of wage paid to an employee shall be not only no less than 80 per cent of local minimum wage, but also no less than 70 per cent of the employee’s regular wage.<sup>52</sup>

**Table VI: Maximum period of sick leave in Shanghai**

Service Period	1 years	2 years	3 years	4 years	...
Sick Leave	3 months	4 months	5 months	6 months	... up to 24 months

### *Discretionary leave*

Discretionary leave is known as casual leave in India. It is allowed for all other reasons other than vacation or illness, such as family events and emergencies. This possibility exists only in state laws. Apart from Maharashtra, all other states in this report explicitly mandate its existence, and it is compensated by full pay in the states in our study. In Delhi and Karnataka, it

<sup>50</sup> Guanyu Guanche Zhixing (Zhonghua Renmin Gongheguo Laodong Fa) Ruogan Wenti de Yijian [Opinions on Several Issues Concerning the implementation of the Labour Law of the People’s Republic of China] (promulgated by Ministry of Labour, Aug. 4, 1995, effective August 4, 1995), Art. 59, 1995 (P.R.C.) available at <http://trs.molss.gov.cn/was40/mainframe.htm>

<sup>51</sup> Guanyu Benshi laodongzhe zai Luxing Laodong Hetong Qijian Huanbin huo Feiyingong Fushang de Yiliaoqi Biao zhun de Guiding [Shanghai Regulations concerning the Standard of Sick and Non-Industrial Injury in the Duration of Performing Labour Contract in Shanghai] (promulgated by Shanghai Municipal People’s Government. Apr. 30, 2002, effective May 1, 2002) Article 2, 2002 (P.R.C.) available at [http://www.12333sh.gov.cn/07zcfg/szfgz/200709/t20070914\\_1029546.shtml](http://www.12333sh.gov.cn/07zcfg/szfgz/200709/t20070914_1029546.shtml)

<sup>52</sup> Shanxisheng Qiye Gongzhi Zhifu Tiaoli [Shanxi Regulations on Wage Payment of Enterprises] (promulgated by Shanxi Standing Comm. Nat’l People’s Cong. Jun. 4, 2004, effective October 1, 2004), Art. 20, 2004 (P.R.C.) available at [http://www.shaanxihrss.gov.cn/channel/node100085\\_1.html](http://www.shaanxihrss.gov.cn/channel/node100085_1.html)



is subsumed within sick leave. Chinese law provides for paid leave for weddings and funerals, but does not specify its length.

**Table VII. Discretionary leave in Indian states studied**

none specified	Maharashtra
subsumed within sick leave	Delhi; Karnataka
7 days	Gujarat; Haryana, Himachal Pradesh; Punjab
10 days	Uttar Pradesh; West Bengal
12 days	Andhra Pradesh; Bihar; Jharkhand; Kerala; Tamil Nadu

### *Parental leave*

There is no law mandating paternity leave in India. In China, there is no national standard on entitlement to paid paternity leave. It is simply provided as a reward for childbirth after age 24 in about 20 provinces. The length of paid paternity leave varies from 3 days in Shanghai to 90 days in Qinghai.

**Table VIII: Length of paid paternity leave as awards for childbirth after age 24 in Chinese provinces**

Duration	Provinces
3 days	Shanghai
7 days	Chongqing, Fujian, Guizhou, Jilin, Shandong, Tianjin, Yunnan, Zhejiang
10 days	Anhui, Guangdong, Guangxi, Hebei, Heilongjiang, Hubei, Inner Mongolia, Jiangsu, Jiangxi, Qinghai, Shanxi ( 陕 西 )
15 days	Gansu, Hunan, Liaoning, Shanxi ( 山 西 ) , Sichuan, Xinjiang
30 days	Henan
90 days	Qinghai

Maternity benefits in India are guaranteed through the Employee's State Insurance (ESI) Act and the Maternity Benefit Act, which extends to the whole of India.<sup>53</sup> The latter is the more

<sup>53</sup> In October 2010, India announced a pilot programme of a conditional maternity benefit scheme that provides cash transfers to pregnant and lactating mothers if they are not covered by the Maternity Benefit Act. In other words, even unemployed women (or working women not covered by formal laws), may now receive a total of Rs. 12,000 (approximately US\$270) from the second trimester to six-months after birth, provided that she is breast-

comprehensive law, applying to any factory, mine, plantation or performance venue, as well as to any shop or establishment deemed to be such by state governments, where ten or more people have worked at any point in the preceding twelve months. The Act however does not apply to establishments where ESI maternity benefit applies, unless a woman has not yet completed the more stringent eligibility benefits of the latter or earns more per month than allowed by the government under ESI (currently set at Rs. 10,000). In those cases, she would qualify under the Maternity Benefit Act.

The Maternity Benefits Act ensures twelve weeks' paid leave for a woman (full wages at average daily rate during three months preceding absence). Up to six of these twelve can be taken before the expected date of delivery. Six weeks' leave is also guaranteed for miscarriages or medical terminations of pregnancy; knowingly employing a woman up to six weeks after her delivery is in fact explicitly prohibited in the act.

There are no state differences in the provisions of the act. Indeed, the Shops & Establishments Acts of most states in this report reaffirm the provisions stated in the federal Maternity Benefit Act, thereby ensuring that all establishments under state labour jurisdiction also qualify for the three-month leave. In Tamil Nadu, the rules promulgated by the state to support the federal Maternity Benefit Act extend the benefit to all shops and establishments.<sup>54</sup> However, the federal act does note that pregnant women who immigrate to Assam do not need to meet the eligibility period of work at the employer to qualify for the benefits.<sup>55</sup> Additionally, the 1990 Andhra Pradesh rules governing the Shops & Establishment Act disqualify from the benefit all women who already have two children.<sup>56</sup>

This standardisation of the norms of maternal leave in India is in stark contrast to complexities inherent to the Chinese provisions. Chinese labour law states that every employee is entitled to, and must be granted, a leave of absence for pregnancy. The minimum period of maternity leave shall consist of a period of 90 days, commencing fifteen days before the anticipated date of delivery.<sup>57</sup> An extra leave of 15 days should be granted in case of difficult childbirth. An employee who has borne more than one child in a single birth should also be granted an extra leave of 15 days for each additional baby borne.<sup>58</sup> The national standard was again confirmed by most local governments apart from Tibet, where a pregnant employee shall be granted no less than 120 days of maternity leave.<sup>59</sup>

---

feeding and that she can open a bank account. See Aarti Dhar, *Conditional Maternity Benefit Scheme Launched*, *The Hindu*, Oct. 21, 2010, available at <http://www.hindu.com/2010/10/21/stories/2010102163351500.htm>

<sup>54</sup> Tamil Nadu Maternity Benefit Rules, 1967, Pt. V, Fort St. George Gazette, 650.

<sup>55</sup> The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, Art 5.2

<sup>56</sup> Andhra Pradesh Shops and Establishments Rules, 1990, Andhra Pradesh Gazette, 41.

<sup>57</sup> Labour Law, supra note 32, Art. 62.

<sup>58</sup> Nvzhigong Laodong Baohu Guiding [Regulations concerning Labour Protection of Female Staff and Workers] (promulgated by the St. Council, Jun. 28, 1988, effective September 1, 1988), Art. 8, 1988(P.R.C.) available at <http://trs.molss.gov.cn/was40/mainframe.htm> [hereinafter Female Protection].

<sup>59</sup> Xizang Zizhiqu Chengzhen Zhigong Shengyu Baoxian Banfa [Tibet Autonomous Region Measure on Maternity Insurance for Staff and Workers of Enterprises in Cities and Towns] (promulgated by Tibet Government, Dec. 31, 2006, effective March 1, 2007), Art. 15, 2006 available at <http://vip.chinalawinfo.com/Newlaw2002/SLC/slc.asp?db=lar&gid=16920876>

The Chinese national standard requires that an employee who terminates a pregnancy medically also be entitled to maternity leave. The period of leave is between fifteen to thirty days if the abortion occurs before the fourth month of pregnancy and forty-five days if after the fourth month.<sup>60</sup> In practice, if the abortion occurs after seven months of pregnancy, it will be deemed as delivery and 90 days of paid leave will be granted.

At any time during the pregnancy, an employee cannot be requested to work overtime, nor scheduled to work at night after seven months of pregnancy. The employer should modify her job functions or reassign her to another job if she is no longer able to fulfil her current responsibilities as evidenced by a medical certificate.<sup>61</sup> The entitlement to maternity leave in China has been greatly influenced by its family planning policy. The Law of the PRC on Population and Family Planning states that an employee who marries and bears her first child after twenty-four years of age may receive awards of extended paid maternity leave.<sup>62</sup> As demonstrated in Table IX, the length of additional maternity leave varies per province, ranging from 14 days in Guangxi to 90 days in Henan. The period of this awarded leave is 30 days in more than half of the provinces.<sup>63</sup>

**Table IX: Length of paid maternity leave as awards for childbirth after age 24 in Chinese provinces**

Duration	Provinces
14 days	Guangxi
15 days	Guangdong, Hainan, Shanxi ( 陕 西 )
20 days	Chongqing
25 days	Gansu
30 days	Anhui, Beijing, Guizhou, Hubei, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Jilin, Qinghai, Shanghai, Shanxi ( 山 西 ), Sichuan, Tianjin, Tibet, Xinjiang, Yunnan
45 days	Fujian, Hebei
60 days	Liaoning, Shandong,
90 days	Heilongjiang, Henan

<sup>60</sup> Guanyu Nvzhigong Shengyu Daiyu Ruogan Wenti de Tongzhi [Circular on Several Issues Relevant to Childbearing Treatment for Female Staff and Workers] (promulgated by the Ministry of Labour, effective September 1, 1988), Art. 1, 1988 (P.R.C.) available at <http://trs.molss.gov.cn/was40/mainframe.htm>

<sup>61</sup> Female Protection, supra note 58, Art. 7.

<sup>62</sup> Jihua Shnegyu Fa [Law of the People’s Republic of China on Population and Family Planning] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2001, effective September 1, 2002), Art. 25, 2002 (P.R.C.) available at [http://www.gov.cn/banshi/2005-08/21/content\\_25059.htm](http://www.gov.cn/banshi/2005-08/21/content_25059.htm)

<sup>63</sup> See the regulations on population and family planning policy in relevant provinces.

The national law also calls for additional days of maternity leave as awards for employees who promise to have only one child and sign the One-Child Certificate after the birth of the first child. Twelve provinces have adopted this policy as shown in Table X, among which five provinces state that additional 30 days of paid leave is granted to qualified employees. In Tibet, this award is up to 240 days of paid leave.<sup>64</sup> As nowadays it is quite common to bear only one child after the age of 24 in China, these awards have been actually exercised regularly.

**Table X: Length of paid maternity leave as awards for single-child parents in Chinese provinces**

Duration	Provinces
15 days	Yunnan
20 days	Guangxi
30 days	Anhui, Hebei, Hunan, Inner Mongolia, Shanxi ( 陕 西 )
35 days	Guangdong
45 days	Fujian
50 days	Gansu
90 days	Guizhou
240 days	Tibet

Payment during maternity leave is guaranteed by the Maternity Insurance program, which began in 1995.<sup>65</sup> Maternity Insurance Funds were established by governments at the municipal level to cover the wages of employees during maternity leave as well as medical fees arising from delivery or medical termination of pregnancy. The national regulation on maternity insurance provides that this program shall be applied to all employees of enterprises located in cities and towns. In fact, the program is being extended to cover employees of governments and non-profit institutions, among others, in several provinces.<sup>66</sup> One requirement for this entitlement unanimously set by provincial regulations is that the childbirth of a qualified employee shall comply with family planning policy. If it does not, then no pay is provided.

The national regulation provides that an employee on maternity leave shall be reimbursed on the basis of average monthly wage among all the employees serving in the same enterprise in the last calendar year. However, provincial governments are allowed to adjust the rate of payment for an employee on maternity leave in accordance with the local environment.<sup>67</sup> In fact, only Heilongjiang follows the standard proposed by the national regulation to pay a qualified employee on the basis of the average wage among all employees in the same enterprise. In twenty provinces, a qualified employee shall be fully paid by the relevant funds on

<sup>64</sup> See the regulations on population and family planning policy in relevant provinces.

<sup>65</sup> Qiye Zhigong Shengyu Baoxian Shixing Banfa [Provisional Regulations on Maternity Insurance for Employees of Enterprises in Cities and Towns] (promulgated by the Ministry of Labour, Dec. 14, 1994, effective January 1, 1995), 1994 (P.R.C.), available at <http://trs.molss.gov.cn/was40/mainframe.htm> [hereinafter Maternity Leave]

<sup>66</sup> Examples are Shanghai, Beijing and Jiangsu.

<sup>67</sup> Maternity Leave, supra note 65, Arts. 5, 15.

the basis of her own average wage in the preceding twelve months. In Jiangxi and Jilin, a qualified employee is entitled to be paid either on the basis of her average wage or on the basis of a national standard, depending on which one is more favourable to her. In another five provinces, an employee is entitled to choose to be reimbursed on the basis of the average wage among employees of all the enterprises participating to the same fund.<sup>68</sup>

## Discussion

Our data provides a systematic overview of standards governing working conditions in a wide variety of economic contexts within both India and China. We believe that our research demonstrates that both countries, perhaps contrary to popular perception, have legislated many important aspects of a floor of labour conditions. One of the greatest concerns raised regarding globalisation is that increasing competition from countries with low labour standards could have an adverse effect on working conditions around the world. While there are minor differences between India and China on a number of fronts in the substance of the standards, there are a great number of commonalities in how the legislated norms indicate employees in the respective jurisdictions should be treated.

### *Comparison of standards*

Overall, India fails to meet the 1962 Reduction of Hours Recommendation of the ILO<sup>69</sup>, which suggests that countries work to bring down their weekly hours from 48 hours to 40. In contrast, China has achieved this goal in a very short time. Most Indian women are legislated away from night work even beyond the requirements of the ILO's Night Work (Women) Convention from 1948<sup>70</sup>, whose benefits are not available to Chinese women. Workers in many Indian states and Chinese workers whose working life is less than 20 years also fail to benefit from the ILO's revised 1970 Holidays with Pay Convention of three-weeks' annual leave. Indian employees covered by the federal ESI Act are protected by the ILO's special recommendations for countries without advanced medical facilities, with a sickness benefit of 13 weeks as detailed in the 1952 Social Security (Minimum Standards) Convention.<sup>71</sup> However, states fall short with their sick leave standards, while Chinese provinces perform much better. India's inability to extend protection to large portions of its workforce also hampers its ability to meet the requirements of the Convention. Both India and China fall just short of the 14-week maternity leave proposed by the same convention.

### *Comparison of legal frameworks*

China's standards are a relatively recent development and demonstrate a single overarching approach to all employment contracts in the country. India's laws, however, date from much earlier, reflecting the standards deemed suitable in the immediate post-independence period. The Indian approach to labour law is much more piecemeal, covering different

---

<sup>68</sup> See measures of relevant provinces on maternity insurance .

<sup>69</sup> Int'l Labour Org. [ILO], *Reduction of Hours Recommendation*, R116 (June 26, 1962).

<sup>70</sup> Int'l Labour Org. [ILO], *Night Work (Women) Convention (Revised)*, C89 (July 9, 1948).

<sup>71</sup> Int'l Labour Org. [ILO], *Social Security (Minimum Standards) Convention*, C102 (June 28, 1952).

industries and sectors through different laws. This patchwork method of legislation contributes in part to the vast sectors of Indian labourers who fall through these regulatory gaps, depending on such factors as the size of the establishment of their employment, or their jurisdiction of employment as well.

These differences are compounded by the governance systems of each country. The unitary system in China provides a uniform blanket of regulation across the country, which provinces may alter only slightly. In India, although the basic principles remain standard throughout the country, the joint constitutional jurisdiction over labour makes the details of norms quite diverse. This system has an impact on transparency in Indian law, as it makes it more difficult to know which laws apply in which instances compared to China.

### *Implementation challenges*

Our research shows that both India and China have developed mechanisms to regulate working conditions within their jurisdictions, and the situation is not static. Internal debates within the countries mean that the response to workers' well-being is evolving over time. In particular, while the laws put in place a floor for labour standards in both countries, the ability to implement these laws is critical for both countries. Although legislated standards clearly indicate what can be attained for workers within India and China and provide important information on areas where a global floor of agreement in labour standards could be practically achieved, legislation alone is only a first step. For workers in both countries, it is critical that the next steps be putting in place effective mechanisms for increasing implementation and providing support for those mechanisms for increased coverage that India and China have themselves recently passed. Although this question requires further study, we would suggest that the ongoing struggle for implementation is at different stages in both countries. Social transformation in both countries, with expanding middle-classes, means that citizens expect increased government accountability. Both India and China have responded, with each country passing, in 2005 and 2007 respectively, acts that guarantee the right to information from government agencies upon a citizen's request.<sup>72</sup> Increased domestic pressure for reform has also led to a more vocal citizenry.

The Chinese State Council promulgated the Labour Inspection Regulations in 2004, providing labour agencies with authority to monitor compliance. Furthermore, the SCNPC passed the Labour Contract Law and the Law on Labour Dispute Mediation and Arbitration in 2007. These initiatives are expected to provide a better legal framework for the employee to claim legal entitlements.<sup>73</sup> In fact, the number of labour disputes brought before arbitral tribunals

---

<sup>72</sup> For India, see Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, available at <http://righttoinformation.gov.in/rti-act.pdf>; for China, see Zhengfu Xinxi Gongkai Tiaoli [Decree of Government Information Openness](promulgated by the St. Council, January 17, 2007, effective May 1, 2008), 2007 (P.R.C), available at [http://www.gov.cn/zwjk/2007-04/24/content\\_592937.htm](http://www.gov.cn/zwjk/2007-04/24/content_592937.htm).

<sup>73</sup> See Ho, *supra* note 8, and Halegua, *supra* note 8.

has been increasing yearly, from 48,121 in 1996 to 317,162 in 2006, an increase of more than 660 % in one decade.<sup>74</sup>

In India, the fact that a large majority of the workforce is not covered by formal labour laws requires a reevaluation of the approach to labour protection. The Indian government has recognised the importance of developing a national framework to protect informal-sector workers, through work such that of the National Commission for Enterprises in the Unorganised Sector. The Commission submitted a draft bill to the Indian parliament in 2007 that was eventually passed into law in 2008, extending basic social security schemes to workers in the informal sector across the country. This law came closer to implementation in the 2010 Indian budget, when Rs. 10 billion was set aside to fund this social security scheme providing basic pension, illness and maternity benefits to informal workers upon their registration. Notwithstanding this progress, there remain other challenges in India, as the Commission also notes the inadequacies in India's current (state-based) implementation bureaucracies, which should be corrected through better training of both civil servants and workers.<sup>75</sup>

## Future directions

Understanding implementation mechanisms is key for both countries, but our study also points out other questions for research and policy development. India and China are moving towards improving government transparency, but the more recent Chinese experience with labour law reform suggests the importance of analysing the value of a uniform legal code, in contrast to India's current legal structure. The different governance systems in both countries also highlight the impact of decentralisation in the maintenance and implementation of labour standards. In addition, a review of the histories of labour law development in each country would highlight the social conditions that are most propitious for the creation of decent working conditions in contrasting social, economic and political contexts that nonetheless lead to converging results. These future directions in understanding labour policies that cover one-third of the world would elucidate questions that remain on how to protect workers globally through good and bad economic times.

---

<sup>74</sup> Ministry of Labour and Social Security, *Laodong Zhengyi Chuli Qingkuang* [Labour Disputes Accepted and Settled], 2007 Zhongguo Laodong Tongji Nianjian [China Labor Statistics Yearbook 2007].

<sup>75</sup> National Commission for Enterprises in the Unorganised Sector *Report on Conditions of Work and Promotion of Livelihoods for Enterprises in the Unorganised Sector* 166-7 (2007).