



RAJIV GANDHI
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In this issue

An Overview of the Labour Situation in India, 2020:
Vijay Mahajan

Key Features of Labour Laws till 2020 and the Recently Enacted Reforms:
Somnath Ghosh

Laws Applicable to the Migrant and Informal Sector Workers:
Somnath Ghosh and Navin T.

Understanding the New Labour Codes:
Heena Zuni Pandit and Navin T.

Conclusion – The Codes Are Neither Adequate Not Appropriate:
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4 An Overview of the Labour Situation in India, 2020:
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13 Key Features of Labour Laws till 2020 and the Recently Enacted Reforms:
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25 Laws Applicable to the Migrant and Informal Sector Workers:
Somnath Ghosh and Navin T.

37 Understanding the New Labour Codes:
Heena Zuni Pandit and Navin T.

46 Conclusion – The Codes Are Neither Adequate Not Appropriate:
Vijay Mahajan

Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) works on five themes:

1. Constitutional Values and Democratic Institutions
2. Growth with Employment
3. Governance and Development
4. Environment, Natural Resources and Sustainability
5. India's Place in the World.

Under the Constitutional Values and Democratic Institutions, there are three sub-themes:

- a. Preamble Values - Justice, Liberty, Equality and Fraternity
- b. Affirmative Action for Disadvantaged Groups
- c. Academia, Media and Civil Society as building blocks of democracy

This issue of Policy Watch cuts across several of the above themes and deals with the issue of Labour Rights and affirmative action in terms of protecting them against exploitation as well as ensuring fair wages, decent benefits and safe working conditions. The enactment of the Four Labour Codes in 2020, by combining as many as 39 existing labour laws is reviewed from different points of view.

The first article gives an overview of the labour situation in India in 2020. In it Vijay Mahajan, Director, RGICS, highlights the fact a vast majority of India's workforce is engaged in the agricultural and the informal sector, about half is self-employed and a third are casual workers.

The second article is by Prof Somnath Ghosh, Sr Visiting Fellow, RGICS, and it traces out the history of labour legislation from the pre Independence days and how after Independence, the laws enacted reflected the Directive Principles enshrined in the Constitution. It also deals with Labour Law Administration and the reforms proposed over the years.

The third article is by Somnath Ghosh and Navin T, Regional Coordinator, Institute for Livelihood Research and Training, Hyderabad, and it deals with the special laws that were enacted to take care of the informal and migrant workers and some sectoral laws like those for the Construction sector.

The fourth article by Heena Zuni Pandit, Research Associate, RGICS, and Navin T, deals with Understanding the New Labour Codes. We are indebted to PRS India, from which we have heavily borrowed. The fifth article is by Vijay Mahajan and he asserts that the New Labour Codes are neither adequate nor appropriate and he suggests the way forward, highlighting the role of trade unions and civil society Institutions in correcting the shortcomings.

Mr Vijay Nadkarni provided valuable critique of the initial draft of the papers. Rahul Singh, a post graduate student of Public Policy, National Law School University, Bangalore and Intern with RGICS, provided research support to all the authors.

We hope you enjoy reading these articles. We look forward to your feedback.

**Vijay Mahajan, Director,
Rajiv Gandhi Institute for Contemporary Studies**



An Overview of the Labour Situation in India, 2020

Vijay Mahajan

As economies grow and evolve to capture new aspects of this evolution it's only natural to revisit any laws and regulations enacted in the past. As the fourth industrial revolution approaches the economies world –over are undergoing a fundamental shift, as work spaces evolve, new legislations are required to cater to this change. Moreover, situation like the COVID-19 pandemic and the resultant lockdown has brought to the fore the issues of insecurity and non-negotiable layoffs, low bargaining power of the Indian worker. This lack of safety nets for the large extent of the workforce in 21st century requires re-evaluation of the prevalent institutional order and the legislations it works on. Thus a demand for labour reforms is a necessity. But does this reformation can be inclusive to the large unorganized work force in India, what do they stand to lose, what shall be the safeguards to guard their interest, are some of the themes explored.

As economies grow and evolve to capture new aspects of this evolution it's only natural to revisit any laws and regulations enacted in the past. As the fourth industrial revolution approaches the economies world –over are undergoing a fundamental shift, as work spaces evolve, new legislations are required to cater to this change. Moreover, situation like the COVID-19 pandemic and the resultant lockdown has brought to the fore the issues of insecurity and non-negotiable layoffs, low bargaining power of the Indian worker. This lack of safety nets for the large extent of the workforce in 21st century requires re-evaluation of the prevalent institutional order and the legislations it works on. Thus a demand for labour reforms is a necessity. But does this reformation can be inclusive to the large unorganized work force in India, what do they stand to lose, what shall be the safeguards to guard their interest, are some of the themes explored.

The Indian economy is characterised by the existence of a vast majority of informal or unorganised labour employment. Overall Estimates of Employment. The labour force includes those working (called the workforce) plus those able and willing to work, but are unemployed. In India, the National Sample Survey Organization (NSSO) conducted five-yearly Employment and Unemployment Surveys (EUS) and the last EUS was in 2011-12. The Government of India (GoI) discontinued the EUS from 2015 onwards and launched the Periodic Labour Force Survey (PLFS) from 2017. The first Annual Report of the PLFS for the period June 2017- June 2018 was released in June 2019. The second report based on the survey from July 2018 to June 2019, was released in June 2020. Though the second annual report of the PLFS

came in the middle of the pandemic-induced lockdown, as it covered a period a year before, it could not throw light on the situation in the midst of the lockdown.

Using other sources, particularly the unemployment reports from the Centre for the Monitoring of the Indian Economy (CMIE), we were able to put together a picture as on 31st December 2020. Applying the Labour Force Participation Rate (LFPR) of 37.5 per cent for age 15 and above, from the PLFS 2018-19, to the estimated Indian population of age 15 years and above of 1095 million¹ at the end of 2020, we computed that the labour force was 520 million at the beginning of 2021. Of these, as per CMIE's moving average, 9.15 percent or 47.6 million persons were unemployed at the end of 2020. In colloquial terms, at beginning of 2021, India had a labour force of 52 crore, of whom 47.2 crore worked and 4.76 crore were unemployed.

Labour laws are a set of laws that deal with the rights and restrictions of the employers and the employees in an economy. They are greatly impacted by the social and economic changes in an economy. They broadly fulfill three roles: Chalk out the rights and powers of the employees, unionization of employees, remedial mechanism when rights are infringed.

The major challenge for labour policy is to facilitate employment growth while protecting workers' rights. Economists have long argued that India's outdated labour laws need change. Stringent hiring-firing rules applied to firms with over 100 employees, making it virtually impossible to lay off workers. This adversely acted as an incentive for smaller firms to stay small so they could escape the rules. According to the World Bank, with less restrictive laws, India could approximately add on an annual basis "2.8 million more good quality formal sector jobs".

Key debates relate to the coverage of small firms, deciding thresholds for prior permission for retrenchment, strengthening labour enforcement, allowing flexible forms of labour, and promoting collective bargaining. Further, with the passage of time, labour laws need an overhaul to ensure simplification and updation, along with provisions which can capture the needs of emerging forms of labour (e.g. gig work). This note discusses these challenges and the approaches taken by the four Codes.

Employment by Location, Gender and Age

In terms of rural/urban and male/female shares of the labour force, as per the PLFS 2018-19, about 55.1 per cent of rural males, 19.7 per cent of rural females, and 56.7 per cent of urban males and 16.1 per cent of urban females were in the labour force. As can be seen, female labour force participation rate (LFPR) was much lower than male LFPR. Female LFPR is high in low-income countries as well as in upper-middle and high-income economies, but relatively low in lower-middle-income countries, creating a U-shaped relationship between national income and female LFPR (Goldin 1995; Mammen and Paxson 2000). Decline in female LFPR in India since the 2005 is in line with this U-shaped curve (Mehrotra and Sinha, 2017; Regy 2019).²

¹ <https://www.worldometers.info/world-population/india-population/>

² Mahajan, et al 2020.

The age wise detail for LFPR is available from the PLFS 2017-18. In that year, among persons of age 15 years and above, LFPR was 49.8 per cent. Working age (15-59 years) population LFPR was 49.8 per cent. However, among persons of age 15-29 years, LFPR was only 38.2 per cent, much lower than working age population, which indicated that a majority of working age youth were “Not in Education, Employment or Training” (NEET), yet were not seeking work.

Sectorwise employment details are also from PLFS 2017-18. From that data, it can be seen that crop cultivation accounted for 37.14 per cent of the work force, and animal husbandry (6.55), making farming the largest occupation of 43.69 per cent. Manufacturing (12.13), Construction (11.68), Wholesale and Retail Trade (10.09), Transport and Storage (4.93) and Education services (3.78) were the next five largest employment sectors, together higher than farming.

The Informal Sector – Employment of the Last Resort

As per the Annual Report of the Periodic Labour Force Survey (PLFS) 2017-18, in India, 68.4 per cent of the workers in the non-agriculture sectors were engaged in the informal sector.

By gender, the share of informal sector among male workers was 71.1 per cent and among female workers was nearly 54.8 per cent in non-agriculture sectors. This was due to the fact females, when they worked, tended to get into arrangements where they were more likely to be causal workers.

By contractual status, in rural areas, the share of households who had major source of income from self-employment was 52.2 per cent. Households with major source of income from regular wage/salary earning were 12.7 per cent and households in casual labour during 2017-18 were 25 per cent.

In urban areas, the share of the households in self-employment was 32.4 per cent; the share of households with regular wage/salary earning was 41.4 per cent while those in casual labour was 11.8 per cent. As can be seen, urban areas were magnets because they offered a much greater opportunity for regular wage/salary earning.

Self-Employed Workers

The largest number of these were self-employed. During 2017-18, about 52.2 per cent of rural households had major source of income from self-employment. In terms of earnings, as many as 57 per cent of all workers in rural areas fall were self-employed and their average gross earnings ranged between Rs 8500 to Rs 9700 per month among males and Rs 3900 to Rs. 4300 among females during 2017- 18. In urban areas, where 38 per cent of all workers were self-employed, the average gross earning was around Rs 16,000 among males and it ranged between Rs 6500 to Rs 7500 among females during 2017-18. The differential of nearly 76 per cent between rural and urban males’ earnings through self-employment, in addition to more self-employment opportunities in urban areas, explains the urban pull for rural migrants.

Regular Workers in the Informal Sector

The share of rural households with major source of income from regular wage/salary earning was 12.7 per cent. Earnings in rural areas ranged from Rs 13,000 to 14,000 per month among males and between Rs 8,500 to 10,000 per month among female. In urban areas, the share of households with regular wage/salary earning was 41.4 per cent. Earnings among regular wage/salaried employees ranged from Rs 17,000 to 18,000 among males and from Rs 14,000 to 15,000 among females in 2017-18. The differential of nearly 30 per cent between rural and urban wages, in addition to more job opportunities in urban areas, explains the urban pull.

Casual Workers

Households in casual labour during 2017-18 were 11.8 percent in rural areas and 25 per cent in urban areas. In terms of earnings per day, casual labour engaged in works other than public works like MNREGS earned from Rs 253 to Rs 282 among males (working out to Rs 6955 per month) and from Rs 166 to Rs 179 among females (Rs 4511 per month). Urban average earnings per day by casual labour ranged from Rs 314 to Rs 335 among males (Rs 8435 pm) and from Rs 186 to Rs 201 among females (Rs 503 pm). The 94 per cent differential in rural and 104 per cent in urban areas, between wages of regular employees and casual workers, in addition to greater insecurity of tenure and lack of benefits, explains the urge to search for “naukri” (regular job) rather than “rozgar” (casual work). Job seekers often opt for Swarozgar (self-employment) as a temporary option initially, but it becomes lifelong for most of them.

Benefits and Working Conditions

Let us briefly look at worker benefits and working conditions in the informal sector. Even among regular wage/ salaried employees, 49.6 per cent did not any social security benefit. Thus, there was no paid leave once a year, not maternity leave or benefits, no crèches, no cover for health and life under the Employees State Insurance, nor any provident fund/pension. Working conditions showed little concern for occupational health and safety, and amenities like first aid were missing. As many as 95 percent of women workers in the informal sector in India suffered abuse and sexual harassment at the work place, as per a study by Human Rights Watch.³

India not only had a large percentage of its workers in the informal sector due to the inadequacy of employment in the formal sector but the unemployment rate⁴ was 6 per cent in 2011-12. In the same year, the share of the population below the poverty line was around 22 per cent⁵. Thus, many of the working persons were not earning enough to cross the poverty line. For them, some guaranteed employment was needed, even if it provided just living wages.

Categorisation of Labour

The Ministry of Labour, Government of India, has categorized the unorganized labour force under four groups in terms of Occupation, nature of employment, especially distressed categories and service categories.

³ <https://economictimes.indiatimes.com/magazines/panache/2-years-after-metoo-movement-poor-indian-women-fear-losing-their-jobs-over-workplace-harassment-complaintsormetoo-2-years-on-indian-women-in-informal-sector-rarely-report-workplace-harassment-over-fear-of-losing-job/articleshow/78680850.cms?from=mdr>

⁴ NSSO(2013) http://mospi.nic.in/sites/default/files/publication_reports/KI-68th-E_per cent26U-PDF.pdf

⁵ "Number and Percentage of Population Below Poverty Line". Reserve Bank of India. 2012

<https://web.archive.org/web/20140407102043/http://www.rbi.org.in/scripts/PublicationsView.aspx?id=15283>

As per the Economic Survey 2007-08, 93 per cent of India's workforce included the self-employed and employed in unorganized sector.

Under Terms of Occupation

Small and marginal farmers, landless agricultural labourers, share croppers, fishermen, those engaged in animal husbandry, beedi rolling, labelling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, oil mills, etc. come under this category.

Under Terms of Nature of Employment

Attached agricultural labourers, bonded labourers, migrant workers, contract and casual labourers come under this category.

Under Terms of Specially Distressed Category

Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders come under this category.

Under Terms of Service Category

Midwives, Domestic workers, Fishermen and women, Barbers, Vegetable and fruit vendors, Newspaper vendors etc. belong to this category.

In addition to these four categories, there exists a large section of unorganized labour force such as cobblers, Hamals, Handicraft artisans, Handloom weavers, Lady Tailors, Physically handicapped self-employed persons, Rickshaw pullers, Auto drivers, Sericulture workers, Carpenters, Tannery workers, Power loom workers and Urban poor.

Though the availability of statistical information on intensity and accuracy vary significantly, the extent of unorganized workers is significantly high among agricultural workers, building and other construction workers and among home based workers. According to the Economic Survey 2007-08 agricultural workers constitute the largest segment of workers in the unorganized sector (i.e. 52 per cent of the total workers).

To a greater extent, these transformation could be related to the ongoing globalization process and the resultant efforts on the part of employers to minimize the cost of production to the lowest levels. It is also evident that most of these outcomes are highly correlated and mutually reinforcing. A closer analysis suggests that the growing informalisation of labour market has been central to most of these transformations, which inter alia highlights the utility of understanding the growth of unorganized sector in India and its implications.

Many thought that India's growth could do no wrong, and took the administrative versions and interpretations for granted. Now it comes to a point that none of these can be taken for granted. Growth is slow, inflation is structural and structure of employment is not enough to cater to the growing labour force.

Persisting Prominence of Unorganized Workers in India

Predominance of unorganized or informal employment has been one of the central features of the labour market scenario in India. While the sector contributes around half of the GDP of the country, its dominance in the employment front is such that more than 90 per cent of the total workforce has been engaged in the informal economy. As per the latest estimation of a Sub-committee of the National Commission for Enterprises in the Unorganized Sector (NCEUS), the contribution of unorganized sector to GDP is about 50 per cent (NCEUS 2008).

This national level pattern of informal workers occupying around 90 per cent of the workforce is more or less similar in the case of most of the prominent states in the country. Among the unorganized sector workers, a considerable proportion (about 65 per cent) is engaged in agricultural sector, which in turn indicates the prominence of rural segment in the informal economy.

The growth of formal employment in the country has always been less than that of total employment, indicating a faster growth of employment in the informal sector. Available data suggests that within the formal sector also the proportion of informal / unorganized workers are on the increase. For instance, by providing a comparison of the NSSO Employment Data for 55th and 61st Rounds (for 1999-2000 and 2004-05 respectively) the NCEUS (2007) explains that the country is currently in a state of “informalisation of the formal sector”, where the entire increase in the employment in the organized sector over this period has been informal in nature.

It is widely acknowledged that the informal sector in India suffers from a low productivity syndrome, compared to the formal sector. The prominent features of the sector are lower real wages and poor working / living conditions. Further, the sector is characterized by excessive seasonality of employment (especially in the farm sector), preponderance of casual and contractual employment, atypical production organizations and work relations, absence of social security measures and welfare legislations, negation of social standards and worker rights, denial of minimum wages and so on. Poor human capital base (in terms of education, skill and training) as well as lower mobilization status of the work force further add to the vulnerability and weaken the bargaining strength of workers in the informal sector. Thus, the sector has become a competitive and low cost device to absorb labour, which cannot be absorbed elsewhere, whereas any attempt to regulate and bring it into more effective legal and institutional framework is perceived to be impairing the labour absorbing capacity of the sector.

With the advent of globalization and resultant reorganization of production chains led to a situation where production systems are becoming increasingly atypical and non-standard, involving flexible workforce, engaged in temporary and part-time employment, which is seen largely as a measure adopted by the employers to reduce labour cost in the face of stiff competition. No doubt, it obviously indicates that these flexible workers in the new informal economy are highly vulnerable in terms of job security and social protection, as they are not

deriving any of the social protection measures stipulated in the existing labour legislations. The insecurities and vulnerabilities of these modern informal sector labour are on the rise, as there is a visible absence of worker mobilization and organized collective bargaining in these segments owing to a multitude of reasons.

The alarming expansion of informal sector, in recent times, has adversely affected employment and income security for the larger majority of the workforce, along with a marked reduction in the scale of social welfare / security programme. In our “global” cities such as Bangalore, which are being show-cased as the new faces of an affluent and vibrant India, there are lakhs of people who rely on manual labour for their own livelihood. The housemaids, security guards, construction workers, garment workers, cobblers, beedi workers, agarbatti workers, drivers and many others have a very different story to tell. Their incomes have not grown at the staggering rate of their employers; indeed adjusted for inflation their incomes have often fallen over the last two and half decades, driving them into deeper poverty.

Major Characteristics of the Unorganised Sector Workers

The unorganized labour is overwhelming in terms of its number range and therefore they are omnipresent throughout India.

As the unorganized sector suffers from cycles of excessive seasonality of employment, majority of the unorganized workers does not have stable durable avenues of employment. Even those who appear to be visibly employed are not gainfully and substantially employed, indicating the existence of disguised unemployment. The workplace is scattered and fragmented. There is no formal employer – employee relationship

In rural areas, the unorganized labour force is highly stratified on caste and community considerations. In urban areas while such considerations are much less, it cannot be said that it is altogether absent as the bulk of the unorganized workers in urban areas are basically migrant workers from rural areas.

Workers in the unorganized sector are usually subject to indebtedness and bondage as their meager income cannot meet with their livelihood needs. The unorganized workers are subject to exploitation significantly by the rest of the society. They receive poor working conditions especially wages much below that in the formal sector, even for closely comparable jobs, i.e., where labour productivity are no different. The work status is of inferior quality of work and inferior terms of employment, both remuneration and employment.

Primitive production technologies and feudal production relations are rampant in the unorganized sector, and they do not permit or encourage the workmen to imbibe and assimilate higher technologies and better production relations. Large scale ignorance and illiteracy and limited exposure to the outside world are also responsible for such poor absorption.

The unorganized workers do not receive sufficient attention from the trade unions. Inadequate and ineffective labour laws and standards relating to the unorganized sector. Though it has

been argued that most labour laws are directly and indirectly applicable to the workers in the unorganized sector also, their contribution is very negligible to the unorganized workers. In spite of the fact that not much has been done in providing social security cover to the rural poor and the unorganized labour force, the country has made some beginning in that direction. Both the central and state governments have formulated certain specific schemes to support unorganized workers which fail in meeting with the real needs and requirements of the unorganized sector labour force.

This becomes clear even when the highly proclaimed National Rural Employment Guarantee Act -2005 (NREGA), though it is a breakthrough, doesn't have common wage in different states and limits itself only to hundred day's work for those registered worker under the Act. What about the rest of the days in a year? As per this Act, the work guarantee applies in rural areas only, what about the urban poor? Looking at the recent Unorganized Sectors' Social Security Act (2008), one really wonders if there is any provision for an unorganized worker in this Act other than some guidelines about the available social security schemes in the country. How can it be called an Act unless it has the legal binding and provisions of rights to work and entitlements under it?

Here as per the Act nothing is mentioned about what constitutes appropriate and adequate social security for the vast mass of unorganized workers and their dependents, what eligibility criteria, if any, ought to be prescribed, what will be the scale of benefits that the workers and their families are entitled to receive and under what conditions, what will be the funding arrangements that must be put in positions to meet the cost of social security and so on. Aren't the unorganized workers of this country entitled to receive, minimum standards of social security and labour rights, on the scale and spread adumbrated in the relevant ILO convention drawn up more in the 1950s?



LABOUR LAW



Key Features of Labour Laws till 2020 and the Recently Enacted Reforms

Somnath Ghosh

Introduction of Social Protection and Shift in the Politics of Labour

When independent India's Constitution was drafted, social security was specially included in List III to Schedule VII of the constitution and it was made as the concurrent responsibility of the central and state governments. A number of directive principles of state policy relating to aspects of social security were incorporated in the Indian constitution. Initiatives in the form of Acts such as the Workmen's Compensation Act (1923), the Industrial Disputes Act (1947), the Employees State Insurance Act (1948), the Minimum Wages Act (1948), the Coal Mines Provident Funds and Miscellaneous Provisions Act (1948), The Employees Provident Fund and Miscellaneous Provisions Act (1952), the Maternity Benefit Act (1961), the Seamen's Provident Fund Act (1966), the Contract Labour Act (1970), the Payment of Gratuity Act (1972), the Building and Construction Workers Act (1996) etc. reveal the attention given to the organized workers to attain different kinds of social security and welfare benefits.

Historically, mobilization, electoral and mass struggles, and a broad-based alliance of poor peasants, agricultural labour and workers collectively merged into a political constituency. This was evident in traditional industries such as the agro-processing coir and cashew industry in the 1970s where issues such as mechanisation and decentralisation of production, expansion of public and cooperative sectors, minimum wage law, statutory bonuses in industry, institutionalising collective bargaining were taken up. Later, comprehensive welfare measures were extended to agricultural workers and to the informal sector work such as construction, beedi manufacture, fisherfolk, headload workers, public distribution (food), healthcare and education as part of 'social development'. These extensions took place in a changed political environment that saw a split in trade unions along political lines leading to unionisation rivalries especially in the informal sector. Public policy in support of the poor arose in the 1980s in the form of welfare funds covering headload workers (located in urban areas), fish workers, artisans, handloom and motor transport workers, clerks working with lawyers, and also in sectors such as the coir and cashew industry where women workers predominated.

In the 1990s, seven more welfare funds were added in the form of collective care arrangements which was essentially an institutional model of collective contributions made by workers, employers and the state, ensuring some social security at the end of a working life. Where

a welfare fund did not provide old-age security, pension fund allocations were made in the budget itself. However, a majority of informal sector workers, women in particular, still remained outside welfare protection. Where unions played a role in the entry into the labour market, the employers sometimes colluded with unions to restrict the number of registered workers with a section of unregistered workers who were excluded from welfare funds.

Problems with the existing laws

A central challenge to labour regulation is to provide sufficient rights and safeguards to the workforce while creating an enabling environment to facilitate growth of the firms so as to increase output. The labour laws existent currently have failed on both of these fronts due to the following reasons:

- **Numbers and Complexity of the laws:** At the union level there existed more than 40 laws and at the state level there existed more than 100 laws, this piecemeal, ad-hoc approach has complicated matters more so as many of these laws are mutually inconsistent, having different definitions of the same clauses. For example the definition of appropriate government, worker, employee establishment and wagers vary in many of the legislations to which the codes refer to. The problem of multiple laws dealing with the same subject is also a serious one. For example there are multiple laws on each of the subjects of wages, health and safety ad social security. This is major barrier in the incubation of new businesses and cause hardships to entrepreneurs. Consequently resulted in lower Ease-of-doing –business rank for India, which is a major factor controlling incoming foreign investment.
- **Poor enforcement of laws:** Many CAG reports have pointed out the labour law enforcement in India has been very weak due to which the workers have been suffering under very little protection. CAG report has pointed out the following reason for the same. 1) Delay by government in referring the labour dispute for adjudication, 2) Delay in disposal of the case. 3) delay in publication of award in the gazette, 4) Delay in implementation of the award. Moreover Economic survey 2018-19 pointed out that one in every three wage worker do not receive minimum wage prescribed by law due to lack of enforcement, the condition of the non-wage workers is much worse.
- **Constrained growth of firms:** Experts have suggested the excessive restrictions imposed on the firms worked as a disincentive to keep the firms smaller hence not achieving economies of scale model. As most labour laws apply to firms over a certain size. This threshold creates a negative incentive to keep the firm small, in order to avoid complying with the law, promoting dwarfism. 6th Economic census reported that there were 6 crore establishments in India employing 13.1 crore people but 79% of these employ less than 10 people. Moreover, Industrial Disputes Act 1947, requires firms employing 100 workers or more to obtain permission of the government before closing down, or laying off or retrenching workers, creating exit barrier.
- The restrictive labour regulations tended to promote more capital intensive industries rather than more labour intensive ones which are more suited to Indian economy as there is a labour surplus.

- Since there is a disincentive to grow the number of employs this led to hiring of more and more contractual employees the share of contractual workers in factories as a proportion to total workers grew from 26% in 2004-05 to 36% in 2017-18 while the share if hired workers fell from 74% to 64%, which has had two major impacts in labour welfare in India:
 - First it is a known fact that the social security and labour welfare of the contractual employees are not enforced to the same extent, thus they face adverse working condition.
 - It weakens the trade unions as the contractual workers are not part of the union thus degrading collective bargaining.
- Left out many new and emerging works, workers like gig workers, migrant labour, cab drivers, and house help. Labour falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. There are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages. [1]

The Second National Commission on Labour (2002) (NCL) found existing legislation to be complex, with archaic provisions and inconsistent definitions.[2] To improve ease of compliance and ensure uniformity in labour laws, the NCL recommended the consolidation of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

Simplification of labour laws

The 2nd National Commission on Labour (NCL) recommended consolidation of central labour laws. It observed that there are numerous labour laws, both at the centre and in states. Further, labour laws have been added in a piecemeal manner, which has resulted in these laws being ad-hoc, complicated, mutually inconsistent with varying definitions, and containing outdated clauses.[2] For example, there are multiple laws each on wages, industrial safety, industrial relations, and social security; some of these laws cater to different categories of workers, such as contract labour and migrant workers, and others are focused on protection of workers in specific industries, such as cine workers, construction workers, sales promotion employees, and journalists.

Further, several laws have differing definitions of common terms such as “appropriate government”, “worker”, “employee”, “establishment”, and “wages”, resulting in varied interpretation. Also, some laws contain archaic provisions and detailed instructions (e.g., the Factories Act, 1948 contains provisions for maintaining spittoons and frequency of white-washing walls).

The Commission emphasised the need to simplify and consolidate labour laws for the sake of transparency, and uniformity in definitions and approach. Since various labour laws apply to different categories of employees and across various thresholds, their consolidation would also allow for greater coverage of labour. Following the recommendations of NCL, the four Codes on wages, industrial relations, social security, and occupational safety were introduced in Parliament.

While the Codes consolidate and simplify existing laws to some extent, they fall short in some respects. For example, the Codes on occupational safety and social security continue to retain distinct provisions of each of the laws that these Codes subsume. For example, while the Occupational Safety Code contains provisions on leaves for all employees, it continues to retain additional leave entitlements for sales promotion employees (e.g. earned medical leave for 1/18th of time on duty). Similarly, while the Codes rationalise definitions of different terms to a large extent, they are not uniform in all respects.

For example, while the Codes on wages, occupational safety and social security contain the same definition of “contractor”, the code on industrial relations does not define the term. Finally, while the government stated that 40 central labour laws would be subsumed, the four Codes only replace 29 laws. The Annexure to this note lists the laws which are being subsumed by each of the Codes.

Facilitating job creation while protecting work

The 6th Economic Census (2013-14) reported that there were 5.9 crore establishments in India employing 13.1 crore people (of which 72 per cent were self-employed and 28 per cent hired at least one worker). [4] A total of 79 per cent workers were in establishments with less than ten workers. The central challenge to labour regulation is to provide sufficient rights to workers while creating an enabling environment that can facilitate firm output and growth, leading to job creation. Firms should find it easy to adapt to changing business environment and be able to change their output (and employment) levels accordingly. At the same time, workers need protection of assured minimum wages, social security, and reduction in job insecurity, health and safety standards, and a mechanism for ensuring collective bargaining rights. This would also require a labour administration that effectively manages conflicts and ensures the enforcement of rights.

It has been argued that firm sizes have remained small in India because of: (i) labour rigidity arising from the fear of having to take prior permission for retrenchment/closure even if businesses are not viable (lack of an easy exit option), and (ii) high administrative burden since multiplicity of labour laws has resulted in multiple inspections, returns and registers.[5] This has constrained growth of firms.[5] Amongst registered factories, the Annual Survey of Industries (2017-18) indicates that 47 per cent factories employ less than 20 workers, but provide only 5 per cent of employment, and 4 per cent of output.[6] Further, high administrative burden has resulted in corruption and rent-seeking.[5]

In order to get around the rigidities in hiring and firing that constrain the ability to adjust to production demands, businesses have increasingly used contract labour.[5] The share of contract workers in factories among total workers increased from 26 per cent in 2004-05 to 36 per cent in 2017-18, while the share of directly hired workers fell from 74 per cent to 64 per cent over the same period.[7],[8]

Table I: Attributes of registered factories by worker size (ASI 2017-18)

Feature	0-19	20-99	100-499	500-4999	At least 5000
per cent of total factories	47.1%	33.8%	14.3%	4.4%	0.3%
Fixed capital utilized	3.5%	8.2%	19.6%	44.7%	24.1%
Persons engaged	5.0%	18.4%	32.1%	35.9%	8.6%
Output produced	4.1%	15.3%	25.8%	40.1%	14.6%
Net value added	2.2%	11.7%	25.0%	47.5%	13.6%

Sources: Annual Survey of Industries (2017-18); PRS.

However, it has been observed that rights of contract labour to wages and social security dues have not been enforced to the same extent as that of permanent workmen and they face precarious working conditions.[2] Further, various studies have observed that labour enforcement in India has been weak and has not protected workers adequately, the success of collective bargaining has been low because of lack of recognition to bargaining agents, and the coverage of labour laws has been inadequate.[5],[9]

The Periodic Labour Force Survey Report (2018-19) indicates that 70 per cent of regular wage/salaried employees in the non-agricultural sector did not have a written contract, 54 per cent were not eligible for paid leave and 52 per cent did not have any social security benefit.[10]

Note that studies have shown that ultimately firm growth and job creation may also depend on several other key factors, which include infrastructure development, access to finance, availability of skilled manpower, boost in skill upgradation, and reduction in overall corruption. [11],[12] However, one could argue that current laws have neither benefited industries (as they have constrained firm growth) nor workers (due to lack of formalization and weak enforcement). Expert committees have made recommendations to address this issue. We discuss below various aspects of these recommendations, and the provisions in the four new labour codes.

Coverage of establishments under labour laws

Most labour laws apply to establishments over a certain size (typically 10 or over). Low numeric thresholds may create adverse incentives for establishment's sizes to remain small, in order to avoid complying with labour regulation. Further, these laws only cover the organised sector (around 7 per cent of the workforce). [9]

It has been argued that small firms may be exempted from application of various labour laws in order to reduce the compliance burden on infant industries and to promote their economic growth.[13],[14] However, low numeric thresholds may create adverse incentives for establishments sizes to remain small, in order to avoid complying with labour regulation.[13],[14]. To promote the growth of smaller establishments, some states have amended their labour laws to increase the threshold of their application. For instance, Rajasthan increased the threshold of applicability of

the Factories Act, 1948, from 10 workers to 20 workers (if power is used), and from 20 workers to 40 workers (if power is not used). The Economic Survey (2018-19) noted that increased thresholds for certain labour laws in Rajasthan resulted in an increase in growth of total output in the state and total output per factory. [9]

On the other hand, some have argued that basic provisions for enforcement of wages, provision of social security, safety at the workplace, and decent working conditions, should apply to all establishments, regardless of size.^{2,13} In this regard, the NCL had recommended a separate law for small scale units (having less than 20 workers) with less stringent provisions for conditions such as payment of wages, welfare facilities, social security, retrenchment and closure, and resolution of disputes. Further, for unorganised sector establishments (which fall outside the purview of labour laws), the National Commission for Enterprises in the Unorganised Sector (NCEUS) made a number of recommendations to address the social security and minimum conditions of work for both agricultural and non-agricultural workers and suggested two Bills – one for each sector. [15] Note that the Economic Survey (2018-19) estimates that almost 93 per cent of the total workforce is informal. [9]

The ILO (2005) notes that only 10 per cent of its member states had exempted small enterprises from labour regulation altogether. [16] Most countries adopt a mixed approach to labour regulation. For instance, health and safety laws in the US, UK, South Africa and Philippines provide universal coverage to all workers (except for domestic help in the US and UK). [17] However, certain obligations under these laws are only applicable to enterprises with employees over a certain threshold. For example, record-keeping obligations for work-related accidents in the US do not apply to establishments with less than 10 employees or in “low hazard” industries.

Thresholds for lay-off, closure and retrenchment

The Industrial Disputes Act (IDA) 1947, requires factories, mines and plantations employing 100 or more workers to obtain prior permission of the government before closing down, or laying off or retrenching workers. It has been argued that the requirement of prior permission has created an exit barrier for firms and hindered their ability to adjust labour workforce to production demands.

The Standing Committee on Labour (2009) recommended that the government consider amendments to include provisions of prior notice, adequate compensation, and other benefits for retrenched workers to balance the need for economic efficiency of businesses. [18] NCL noted that unviable firms should be allowed to close while also ensuring prior scrutiny of grounds of closure and reasons for loss of viability. Therefore, it recommended that the requirement of prior permission may be retained for closure of establishments which hire 300 or more workers and be made applicable to all types of establishments. However, the requirement for prior permission should be removed for lay off and retrenchment. To balance the interests of workers, adequate notice and compensation must be provided, there must be consultation with the representatives of the workers and judicial recourse must be provided against the closure.

It also recommended that the government consider a contribution-based unemployment insurance (in establishments covered by the Employees' Provident Fund Act) to take care of retrenched workers or those whose establishments have been closed. The benefit would be payable for one year or till re-employment, whichever is earlier.

The recommendations of NCL on retrenchment, closure and lay-offs are summarized below:

Table 2: Comparison of IDA provisions and changes proposed by NCL for lay-offs, retrenchment and closure.

Feature	ID Act 1947	NCL Recommendations
Prior Permission	Required for lay-offs, closure and retrenchment in establishments with 100 or more workers.	Not required for lay-offs and retrenchment. Required for closure in establishments with 300 or more workers
Clearance of dues as a pre-condition	No	Yes
Notice period	One month	Two months
Compensation	At the rate of 15 days (for closure and retrenchment) 50 per cent of wages for lay-offs	Based on whether enterprise is profitable or loss making: Closure for establishments with more than 100 workers: 30 days (for sick enterprises with three years' losses and filed for bankruptcy/winding up) and 45 days (for profit making enterprises) Retrenchment for establishments with more than 100 workers: 45 days (for sick enterprises looking to become viable by retrenching) and 60 days (for profit making ones) 50 per cent of above to be paid for enterprises with 100 or less workers. 50 per cent of wages for lay-offs. Government approval to be obtained in establishments with 300 or more workers if lay-off exceeds one month.

Sources: Industrial Disputes Act, 1947; 2nd NCL Report; PRS.

Some states have amended the threshold provision of the IDA 1947. For example, Rajasthan amended the Act in 2014 to increase the threshold from 100 workers to 300 workers. A report of the ILO (2020) suggested that only 22 countries (including India, Pakistan and Thailand) require collective dismissals to be authorized by public authorities. [19] Of these, seven countries (including India, Sri Lanka and Colombia) do not require consultation with workers' representatives. On the other hand, most countries require notification to both workers' representatives and competent authorities, but no prior permission.

Provisions of the Code: The Industrial Relations Code increases the threshold to 300 workers while retaining the notice and compensation requirements specified under the IDA 1947. It allows the government to further increase the threshold by notification.

Labour Administration

All labour laws have distinct compliance requirements for employing units. Multiplicity of labour laws has resulted in multiple inspections, returns and registers. One private study reported that states have 423 labour-related Acts, 31,605 compliances and 2,913 related filings. [20] On the other hand, it has been argued that the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behavior of inspectors. Further, dispute resolution processes need reform to make them more effective. Various committees proposed reforms to tackle three types of issues: compliance burden, enforcement of laws, and resolution of disputes.

Reduce compliance burden

NCL recommended moving towards a regime of self-certification with selective inspections based on returns submitted by the employing units (with the exception of routine inspections where conditions of safety are concerned). [2] However, routine inspections may be retained in the unorganised sector to protect worker interests. To make the enforcement machinery accountable, at least 10 per cent check of all inspections should be done by superior officers at all levels. Certain states such as Gujarat, Punjab and Haryana have already moved to self-certification for certain laws. One Committee (Chair: Anwar Huda, Member, Planning Commission) endorsed a regime of third-party inspections, with regulatory compliances certified by external and recognized agencies, accompanied with a system of joint inspections and annual calendars of inspections. [21] Note however that India has ratified ILO Convention No.81 which emphasizes on the labour inspector's right to enter premises freely without prior notice to ensure compliance of labour laws. In view of this, a Working Group constituted under the Planning Commission (for 2012-17) recommended that complaint-based inspections and self-certification can complement the present system without substituting it. [22]

A 1988 Act allows establishments with up to 19 workers and up to 40 workers to submit combined annual returns and a unified register under 16 central laws (including laws which cover wages, factories and contract labour); NCL recommended extending its application to all establishments in order to simplify registers and returns required to be maintained/filed under different laws. [23] Further, offences of a technical nature, such as failure to maintain registers or file returns may provide for compounding (i.e. settlement) instead of prosecution.

Improve enforcement of laws

Various Committees have recommended strengthening the enforcement machinery by increasing manpower and improving labour enforcement infrastructure. {22, 24} The NCL recommended upgradation of the infrastructure, training and facilities available to the enforcement machinery to improve their efficiency. Further, in the context of the state labour

machinery, it recommended that the central government determine norms for improving the inspector ratio and infrastructure of labour departments. Various committees have also noted that existing penalties for offences are inadequate and do not act a deterrent. [2, 22] They have recommended that the penalties for various offences may be graded based on the seriousness of offence, the number of times the offence has been committed, and the capacity to pay.

Trade Unions - Reforms Proposed

As of 2015, there were 12,420 registered trade unions in India with an average membership of 1,883 persons per union, totaling to 23.4 million workers [31]. This was a fraction, not even one in eight of all non-agricultural workers. A large number of unions within an establishment hampers the process of collective bargaining as it is difficult to reach a settlement with all of them. Employers may also seek legitimacy for a favorable settlement by reaching an agreement with a compliant union though it may not have the support of a majority of workers. The NCL recommended giving ‘recognition’ to a union with the support of 66 per cent members. If no union has 66 per cent support, then unions that have the support of more than 25 per cent should be given proportionate representation on a negotiation college.

The vote for recognition may be cast on the basis of a regular subscription to a union through deduction from the wages of a worker – this system of regular payment of subscription would verify relative strength of different unions on a continuing basis. In establishments with less than 300 workers, the mode of identifying the negotiating union may be determined by Labour Relations Commissions (which may include secret ballot) to mitigate any possibility of victimization by the management of the company. The Standing Committee on Labour (2009) also endorsed compulsory recognition of trade unions. [18]

Further, to counter low unionization in the unorganised sector, the recommended that a specific provision may be made to enable workers in the unorganised sector to form trade unions (with any number of workers) and get them registered even where an employer-employee relationship does not exist or is difficult to establish. On the question of participation of outsider, the NCL noted that it would have been desirable if the Trade Unions Act had provided for a ceiling on the total number of trade unions of which an ‘outsider’ can be a member.

Strengthen peaceful resolution of disputes

The NCL recommended a system of labour courts, lok adalats and Labour Relations Commissions (LRCs) as the integrated adjudicatory system in all labour matters (including wages, social security and welfare). LRCs would act as appellate bodies to hear appeals against the decisions of the labour courts. They will be headed by judges (or lawyers qualified to be judges), and include representatives of employers, workers, economists, as members.

In a performance audit (2001-2006) conducted by the Comptroller and Auditor General of India (CAG) in central establishments and establishments in Delhi, Kolkata, Mumbai and

Chennai, the CAG noted that the effectiveness of the adjudication process was diluted by various factors, such as

- (i) routine delays by the government in referring labour disputes for adjudication,
- (ii) delay in disposal of cases (35-57 per cent of the cases taken up by the labour courts between 2001 and 2006 in the four metros were pending as of 2007),
- (iii) delay in publication of court awards in the gazette and
- (iv) delay in implementation of awards.[25] In this context, the CAG and NCL recommended that:
 - a. the precondition of requiring the government to refer disputes to the labour courts should be dispensed with,
 - b. cases should be decided within three hearings (with extensions thereafter for recorded reasons),
 - c. the award should become enforceable without waiting for its publication in the official gazette, and
 - d. a mechanism for timely implementation of awards should be set up in both central and state sphere.

The NCL also noted that several laws (e.g., payment of gratuity) only permit the inspector to file a complaint. It recommended that any aggrieved person (or his trade union) should also be empowered to file a complaint directly.

Contract Labour – Reforms Proposed Over the Years

It has been argued that labour compliances and economic considerations have resulted in increased use of contract labour. The share of contract workers in factories among total workers increased from 26 per cent in 2004-05 to 36 per cent in 2017-18, while the share of directly hired workers fell from 74 per cent to 64 per cent over the same period.^{7,8} This flexibility has come at a cost of increase vulnerability since contract labour have been denied basic protections (such as assured wages) and are not entitled to be regularized in cases where contract labour is prohibited by the government.[26]

The NCL noted that organisations must have the flexibility to adjust their workforce based on economic efficiency. Currently, the Contract Labour (Regulation and Abolition) Act, 1970 empowers the government to prohibit employment of contract labour in some cases including where: (i) the work is of a perennial nature, or (ii) the work performed by contract workers is necessary for the business carried out by the establishment, or (iii) the same work is carried out by regular workmen in the establishment.

In 2001, the Supreme Court held that even if the use of contract labour is prohibited in an establishment, contract workers do not have the right to be regularized automatically in the workforce. [26] This has resulted in employers being able to hire contract labour more

freely. To provide further flexibility, the NCL recommended allowing contract labour to be used in core work of the establishment if there is sporadic seasonal demand. Further, it recommended delineating between core and non-core work in an establishment and defining the type of work for which contract labour may be hired. Note that Andhra Pradesh passed amendments to the law in 2003 which prohibited contract labour in core activities and specified a list of non-core activities where the prohibition would not apply (such as sanitation and security services). It also permitted employment of contract labour for any sudden increase in work in the core activities of a firm (to be completed in a specified period). As per ILO (2016), countries such as Indonesia and Brazil also limit the use of contract workers in core activities.[27] Further, China restricts the use of contract workers in the total workforce to a limit fixed by regulation (fixed at 10 per cent of workforce as of 2014).

However, the NCL also recognized that contract labour suffers from lack of job security and social security, low wages and suppression of collective bargaining rights. For example, in a compliance audit (2017) of contract labour working for the railways, the CAG noted that in a significant number of selected cases, the Railways did not furnish the requested records which suggested poor compliance.[28] Of the cases where records were shared, it was observed that licenses were not obtained by contractors in 37 per cent cases, minimum wages were not paid in 28 per cent cases, ESI registration was only obtained in 75 per cent cases, and no inspections were conducted. The CAG recommendations included: (i) awarding contracts to agencies which are registered with the labour department, EPFO or ESIC, etc, and (ii) prescribing a comprehensive compliance checklist before clearing contractor bills.

To protect the rights of contract workers, NCL recommended: (i) remunerating contract workers at the same rate as regular workers for similar work (and if such worker does not exist, at the lowest salary of workers in a comparable skill grade), (ii) ensuring responsibility of the principal employer to extend social security and other benefits to contract workers, and (iii) not hiring workers as casual or temporary workers against permanent posts for more than two years. Note that the central rules notified under the Act have always required wage parity between regular and contract workers for similar work.

However, the Supreme Court (2009) interpreted this to mean that the employer can consider various factors such as skill, nature of work, reliability and responsibility of workers in deciding whether similar work is done by the two categories of workers.[29]

Since 2018, the central government has also introduced provisions for fixed term employment in central sphere establishments. [30] Fixed term employment refers to workers employed for a fixed duration based on a contract signed between the worker and the employer. This allows employers to manage variations in production to cater to a short spike in demand (for example, in response to a contract to supply goods) without committing to a higher level of labour force. This also provides a greater level of job security to workers than contract workers, though such security would be lower than that of the permanent employees. However, fear that the fixed term contract may not be renewed may deter them from raising issues with the management. We have summarized the detailed pros and cons of hiring fixed term labour in our Legislative Brief on the Industrial Relations Code, 2019.



Laws Applicable to the Migrant and Informal Sector Workers

Somnath Ghosh and Navin T.

There are four key labour legislations that concern us here; one on migrant workers, two on building and other construction workers, and the last on unorganised workers. Originally these laws were passed in 1979, 1996 and 2008 but these have been subsumed in the new labour codes: the migrant workers in The Occupational Safety, Health and Working Conditions Code, 2020 (OSHWC), and the other three in The Code on Social Security, 2020 (SS).

We shall however dwell on the earlier laws, for three reasons. First, the new labour codes have still to come in effect. Second, there's not much substantial changes so far as legislation with respect to unorganized workers are concerned and where they do we have engaged ourselves. Finally – and this is the most important – whatever we have discussed about the unorganized workers has been after all in the context of the earlier laws.

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

This Act applies to

- (a) every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months;
- (b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

Section 2(e) defines an “inter-State migrant workman” as any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;

Chapter II deals with the registration of establishments employing inter-state migrant workmen. Sections 4 and 5 of this chapter deal with the registration and revocation of enterprises applicable under this Act. Ordinarily, this provision alone should serve both as a database as well monitoring mechanism for the Act’s implementation. Section 6 takes this forward by prohibiting the employment of inter-State migrant workmen without registration.

Chapter III lays down elaborate provisions for licensing of contractors. Section 8 mandates that labour contractors who export workers to other states have to register at both ends and take licences. Those who employ more than five migrant workers are duty bound to provide proper wages, housing, medical facilities, pass-books, displacement allowance and anything else that the appropriate government may deem fit. And in case of transgression, section 10 provides for the revocation, suspension and amendment of licences.

Chapter IV deals with the duties and obligations of contractors. While this chapter has only one section (section 12), through various sub-sections and sub-clauses, it is quite comprehensive. Apart from complying with various provisions of the Act and providing prompt and periodic information to the state in prescribed formats, the contractor is mandated to provide to the migrant worker a pass book affixed with a passport size photograph of the workman indicating the name and place of the establishment wherein the workman is employed; the period of employment; the proposed rates and modes of payment of wages; the displacement allowance payable; the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed in the contract of employment; deductions made; and such other particulars as may be prescribed.

Chapter V, over 6 sections, deals with wages, welfare and other facilities to inter-state migrant workmen. Section 13 prescribes that the wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman in an enterprise shall be the same as those applicable to such other workman performing the same or similar kind of work, provided that an inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.

Section 14 provides for an additional and non-refundable displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy-five rupees, whichever is higher. The Act also provides for journey allowance and other facilities like suitable conditions of work having regard to the fact that they are required to work in a State different from their own State; suitable residential accommodation to such workmen during the period of their employment; prescribed medical facilities to the workmen free of charge; such protective clothing as may be prescribed; and in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

Section 17 with three sub-sections, addresses the issue of actual disbursal of wages. While the contractor is responsible for payment of wages to each inter-State migrant workman employed by him, it is the duty of the principle employer to nominate a representative to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages by the contractor.

After devoting a whole chapter (Chapter VI) to Inspecting Staff, Sections 25, 26 and 27 under Chapter VII deal with contravention of provisions regarding employment of inter-State migrant workmen. Section 25 states that whoever contravenes any provisions of this Act or of any rules made thereunder regulating the employment of inter-State migrant workmen,

or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

This Act, more popularly known as BOCW Act, is more comprehensive than the previous one on inter-state migrant workers. While certain aspects like registration of premises, issue of identity card, pass books and reporting mechanisms are similar, what distinguishes BOCW Act is the provision for the creation of specific fund for the safety, health and welfare measures of BOCW. Ancillary to this is a Board to implement the measures, and advisory and expert committees to help Board functioning.

It is in Chapter IV dealing with registration of building workers as beneficiaries that this law makes a departure. Section 11 lays down that “every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act”, and Section 12 with many sub-sections lays down the modalities of registration. There are two distinguishing features with respect to registration:

- (a) the building worker should be between 18 and 60 years of age and should have engaged in building activity for not less than ninety days during the preceding twelve months to be eligible for registration as a beneficiary under this Act and, conversely, his registration will cease when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year; and
- (b) a building worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government; and conversely, when a beneficiary has not paid his contribution for a continuous period of not less than one year, he shall cease to be a beneficiary.

The law makes detailed provisions for establishment of advisory and expert committees, constitution and functioning of welfare boards, apart from the usual provisions on hours of work, working conditions, crèches, canteens, drinking water, latrines and urinals, safety committees and safety measures. But it needs to be stressed that from the BOC Workers' perspective, the defining element is their access to welfare funds which in turn depends upon the validity of their registration.

While the BOCW Act does make provision for a fund to which, as we noted, the workers have to continuously contribute to maintain the validity of their registration as well as access to the fund, it would be clear that the leviathan of advisory and expert committees and welfare board cannot be maintained by the meagre contribution of BOC workers. It is for this reason that an enabling legislation had to be notified the same day but which was deemed to take effect earlier than BOCW Act, to which we now turn.

The Building and Other Construction Workers' Welfare Cess Act, 1996

This Act was passed “to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers’ Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996”.

The BOCWWCAct is a short legislation of 15 short sections of about 2000 words. Incidentally, while the objective of the Act was to provide for the levy and collection of a cess, nowhere does the Act mention even in passing that the cess collected was meant for the welfare of BOC workers! So, we are left with only one relevant section, Section 3, which concerns with levy and collection of cess. Section 3(1) lays down that a cess would be levied and collected for the purposes of the BOWC Act, 1996, “at such rate not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.”

Other sections are purely technical in nature and, while important for maintenance purposes, have little to do with the lives of BOCW. These relate to furnishing of returns, assessment of cess, power to exempt, power of entry, interest payable on delay in payment of cess, penalty for non-payment of cess within the specified time, recovery of amount due under the Act, appeals, penalty, offences by companies, power to make rules, and repeal and saving.

While we will deal with the implementation aspect of the BOCW Act, 1996 in a separate section, the Occupational Safety, Health and Working Conditions Code, 2020 which subsumes the BOCW Act of 1996 has envisaged some changes which will lead to the closure of all the 36 state BOCW board, cancellation of about four crore registrations of construction workers as beneficiaries. The Secretary of the Campaign Committee of Construction Workers said that the “construction workers are already entitled to social security from BOCW boards which is adequately funded by a cess on the building industry and BOCW’s registration fees. On an average construction workers barely get work for 15 days in a month and earn roughly a quarter of the monthly minimum wage. And it will impact them severely, if they would be asked to pay a fixed per cent of their monthly wages into social security fund.

“The system of collecting a minimal cess of 1-2 per cent of total construction cost from a construction establishment, as per the BOCW Cess Act, 1996, is the best method for funding their social security, he added and that “the closure of BOCW boards will lead to cancellation of lakhs of pensions which are being paid to older workers and disabled workers in different states and cancellation of millions of freeships being paid as education assistance to the children of construction workers besides cancellation of several other benefits including maternity benefits” (Economic Times, July 17, 2019)

Moreover, under draft rules framed pitch for “self-assessment” of Cess. This marks a break with legal tradition in the construction sector, wherein till now an assessing officer was authorised to indicate the cess amount payable by the employer. A cess that is not less than 1% of the cost of construction, “shall be paid by an employer in advance, on the basis of his

self-assessment duly certified by Chartered Engineer at the time of approval or before the commencement of the work,” stated the draft rules of the Code on Social Security, 2020, notified by Union Ministry of Labour and Employment on Sunday, November 15.

The draft labour rules have been notified by the Centre just days ahead of a general strike call by 10 central trade unions and several federations and associations of workers, including those in the unorganised sector, on November 26.

The draft rules, which elaborate the procedure for self-calculation and payment of cess, mark a break with the legal tradition in the construction sector, wherein earlier, under The Building and Other Construction Workers’ Welfare (BOCW) Cess Rules, 1998, an assessing officer was authorised to indicate the cess amount payable by the employer, after scrutinising the information furnished by the latter.

Furthermore, the rate of interest for delayed payment of cess has been reduced from 2% every month or part of a month to 1%, thereby giving a “breather” to the offenders.

It may be noted that the 2020 Code on Social Security already reduces the coverage of the legal provisions under it by not including any construction work that employs less than 10 workers or any project for residential purposes that is worth up to Rs. 50 lakh. Such a threshold amount was Rs. 10 lakh under the earlier BOCW Act, which also required all the establishments – irrespective of the number of workers employed – to get registered under it. Further, experts feel, relaxing the threshold limit (less than 10 workers) for cess collection on residential projects would also put “negative pressure” on the registration of construction workers employed for such activities with the welfare board.

Finally, the OSH Code robs vulnerable construction workers of the legal shield that was meant to protect them. As many as 64 clauses of the 1996 BOCW Act have now been reduced to only nine under the social security code; while 15 of those under the 1998 rules are now down to only seven.

The Unorganised Workers’ Social Security Act, 2008

This is the last legislation we consider for our purposes. This is essentially an outcome of Arjun Sengupta chaired massive NCEUS Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector submitted in 2007, although it falls far short in covering the entire gamut of issues raised. Below, we present the salient aspects of the Act:

- According to section 2(m), an unorganised worker “means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts pertaining to welfare Schemes as mentioned in Schedule-II of this Act”. And Schedule II mentions the following six Acts: The Workmen’s Compensation Act, 1923; The Industrial Disputes Act, 1947; The Employees’ State Insurance Act, 1948; The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952; The Maternity Benefit Act, 1961; and The Payment of Gratuity Act, 1972. The situation has remained exactly the same under The Code on Social Security, 2020 vide section 2(88).

- In real terms, what this means is that the unorganised workers are not entitled to the benefits under ESI that is available to workers in establishments employing 10 or more people; nor EPF, Employees' pension Scheme, Employees Deposit Linked Insurance Scheme or gratuity that workers working in establishments employing 20 or more.
- Section 3(l) provides for formulation of schemes by the Central Government for different sections of unorganised workers on matters relating to (a) life and disability cover; (b) health and maternity benefits; (c) old age protection (d) any other benefit as may be determined by the Central Government.
- Section 4 relates to funding of the schemes formulated by Central Government
- Section 5 envisages constitution of National Social Security Board. The National Board would recommend the Central Government suitable schemes for different sections of unorganised workers; monitor implementation of schemes and advise the Central Government on matters arising out of the administration of the Act
- Section 6 has provision for constitution of similar Boards at the State level
- Section 8 prescribes record keeping functions by the District Administration. For this purpose, the State Government may direct (a) the District Panchayat in rural areas; and (b) the Urban Local Bodies in urban areas as to perform such functions.
- Section 9 provides for setting up of Workers' Facilitation Centre to (a) disseminate information on social security schemes available to them (b) facilitate registration of workers by the district administration and enrollment of unorganised workers.
- Section 10 provides for eligibility criteria for registration as also the procedure for registration under the Act.
- Sections 11-17 contain miscellaneous provisions for implementing the Act.

Excerpts from Rules framed under the Act

- The Central Government in 2017, converged the social security scheme of Aam Aadmi Bima Yojana (AABY) with Pradhan Mantri Jeevan Jyoti Bima Yojana/ Pradhan Mantri Suraksha Bima Yojana. Aam Aadmi Bima Yojana (AABY) to provide life and disability coverage to the unorganized workers, depending upon their eligibility. The converged PMJJBY/OMSBY scheme is for the beneficiaries in the age group 18-50 years and provides for coverage of Rs. 2 lakhs, in case of natural death and Rs. 4 lakhs in case of accidental death.
- The Converged schemes are being implemented through Life Insurance Corporation of India. A premium of Rs. 342(330+12) per annum would be required for the converged schemes. The premium would be shared between the State Government and Central Government in the ratio of 50:50. This Ministry has urged all the State/UT Governments to give their financial concurrence to cover 50 percent of the premium for all eligible unorganised workers. Around 2.80 crore beneficiaries have been covered under this scheme, as per data furnished by LIC, during the current year 2018-19.

- The various social security schemes are currently being run by different Ministries/ Departments under Schedule II of the “Unorganized Workers Social Security Act (UWSSA), 2008” for welfare of the unorganized workers and agencies at the State level, with different eligibility criteria, enrolment processes and benefits there under, etc.

- i) Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development);
- ii) National Family Benefit Scheme (Ministry of Rural Development);
- iii) Janani Suraksha Yojana (Ministry of Health and Family Welfare);
- iv) Handloom Weavers’ Comprehensive Welfare Scheme (Ministry of Textiles);
- v) Handicraft Artisans’ Comprehensive Welfare Scheme (Ministry of Textiles);
- vi) Pension to Master Craft Persons (Ministry of Textiles);
- vii) National Scheme for Welfare of Fishermen and Training and Extension (Department of Animal Husbandry, Dairying & Fisheries);
- viii) Aam Aadmi Bima Yojana (Ministry of Labour and Employment); (now converged with PMJJBY/PMSBY)
- ix) Rashtriya Swasthya Bima Yojana (Ministry of Health and Family Welfare).

While we will examine the implementation aspects of the 2008 Act in a later section, it may be worthwhile to check to what extent the Code on Social Security, 2020 (CSS) which subsumes the 2008 Act will impact the lives of unorganized workers. Chapter IX of CSS does envisage welfare schemes for the unorganised workers.

As per section 109(1), “the central government shall frame and notify, from time to time, suitable schemes for unorganised workers on matters relating to (i) life and disability cover; (ii) health and maternity benefits, (iii) old age protection; (iv) education; and (v) any other benefits as may be determined by the Central Government”. And as per section 109(2), the “State Governments shall frame and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to (i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill upgradation of workers; (vi) funeral assistance; and (vii) old age homes”.

That is not all. Sub-section (4) lays down that “every scheme notified by the Central Government under sub-section (1) shall provide for such matters that are necessary for the efficient implementation of the scheme including matters relating to... (i) scope of the scheme; (ii) authority to implement the scheme; (iii) beneficiaries of the scheme; (iv) resources of the scheme; (v) agency or agencies that will implement the scheme; (vi) redressal of grievances; and (vii) any other relevant matter.

Once again, all the above provisions in the Social Security Code of 2020 as enumerated in the above two paragraphs is nothing new, as sections 3 and 4 of The Unorganised Workers’ Social Security Act, 2008 had laid down precisely these aspects over a decade ago. The criticism then

and now remains the same: legislative power to formulate substantive provisions remained in the executive domain - which means any future change in many substantive provisions of the Code could be made through executive decisions by bypassing the Parliament and other stakeholders. But the real problem with the current Code is that it would make redundant many sector-specific schemes that have been functioning reasonably well so far, such as beedi making, mining etc., providing robust health, education and other benefits and also having legal backing. Moreover, several sector-specific cesses were withdrawn in 2016 and 2017 (except the one for building workers).

Implementation Characterized by Rigidity and Ineptitude

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act was passed forty-one years ago in 1979, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act in 1996 and The Unorganised Workers' Social Security Act passed on the last day of December 2008 came into effect in 2009. If decades after passage of these Acts, various welfare measures had been truly in place, then post lockdown tens of thousands of migrant workers wouldn't have trudged hundreds - and in some cases, thousands of kilometers – to reach home. Perhaps it is symptomatic of the times we live in that the Solicitor General of India reportedly said, "there is no person walking on the roads in an attempt to reach his/her home towns/villages" while filing an affidavit on behalf of, none other than, the Union of India! This happened in the context of a petitioner seeking to mitigate the misery of thousands of migrants who were walking long distances on highways to go to their villages because there were no jobs, no place to stay, and no money to buy food, and no reliable means of transport (Chhokar, 2020).

Then on 5th June 2020, the National Human Rights Commission (NHRC), in an intervention application, drew the Supreme Court's attention to the 41-year-old law on inter-state migrants that could have safeguarded the interests of migrant workers and therefore averted the tragedy had it been implemented effectively.

Moreover, according to experts, less than 5 per cent of the migrant workers are enrolled with government agencies, with most inter-state workmen not even aware of their rights. It is held that "it is never the lack of legislation but the lack of will, efficacy and implementation of the law that fails it, and failure of the government and the executive to enforce the Act has left it ineffective" (Sinha, 2020)

It is also symptomatic that things didn't improve thereafter. As an extensive report of ActionAid revealed, months after the lockdown was lifted informal sector workers continued to struggle with low wages and high debts (Pal, 2020).

It is also held that the full and proper implementation of this law would have meant that state governments had complete details of inter-state migrant workmen coming through contractors within their states. While this would still leave out migrants who move across states on their own, a large segment would be automatically registered due to the requirements of the Act. States would consequently have been better prepared to take steps to protect such workmen during this lockdown. However, almost no state seems to have implemented this law in letter and spirit.

Some observers hold that since the Act is barely implemented, it exists as another law that potentially provides rent-seeking opportunities to enterprising government inspectors while failing in its main objective. Another consequence of weak implementation is the absence of government preparedness and the consequent failure in preventing genuine hardships for vulnerable groups (see Krishnan, et. al., *The Indian Express*, May 9, 2020). They further hold not only does this raise questions about the utility of such well-meaning but impractical laws, it also highlights the lack of state capacity to enforce such provisions. To implement this law alone, government inspectors would not only have to maintain records of inter-state workmen, but also verify whether all the other requirements regarding wages, allowances, accommodation and health care are complied with.

But it is difficult to agree with them that the primary reason for this seems to be the onerous compliance requirements set out in the law. The argument that the law not only requires equal pay for inter-state workmen, but also requires other social protection like payments of different allowances, and requirements that contractors provide accommodation and healthcare for such workmen would make their employment significantly more expensive than intra-state workmen, doesn't hold water. After all, contractors would be the last people to source workers from other states and herd them to work in establishments in other states if the cheaper alternative of locating local labour – or even intra-state migrant workers – was available. So, having done that, it becomes incumbent to provide journey allowance – which is after all a one-time expense – and shanties that go for living quarters.

Further, the implementation of BOCW Act, 1996 raises questions of both bureaucratic sloth as well abdication of fiduciary accountability. For example, in 2018, a case came up in the Supreme Court in which it emerged that while more than Rs 37,400 crore had been collected for the benefit of construction workers, but only about Rs. 9,500 crore had been utilized for their benefit. But that's not all. Justice Lokur was constrained to observe, "no state government and no UT seems willing to fully adhere to and abide by (or is perhaps even capable of fully adhering to and abiding by) two (relevant) laws", namely, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996, (Cess Act). A worse comment was to follow. Failing to get the exact figure of funds collected so far through the Cess, the top court said that "it is quite shocking that even the CAG does not have all the figures and whatever figures are available, may not be reliable".

But it is not just the lack of capacity or competence of the bureaucracy to deliver. Even the minimum ethical standards needed to safeguard the interests of the very people they are appointed to serve is missing. While the bureaucracy can be variously officious, disdainful, exploitative and corrupt toward those who need its service, it readily genuflects to political masters to divert funds they hold in trust. Recently therefore, in September 2020, trade unions led a protest against the YSRCP government for diverting Rs 450 crore from the Andhra Pradesh Building and Other Construction Workers Welfare Board (APBOCWW) for other state schemes instead of utilising the funds for construction workers.

This is in spite of the advisory issued on 24 March 2020 by Union Minister of State, I/C, Labour and Employment to all Chief Ministers/ LGs of all the States/UTs. In the advisory, under Section 60 of the Building and Other Construction Workers Act, 1996 all State Governments/UTs have been advised to transfer funds in the account of construction workers through DBT mode from the Cess fund collected by the Labour Welfare Boards under the BOCW Cess Act. About Rs 52,000 crore is available as cess fund and about 3.5 crore construction workers are registered with these Construction Welfare Boards. Earlier too, the previous Telugu Desam Party government had utilised about Rs 600 crore from the construction workers' fund for other purposes.

There are of course, some bright spots. Post Covid havoc, on March 24, 2020, Himachal Pradesh announced Rs 30 crore relief for construction workers. But the case of Karnataka is the more typical. Even before Covid-19 had struck the country, a huge corpus remained unspent with the Karnataka Building and Other Construction Workers' Welfare Board could finally be used for the purpose it is meant. The state government has started efforts to create a roadmap to use Rs 8,500 crore accumulated with the Board over the past few years.

Although the corpus collected over the years is huge, the government has not taken up major efforts on spending it. Data show that about Rs 641 crore has been spent on 5.75-lakh construction workers and their families in the past eight years. There are about 21.62 lakh construction workers in Karnataka.

In fact, the Labour Department also courted controversy when a senior IAS officer offered to divert a portion of funds to the state government's flood relief work last September. The labour secretary had made the pitch following chief minister BS Yediyurappa's direction to heads of departments to mobilise funds for mitigation. The department withdrew the plan after it came under fire. The Supreme Court is also monitoring the state government's utilisation of Welfare Board funds.

Finally, beyond the inter-state migrants workmen or BOC workers, there still remains a far larger mass of unorganized workers that the state tried to address through the 2008 Act. We have already noted earlier the PLFS data and CMIE data indicating large scale unemployment even before Covid. However, Bhandari and Dubey's study referred to earlier does indicate the rise of formal employment. But we now also know that more regular-income labour are denied social security before Covid-19 hit India (Jha, 2020):

"More than half the workers in India (51.9 per cent), who were earning regular income, had no social security net in 2018-19. The share of such workers went up. The labour market became more vulnerable a year before the coronavirus pandemic hit India as the share of unorganised sector workers rose, official data released on Thursday showed. While the share of workers earning regular salary went up in 2018-19 compared to 2017-18, the proportion of such hands without any social security benefits also increased pointing towards continued trend of informalisation, experts pointed out."

It is not difficult to figure out the reasons for the dismal condition of the migrant workers. First is the very nature of their employment. Considering their high open unemployment

status (Rodgers, op. cit.) the unorganised workers are scattered in vast number of enterprises that are mostly small and unregulated. They precariously hold on to whatever intermittent employment they can find, often moving from one site or employer to another. Their uppermost concern is not to lose the day's wage opportunity. Such uncertainty - and the vulnerability that goes with it - dampens whatever enthusiasm the unorganised worker may muster to knock at the doors of state machinery to get registered for possible benefits about which he has little idea and even lesser hope of receiving.

The dispersed and precariousness of their work life is compounded by their lack of organization. In our opinion, this is the most important factor. Even a novice industrial relations student will point out that three things. First, all over the world it is only when workers have organized in trade unions and waged long-drawn struggle, have they received any benefits. Second, labour legislation is essentially welfare legislation reflecting social necessity as well the acceptance of unequal bargaining power of unions and labour therefore needs protective legislation. Finally, labour can ask for additional benefits when jobs exist in the first place. It has been quite some time since one of the foremost industrial relations scholar and field researcher provided detailed accounts of how mainstream trade union leaders had failed to adequately respond to work related issues induced by changes in the macroeconomic environment and management strategies in the organized sector (Ramaswamy, 1989). Thirty years down the line, trade unions have become more enfeebled, if not irrelevant.



Understanding the New Labour Codes

Heena Zuni Pandit and Navin T.

In 2019, the Ministry of Labour and Employment introduced four Bills on labour codes to consolidate 29 central laws. These Codes regulate: (i) Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions. While the Code on Wages, 2019 has been passed by Parliament, Bills on the other three areas were referred to the Standing Committee on Labour. The Standing Committee submitted its reports on all three Bills.[3] The government replaced these Bills with new ones in September 2020.

The Parliament of India passed the four labour code bills –

- the Occupational Safety, Health and Working Conditions Code, 2020;
- the Industrial Relations Code, 2020;
- the Code on Social Security, 2020 and
- the Wage Code 2020

merging 24 central labour laws in a major boost to labour reforms. The government has now merged 29 central laws into four codes. In August 2019, Parliament had passed the first of the codes, the Wage Code.

The Industrial Relations Code, 2020, bring new rules for hiring and firing of labour in mid-sized and large industries, making retrenchment easier. This effectively brings the north American hire-and-fire model to the Indian hinterland economy in the hope that businesses recoup and add more jobs on a net basis. The Codes replace the following 29 central Acts. Table 3 lists the Acts which are being subsumed by the four labour codes.

Table 3: The Acts which are being subsumed by the four labour codes

Labour Codes	Acts being subsumed
Code on Wages, 2019	<ul style="list-style-type: none"> ■ Payment of Wages Act, 1936; ■ Minimum Wages Act, 1948; ■ Payment of Bonus Act, 1965; and ■ Equal Remuneration Act, 1976

Occupational Safety, Health and Working Conditions Code, 2019	<ul style="list-style-type: none"> ■ Factories Act, 1948; ■ Mines Act, 1952; ■ Dock Workers (Safety, Health and Welfare) Act, 1986; ■ Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; ■ Plantations Labour Act, 1951; ■ Contract Labour (Regulation and Abolition) Act, 1970; ■ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; ■ Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; ■ Working Journalist (Fixation of Rates of Wages) Act, 1958; ■ Motor Transport Workers Act, 1961; ■ Sales Promotion Employees (Condition of Service) Act, 1976; ■ Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and ■ Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
Industrial Relations Code, 2019	<ul style="list-style-type: none"> ■ Trade Unions Act, 1926; ■ Industrial Employment (Standing Orders) Act, 1946, and ■ Industrial Disputes Act, 1947
Code on Social Security, 2019	<ul style="list-style-type: none"> ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952; ■ Employees' State Insurance Act, 1948; ■ Employees' Compensation Act, 1923; ■ Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; ■ Maternity Benefit Act, 1961; ■ Payment of Gratuity Act, 1972; ■ Cine-workers Welfare Fund Act, 1981; ■ Building and Other Construction Workers' Welfare Cess Act, 1996; and ■ Unorganised Workers Social Security Act, 2008

Sources: Existing Central Acts; PRS India.

Table 4 lists some Acts which regulate some aspects of labour but have not been subsumed by the Codes.

Table 4: Some Labour Laws that have not been subsumed by the new Labour Codes

Additional Central Laws	Description of the Act
Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Establishments) Act, 1988	Allows establishments with up to 19 workers and up to 40 workers to submit combined annual returns and unified registers under 16 central laws (covering wages, factories and contract labour)
Apprentices Act, 1961	Provides for the regulation of training of apprentices.
Bonded Labour System (Abolition) Act, 1976	Provides for the abolition of the bonded labour system.
Child and Adolescent Labour (Prohibition and Regulation) Act 1986	Prohibits employment of children (below 14 years) in all occupations and of adolescents (14-17 years) in hazardous occupations and processes.
Public Liability Insurance Act 1991	Makes provisions for public liability insurance to provide relief to persons affected by accidents which occurred while handling any hazardous substance.

Dock Workers (Regulation of Employment) Act 1948	Makes provisions for framing a scheme for regulating the employment of dock workers. Sets up a Board to administer the scheme.
Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act 1997	Provides for inapplicability of the Dock Workers (Regulation of Employment) Act, 1948 to dock workers of major ports in India.
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948	Makes provisions for framing provident fund, pension, deposit linked-Insurance and bonus schemes for persons employed in coal mines.
Provident Funds Act, 1925	Deals with provident funds primarily relating to the government, local authorities, Railways and certain other institutions.
Seamen's Provident Fund Act, 1966	Makes provisions for framing a provident fund scheme for seamen.
Sexual Harassment at Workplace Act, 2013	Creates a process to redress complaints of sexual harassment at the workplace.
Boilers Act, 1923	Regulates the manufacture and use of steam boilers.
Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993	Prohibits employment of manual scavengers for certain activities. Regulates construction and maintenance of water seal latrines.
Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013	Prohibits employment of manual scavengers, manual cleaning of sewers and septic tanks without protective equipment, and construction of insanitary latrines.

Sources: Existing Central Acts; PRS India.

Provisions of the Codes

What are the changes in hiring-firing rules?

The reforms allow industries flexibility in hiring and retrenchment. They will make industrial strikes more difficult by clamping new conditions and also expand the social security net for both formal and informal workers. Under the Industrial Relation Code, the government has allowed companies with up to 300 workers to fire workers or shut plants without the prior approval of the government. Hitherto, prior approval had been required. Firms with more than 300 workers need to still apply for approval.

However, if the authorities do not respond to their request, the retrenchment proposal will be deemed to be approved. Earlier labour laws required a 30- to 90-day notice period before retrenching “workmen”, which is a class of mainly shop floor workers. In the case of manufacturing units, plantations, and mines with 100 or more workmen, lay-offs also required government approval.

What are the new workplace safety rules?

The Occupational Safety, Health and Working Conditions Code, 2020, amends laws regulating occupational safety, health and working conditions of employees. The code empowers a state government to exempt any new factory from the provisions of the Code to create more economic activity and jobs. It fixes the maximum daily work limit at eight hours a day. Women will be entitled to be employed in all establishments

for all types of work and in case they are required to work in hazardous or dangerous operations, the government may require the employer to have adequate safeguards in place prior to employment.

Retrenchment

Establishments hiring 100 or more workers need government permission for closure, layoffs or retrenchments. It has been argued that this has created an exit barrier for firms and affected their ability to adjust workforce to production demands. The Industrial Relations Code raises this to 300, and allows the government to further increase this limit by notification.

Coverage and Labour Law Enforcement

Most labour laws apply to establishments over a certain size (typically 10 or above). Size-based thresholds may help firms in reducing compliance burden. However, one could argue that basic protections related to wages, social security, and working conditions should apply to all establishments. Certain Codes retain such size-based thresholds. Multiplicity of labour laws has resulted in distinct compliances, increasing the compliance burden on firms. On the other hand, the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behaviour of inspectors. The Codes address some of these aspects.

The Codes create enabling provisions for web-based inspections (which may be accompanied by randomized inspections) in some cases and third-party certification (for notified classes of establishments in some cases) and create some provisions for common registers and returns. However, details have been left to delegated legislation. Further, in certain cases, such as Code on Social Security, compliance reporting on different aspects (such as provident fund and insurance) may continue to be required to be made to different authorities.

The Codes also increase the quantum of fines and imprisonment in several cases and allows for compounding of offences in certain cases. With regard to dispute resolution, the Industrial Relations Code removes the requirement for reference to the government and publication of award in the gazette and replaces industrial courts/tribunals with two-member labour tribunals (with one judicial and one administrative member).

Contract labour

Labour compliances and economic considerations have resulted in increased use of contract labour. However, contract labour have been denied basic protections such as assured wages. The Codes do not address these concerns fully. However, the Industrial Relations Code introduces a new form of short-term labour – fixed term employment.

Currently, contract labour provisions apply to establishments/contractors hiring at least 20 workers. The Code on Occupational Safety and Health increases this threshold to 50 workers. Further, it prohibits contract labour in core activities except in certain circumstances (which includes any sudden demand in work). It also specifies a list of non-core activities where

the prohibition would not apply. This includes: (i) sanitation works, (ii) security services, and (iii) any activity of an intermittent nature even if that constitutes a core activity of an establishment. As regards liability of the contractor, the Code leaves the conditions for grant of contractor license to rules. Further, it shifts the primary responsibility of providing welfare facilities from the contractor to the principal employer. It also provides for automatic absorption of contract workers into the establishment of the principal employer where they are engaged through an unlicensed contractor. The Industrial Relations Code introduces provisions to employ fixed term labour.

Emerging Category – Gig and Platform Workers

The Code on Social Security introduces definitions for ‘gig worker’ and ‘platform worker’. Gig workers refer to workers outside the “traditional employer-employee relationship”. Platform workers are those who are outside the “traditional employer-employee relationship” and access organisations or individuals through an online platform and provide services.

In addition to traditional freelance work, independent work would include emerging digital platforms which provide opportunities for task-based “crowd-work” (e.g., freelance work over digital platforms) and “on-demand work” (e.g., taxi and restaurant aggregators). One of the questions the Codes need to address is whether any distinction must be drawn between self-employed persons (e.g., freelancers) who exercise independent control over their work (including terms of service, scheduling and payment terms), and self-employed persons who predominantly work with a single platform which may exert some degree of control over the terms of their work (e.g. aggregators). If so, the Codes will also need to consider the extent to which various provisions that provide rights to employees should be extended to the latter category.

Note that workers in the gig economy are typically classified as independent contractors and thus are not provided the protection of various labour laws, including social security benefits.[33] Globally, some regions have defined principles by which to identify employer-employee relationships which may be mis-classified as independent contract work. For example, California passed a Bill in 2019 which classifies certain independent contractors as employees and entitles them to certain benefits such as health insurance, if the hiring company fails to prove that: (i) the tasks performed by the person fall outside the usual course of the company’s business, (ii) the company does not exercise control over the manner in which the person performs their tasks, and (iii) the person is customarily engaged in a trade or occupation of the same nature as that involved in the work performed. [34]

The Code also defines unorganised workers which include self-employed persons. The Code creates provisions for different schemes for all these categories of workers (and defines the role that aggregators may be expected to play in some of these schemes). However, there may be some overlap between these three definitions which may result in lack of clarity on the applicability of social security schemes to these different categories of workers. We have illustrated this issue in our Legislative Brief on the Code.

Trade Unions

There are several registered trade unions but no criteria to 'recognise' unions which can formally negotiate with employers. The Industrial Relations Code makes provisions for recognition of a negotiation union with 51 per cent membership. In the absence of such support, a negotiation council may be formed. However, the Code does not clarify how vote will take place. Further, no changes have been made to the extent of participation of outsider (up to 33 per cent, subject to a maximum of five members). Up to 50 per cent may be outsiders in unorganised sector unions. However, the Code weakens collective bargaining rights by requiring a two-week notice for strikes.

The Industrial Relation Code lays down new conditions on the right of workers to go on strike. Unions will now have to give 60 days' strike notice. If proceedings are pending before a labour tribunal or the National Industrial Tribunal, workers cannot go on a strike for 60 days after they are concluded. These conditions apply to all industries. Earlier, workers could go on strike by giving between two weeks and six weeks of notice. Flash strikes are now outlawed.

Shortcomings of the new codes

- Establishment has a narrow definition and does not include agricultural enterprises where most of the labour force is concentrated. Definition of employees also does not include ASHA and Anganwadi workers and definition of unorganized workers does not include agricultural workers.

(Industrial Establishment means an establishment is an establishment in which any industry is carried on. Industrial disputes act 1947 section2 defines Industry as: 'business, trade, undertaking, manufacture or calling of employers and includes services, employment, handicraft industrial occupation, in Bangalore water Supply and Sewerage Board v R. Rajappa Industry was defined by a triple test:

- i. Systematic and organized activity
- ii. With the cooperation between employers and employees
- iii. For the production and distribution of good and services whether or not capital has been invested for this activity

Thus Agriculture since it does not stand the test, it is not included in the definition of establishment.

Code on social security Clause2 (26): Leaves out the Asha and Anganwadi workers: this has been pointed out by Standing Committee on Labour. In the same clause the qualification mentions the wage ceiling to identify who is an employee can be an exclusionary measure. The standing committee has said that ; the first proviso to the clause stipulating that the wage ceiling for employees for the purpose of applicability for chapter III and IV to be notified by the government appeared to be restrictive in nature in terms of coverage' adding that 'prescribed low wage ceiling of Rs. 15000 for EPF and Rs. 21000 for ESIC would exclude many informal workers in the formal sector.

UIDAI annual report 2019 states till 31st March 2019 123crore Aadhar cards have been generated. The report also mentions the estimated population of India to be around 133.51crores (A conservative estimate. Some estimates suggest population to be over 137crores), thus according to government own admission about 10crore people in India still do not have aadhar identification,

- The codes also put up a threshold limit of 80work days for women to avail maternity benefits.

(As per section 142 ant employee in the unorganized sector seeking maternity benefit under the code will have to establish her identity and the identity of the person nominated to receive maternity benefits in the event of their death through Aadhar number. Without Aadhar no woman will be able to avail maternity benefits. UIDAI annual report 2019 states till 31st March 2019 123crore Aadhar cards have been generated. The report also mentions the estimated population of India to be around 133.51crores (A conservative estimate. Some estimates suggest the population to be over 137crores), thus according to government own admission about 10 crore people in India still do not have aadhar identification.

Chapter IV clause 60(2) says that no women working in an establishment would be eligible to avail maternity benefits unless she has worked for a period of not less than eighty days in the twelve months immediately before the date of delivery. ILO report suggests women in India mainly work not for economic independence but out of economic necessity, thus largely undertake unproductive work under economic compulsion, thus go on to take temporary stand-by jobs, out of the total female workforce the female main workers (that work all year round) is only 14.65%, hence more than two-third of women due to requirement of at least 80days of prior work requirement world by excluded from maternity benefits.

- Minimal minimum wage: The wage code sets the wage at Rs. 178 per day, which is only two rupees higher than previous national minimum wage and way lower than the wage stipulated by 7th Central Pay Commission (Rs.700) and committees of Labour ministry itself. Further, national floor wage could start a race in the states to keep the minimum wage, this negative competitive federalism can result is an economic disaster.

(For instance this was observed in Okhla Industrial Area in Delhi in 2015, where businesses shifted out of Okhla to Haryana and Uttar Pradesh to take advantage of lower minimum rates prevalent there. Pre-2015 both the central and state government could have fixed the minimum wages. In 2015central government stipulated that the state governments alone can fix minimum wages. The Wages prevalent in Okhla Delhi were 35%-25% higher than neighboring states of Haryana and UP, for example after revision the wage for unskilled work of loading and unloading trays was Rs. 348 per day in Delhi and only Rs. 249 in UP, many of the manufacturing units shifted out of Delhi stating ‘whenever there is an increases minimum wage rate, it’s a disincentive for the workers working to continue to work in the factories they only seek intermittent work)

- Over-delegation of legislation:Traditionally the legislature enacts the law stating the general principles and policies and delegates the rule making to the government allowing flexibility but not so much as to undermine the core principles of the legislation. The codes delegate various essential aspects of the law to the government giving over-flexibility which can be

misused. For example: In increasing the threshold for lay-offs, retrenchments and closure, for setting applicability for different social security schemes, for specifying standards and working conditions to be provided by establishments under occupational safety code.

- Overlapping definitions: Social security code introduces definitions for gig workers, platform workers and unorganized workers including self-employed persons, creating provisions for different schemes for all these categories of workers in doing so the code refers to many other legislations, thus there can be overlapping resulting in lack of clarity.

(Building worker's definition in Code for social security, employee's definition in code for industrial worker are very similar, thus overlaps are present. Many similar overlaps in definitions and explanations are found.)

- All workers not covered under the codes: for example the industrial relations code applies to all establishments with separate threshold for layoffs, retrenchments and closure requirement whereas code on social security and occupational safety is applicable on establishment over certain size. Experts have suggested that basic provisions like social security and safety should be applicable to all establishments irrespective of size.
- Wide discretion to the government in providing exemptions: Industrial relations code provides the government with the power to exempt any new industrial establishment or class of establishment from any or all of its provisions in public interest. Public interest can be interpreted broadly and thus the code gives excessive discretion to the government.
- Jurisdiction of government over PSUs: The codes specify that the central government will continue to be the appropriate government for a central PSU even if the holding of the central government in that PSU becomes less than 50%.
- Low unionization in unorganized sectors is not addressed: National commission on Labour 2002 had suggested that provisions should be made to enable the workers in unorganized sector to form unions and register these unions to enhance the workers collective bargaining power.

Data suggests that over 50% of Indian workforce is illiterate. Only a third of the regular, non-agricultural workers are unionized, with wide disparity countrywide (91% in Mizoram and only 19% in Delhi). Moreover with the law books being in English language exclusively with minimal vernacular translation, keeping such a high bar (51%) for validating a union is nothing but an attempt to dilute the collective bargaining power of the workers and is a ruling in favor of the big businesses.

- Does not provide an upper limit on the proportion of fixed term and ad-hoc contract workers: whereas ILO has suggested that this leads to overexploitation of these workers.

(Vietnam, Brazil and China allow only two successive renewals of fixed term contracts. Philippines and Botswana limit the duration of such contracts up to a year. Brazil and Indonesia also has limits for hiring Ad-hoc employees in core activities, whereas China has fixed the use of such to be not more than 10% of the total workforce. ILO in its report titled 'Non-standard Employment around the world', mentions that for the period of 2004-05 in India contract workers made up for 31% of the workforce whereas casual workers made up 56% of the workforce)



Conclusion – The Codes Are Neither Adequate Not Appropriate

Vijay Mahajan

The Government of India in 2020 amended the multiple labour laws and condensed into four labour codes. It is unlikely that this will increase the protection for or security of informal sector workers in any way. With a little over a half of the rural workers and a little less than a third of all urban workers being self-employed, the meaning of “decent work” has to be understood differently from the employer’s responsibility.

The Codes are Not Adequate – They Leave out a Majority of India’s Workers

The new labour codes have undone decades of jurisprudential developments in workers’ rights in the unequal relationship between employers and employees. The introduction of fixed term employment and the new provision of the definition of “settlement” under the code now includes individual settlements, which goes against the very concept of collective bargaining. Earlier under the ID Act, 1947, industrial establishments with more than a hundred workers were required to obtain prior permission to lay-off/retrench workers as well as in cases of closure.

But section 77 of IR Code 2020, this requirement has been waived off for industrial establishments employing not less than three hundred workers or such higher number as may be notified by the Government. Now if we go by data of Annual Survey of Industries for 2017-18, around 90% of working factories and 44% of workers in them will have no protection. For the same threshold reason, exactly the same number of workers will get no protection from any Standing Orders. And all we need to remember is that the erstwhile Industrial Employment (Standing Orders) was the best moderator for working conditions as well conditions of work.

“..More than 97 per cent of all enterprises in India... employ less than five labourers, in most family enterprises... Here the code of labour engagement, employer-employee relation, security, working conditions, etc. is constructed within a framework of social, familial, ethnic, caste ties of reciprocity, mutualism, and trust. The authority of the state is already minimal

in this context and will remain so in the given construct...How to imagine a labour code of security in this context? The country needs a robust institutional infrastructure at the state and local level to locate and identify informal workers of all types and facilitate the process of advancing social security measures. Currently, that infrastructure does not exist..."(Sarkar, 2020)

The Industrial Relations Code, 2020 and the Wage Code 2020 – apply to all establishments, with limited exceptions. However, the code increases the thresholds for factories from 10 to 20 (with power) and 20 to 40 (without power). The Code on Social Security will apply to establishments over a certain size (typically, above 10 or 20 workers). Further, it makes provisions to notify a separate social security fund for unorganised workers but does not provide any roadmap nor deadlines. The Code on Social Security enables the government to formulate schemes for the benefit of unorganised workers, and gig and platform workers.

The track record of governments converting such intent into action has not been credible. Two pieces of legislation, the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and the Unorganized Workers' Social Security Act, 2008, remained on paper. Both called for registration of migrant workers and unorganized sector workers, respectively, as a first step towards extending benefits and services to them. However, the labour departments had no framework for the implementation of these laws.

Though the Code on Social Security, 2020 promises universal social security for the first time, including for both organised and informal workers as well as gig and platform workers, it is only a statement of intent. The government, the code states, shall formulate and notify, from time to time, suitable welfare schemes, including schemes relating to "provident fund; employment injury benefit; housing; educational schemes for children; skill upgradation of workers; funeral assistance; and old age homes". The government can tap corporate social responsibility funds (within the meaning of the Companies Act, 2013) or any other such source as may be specified in the scheme. The social security code lays down the setting up of a National Social Security Board to recommend to the central government suitable schemes for unorganised workers.

The Occupational Security and Health Code, 2019 has subsumed the Interstate Migrants law while the Code on Social Security, 2019 has subsumed the Unorganised Workers law. Merely moving legal provisions from one Act to another Code will not ensure improvement in implementation. The same neglect as earlier can persist unless the GoI and state governments enabled the departments charged with the responsibility to enforce these laws.

The Code on Occupational Safety applies to establishments over a certain size (typically, above 10 or 20 workers). However, the applicability thresholds (of 10 or above) will not apply in those establishments in which hazardous activities are being carried out. As such, the Occupational Safety Code and therefore the Interstate Migrants Workers Act will not cover a vast majority of migrant workers since they work in units with less than 10 workers. This is a seriously regressive step taken just a few months after the nation witnessed the unprecedented plight of migrant workers walking back home. An example of what a government can do with its rule making powers was shown by the Uttar Pradesh government in the midst of the pandemic. It decided to keep in abeyance all labour laws, except three, for three years.

The new normal is to hire workers for 12-hour shifts, doing away with the earlier mandatory provision of paying overtime at double the normal wage rates. Obviously, if employers can legitimately shift to two 12-hour shifts in place of ILO mandated three 8-hour shifts, employers need to recruit 33 per cent less labour – and thereby save on PF and all other statutory welfare obligations. Now, if this is the fate of organized labour, it does not take much imagination to figure out the plight of unorganized workers. Thus there is no credibility in statements that the new Labour Codes will lead to improving the lot of the unorganized workers, migrants or those in the informal sector.

The Codes are Not Appropriate – They Leave Too Much to Rule Making

As per PRS India⁶ “The Codes leave several key aspects, such as the applicability of social security schemes, and health and safety standards, to rule-making. The question is whether these questions should be determined by the legislature or be delegated to the government. Under the Constitution, the legislature has the power to make laws and the government is responsible for implementing them. The legislature enacts a law covering the general principles and delegates detailed rule-making to the government to allow for expediency and flexibility. However, certain functions and powers should not be delegated to the government. These include framing the legislative policy to determine the principles of the law. Any Rule should also remain within the scope of the delegating Act. The question is which matters should be retained by the legislature and which of these could be delegated to the government.”

The Labour Codes delegate various essential aspects of the laws to the government through rule-making. These include: (i) increasing the threshold for lay-offs, retrenchment, and closure, (ii) setting thresholds for applicability of different social security schemes to establishments, (iii) specifying safety standards and working conditions to be provided and maintained by establishments, and (iv) deciding the norms for fixation of minimum wages. The Industrial Relations Code, 2020 and the Wage Code, 2020 and the Code on Occupational Safety, 2020, all allow the government to exempt any new establishment from its provisions in public interest. Given the penchant for supporting start-ups, this can lead to a situation where new enterprises begin by being exempted from adhering to labour codes. This then becomes a part of their genetic code and it is unlikely that five years later, when they survive and break-even, that they will suddenly like to incur the additional costs of adherence to the various labour codes.

What can be Done – The Role of Trade Unions and Civil Society Institutions

In spite of the many limitations in extant labour laws, there is sufficient on the books to provide succor to unorganized workers. But we do need to recognize that no more than 5 per cent of the unorganized workers are aware of the various benefits under the three legislations discussed above. Since what one does not know, one cannot claim, the first requirement is mass awareness of the various benefits. The second requirement is to press for the delivery of benefits and amelioration of conditions as stipulated in the three Acts. Here too, organized power is needed to elicit compliance from employers and diligent and quick response from

⁶ <https://www.prsonline.org/billtrack/code-social-security-2020>

officers and staff entrusted in labour law implementation. Finally, the Covid episode has clearly demonstrated the need to build financial protective cover, irrespective of what may come by from government largesse. Here too, a collectivized response rather than covering individual risks is a better option.

The trade union movement could have counteracted the anti-labour policies but it has not been able to do so because it is divided. A united trade union movement is perhaps the most pressing need in the present situation. Every major trade union in the country has stressed this; yet, there seems to be no signs of its emergence. Trade unions are organisations of workers which are formed to protect their interests. Though trade unions are expected to counteract the power of the employers at the grassroots level, it cannot do so effectively without the support of the state. In fact, the state has played an important role in retarding this process. We have seen that the legal framework for industrial relations on the one hand provides grounds for multiple unions and on the other hand makes the unions more dependent on government agencies for settlement of disputes. Moreover, the state itself has inevitably come out in support of the employers whenever there is a major confrontation between labour and management.

The only way to ensure accountability is to organise the informal and migrant workers. For example, in Maharashtra, informal workers have a Kashtkari Sangarsh Mahasangh⁷, a federation comprising of many local associations. A major trade union, CITU, recently tried to register a Migrant Workers' Union in West Bengal.⁸ The Aajeevika Bureau has been working with migrant workers for about three decades and undertakes both activities for supporting them as also policy advocacy work. Through its affiliate, Shram Sathi, it also extends microcredit and insurance services to migrant workers. Similarly, LabourNet "is a social enterprise that enables sustainable livelihoods for disadvantaged men, women and youth in urban and rural areas. [Its] three-pronged engine integrates social and business impact by bridging the gaps in Education, Employment and Entrepreneurship."

The success of various Mathadi organisations formed under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 is a useful pointer. The civil society response to managing the havoc caused by sudden Covid lockdown announced by the government indicates that CSIs have the capacity to work with the marginalized, a realistic possibility emerges in organizing the unorganized workers in respective work clusters, educating them of the various benefits available under labour legislation, helping them to get registered, and so on and so forth. Otherwise, the lot of the unorganized workers are unlikely to improve.

We recommend a provision in the new Labour Code for recognised Informal Workers Associations (IWAs) and for civil society institutions (CSIs) who support their formation and capacity building. Thus, for example, IWAs of migrant workers can be recognised along with Aajeevika Bureau, a civil society institution working with them. Likewise, IWAs of informal workers can be recognised along with LabourNet, another civil society institution working with them. Over a period there can be hundreds of such localized IWA-CSI combinations which can substitute for the absence of traditional trade unions among migrant and informal workers.

⁷ <https://m.dailymotion.in/news/nepal/marathi/max+maharashtra-epaper-maxmar/1700+garajvant+kutumbanch+pot+bharanara+kashtakari+sangharsh+mahasangh-newsid-n179294654>

⁸ <https://www.newsclick.in/exclusive-trade-unions-for-migrant-workers-across-country>

References

- Biju, B. L. (2013, 28 December). Angels are turning red. *Economic & Political Weekly*, 48(52), 25–28.
- George, S., Sinha, S. (Eds.). (2017). Redefined labour spaces: Organizing workers in post-liberalized India (South Asia Edition). New Delhi: Routledge. ISBN 1138104280, 978-1138104280.
- Goptu, N. (May 2009). Neoliberal subjectivity, enterprise culture and new workplaces: Organized retail and shopping malls in India. *Economic & Political Weekly, Review of Labour*, 44(22), 45–54.
- Hensman, R. (2001). The impact of globalisation on employment in India and responses from the formal and informal sectors (IIAS/IISG CLARA Working Paper No. 15). Amsterdam: IIAS/IISG CLARA. (18 p.)
- Heyer, J. (2012). Integration into a global production networks: Impacts on labour in Tiruppur's rural hinterlands. *Oxford Development Studies*, 41(3), 307–321.
- Jenny, S. (2012). Gender, space and work: Experiences of the sales girls in Calicut City (Unpublished MPhil thesis in Women's Studies). Mumbai: TISS.
- Kannan, K. P. (2002). The welfare funs model of social security for informal workers: The Kerala experience (Working Paper 279). Thiruvananthapuram: Centre for Development Studies.
- Kuzhipparambil, A. (2016). A secondary informal circuit of globalization of production: Home-based cashew workers in Kerala, India. *Global Labour Journal*, 70, 279–296. doi: <https://doi.org/10.15173/glj.v.7i3.2704>.
- Mohanty, M. (2009). A note on trends in unionization in India (Working Paper Series 641). Kolkata: Indian Institute of Management.
- Nair, S., Timmons, S., Evans, C. (2016). Nurses in private health sector in Kerala: Any lessons learnt from their strikes in recent years? *Indian Journal of Gender Studies*, 23(1), 8–25.
- Neethi, P. (2014). Home-based work and issues of gender and space. *Economic & Political Weekly, Review of Women's Studies*, 49(17), 88–96.
- Phillip, S. (2018, 15 July). The whole nine yards: How Kerala's saleswoman won a protracted battle for their right to sit. *Indian Express*, Calicut.
- PUDR (2015, 7 March). Nine weeks and counting: Strike of women sales-attendants of Kalyan Silks (PUDR Report). New Delhi: PUDR.
- Roy Chowdhury, S. (1–19 December 2003). Old classes and new spaces: Urban poverty, unorganised labour and new unions. *Economic & Political Weekly*, 38(50), 5277–5284.

Sundar, S. K. R. (2006). Trade unions and the new challenges: One step forward and two steps backward. *The Indian Journal of Labour Economics*, 49(4), 903–918.

Velayudhan, M. (2000). Women and the democratic process in Kerala, South Asia Research project on Gender & Governance, Re-imagining the state. Kerala: Centre for Development Studies.

Velayudhan, M. (2016). Unions & new forms of collectives in Kuttanad and Alappuzha, post-1980s. In Bhattacharya, S. (Ed.), Vernacularization of labour politics. Delhi: Tulika Publishers.

The Long Haul, Bombay: Build Documentation.

[1]. List of Central Labour Laws under Ministry of Labour and Employment, Ministry of Labour and Employment.

[2]. Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.

[3]. "Report No. 4: Occupational Safety, Health and Working Conditions Code, 2019", Standing Committee on Labour, Lok Sabha, February 11, 2020; Report No. 8: "Industrial Relations Code, 2019", Standing Committee on Labour, Lok Sabha, April 23, 2020; Report No. 9: "Code on Social Security, 2019", Standing Committee on Labour, Lok Sabha, July 31, 2020.

[4]. Highlights of the Sixth Economic Census, 2013-14, National Statistics Commission, Government of India.

[5]. "Structural Changes in India's labour markets", Chapter 10, Economic Survey 2015-16.

[6]. "Summary of results for factory sector", Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

[7]. Annual Survey of Industries (2004-05), Ministry of Statistics and Programme Implementation.

[8]. Volume I, Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

[9]. "Reorienting policies for MSME growth", Economic Survey 2018-19.

[10]. Periodic Labour Force Survey Report (2018-19), Ministry of Statistics and Programme Implementation, June 2020.

[11]. India Country Profile 2014, Enterprise Survey, World Bank.

[12]. "Amendments in Labour Laws and Other Labour Reform Initiatives undertaken by State Governments of Rajasthan, Andhra Pradesh, Haryana and U.P", NLI Research Studies Series No. 122/2017, V.V. Giri National Labour Institute, 2017.

[13]. "Towards an optimal regulatory framework in India", Implementation Group, Planning Commission, 12th Five Year Plan.

[14]. "Reorienting policies for MSME growth", Economic Survey 2018-19.

- [15]. “Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector”, NCEUS, August, 2007.
- [16]. “Labour and Labour-related Laws in Micro and Small and Enterprises: Innovative Regulatory Approaches”, International Labour Organisation, 2007.
- [17]. LEGOSH, Occupational Safety and Health, Country Profiles, International Labour Organisation.
- [18]. “Report No. I: Industrial Disputes (Amendment) Bill, 2009”, Standing Committee on Labour, December 9, 2009.
- [19]. “The Regulation of collective dismissal: Economic rationale and legal practice”, International Labour Organisation, ILO Working Paper No. 4, May 2020.
- [20]. “Ease of doing business?”, The Print, July 8, 2020, last accessed on September 17, 2020.
- [21]. “Chapter 5: Industry”, Mid-term Appraisal for 11th Five Year Plan (2007-12), Planning Commission.
- [22]. “Report of the Working Group on Labour Laws and Other Labour Regulations”, 12th Five Year Plan, 2012-17, Planning Commission.
- [23]. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.
- [24]. “Report No. 21”, Standing Committee on Labour, Lok Sabha, December 20, 2011.
- [25]. “Report No. 15: Implementation of Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition Act, 1970)”, Comptroller and Auditor General of India, 2007.
- [26]. Steel Authority of India Limited vs. National Union Water Front Worker’s, Supreme Court, AIR 2001 SC 3527.
- [27]. “Non-Standard Employment Around the World”, International Labour Organisation, 2016.
- [28]. “Report No. 19: Compliance to statutory requirements in engagement of contract labour by Indian Railways”, Comptroller and Auditor General of India, 2018.
- [29]. U.P. Rajya Vidyut Utpadan Board vs. Uttar Pradesh Vidyut Mazdoor Sangh, Supreme Court, (2009) 17 SCC 318.
- [30]. Notification GSR 235(E), Ministry of Labour and Employment, March 16, 2018 https://labour.gov.in/sites/default/files/FTE_per cent20Final_per cent20Notification.pdf.
- [31]. Pocket Book of Labour Statistics, Labour Bureau, 2017.
- [32]. “Independent Work: Choice, Necessity, And The Gig Economy”, McKinsey Global Institute, 2016.

[33]. “Strengthening social protection for the future of work”, International Labour Organisation, February 15-17, 2017.

[34]. Assembly Bill No. 5 (amending the Labour Code and the Unemployment Insurance Code).

‘Cabinet approves Industrial Relations Code Bill’, The Times of India, 20 November 2019 <https://timesofindia.indiatimes.com/business/india-business/cabinet-approves-industrial-relations-code-bill/articleshow/72149867.cms> Accessed 9 June 2020.

‘Coronavirus | Labour Minister asks CMs to release construction worker welfare funds’, The Hindu, March 24, 2020; Updated: June 09, 2020 <https://www.thehindu.com/news/national/coronavirus-labour-minister-asks-cms-to-release-construction-worker-welfare-funds/article31152520.ece> Accessed 12 June 2020

‘Lockdown 3.0: After UP, MP, other states relax labour laws to pump up industrial activity’, BusinessToday.In, May 8, 2020 <https://www.businesstoday.in/current/economy-politics/lockdown-30-after-up-mp-other-states-relax-labour-laws-to-pump-up-industrial-activity/story/403209.html> Accessed 21 June 2020

“Most Indian biz units employ less than 10 workers: Govt”, The Economic Times, May 29, 2008 https://economictimes.indiatimes.com/most-indian-biz-units-employ-less-than-10-workers-govt/articleshow/3083645.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst Accessed 9 June 2020

‘Suffering of Poor is Constitutional Concern. But Don’t Look to SC for Answers’. Karan Thapar interview with Gautam Bhatia, The Wire, 16/Apr/2020 <https://thewire.in/law/watch-karan-thapar-interview-gautam-bhatia-lockdown> Accessed 2 May 2020.

“Workers in the Time of COVID-19” a report released on survey of 11,537 informal workers across India, ActionAid, 13-August-2020 <https://www.actionaidindia.org/press-release/workers-time-covid-19-report-released-survey-11537-informal-workers-across-india/> Accessed 20 October 2020

“Committee for Construction Workers opposes govt move to subsume labour laws into 4 codes”, The Economic Times, July 07, 2019 <https://economictimes.indiatimes.com/news/economy/policy/committee-for-construction-workers-opposes-govt-move-to-subsume-labour-laws-into-4-codes/articleshow/70116722.cms?from=mdr> Accessed June 13, 2020

Bhandari, Laveesh and Amaresh Dubey, ‘Emerging Employment Patterns of 21st Century India’, Indicus Foundation White Paper, 11 November 2019. [www.indicus.org > pdf > Emerging-Employment-Patterns-in-21st-Century.pdf](http://www.indicus.org/pdf/Emerging-Employment-Patterns-in-21st-Century.pdf) Accessed 15 May 2020.

Bhattacharjea, Aditya, ‘Labour Market Flexibility in Indian Industry – A Critical Survey of the Literature’, Working Paper No. 296 (2019), Centre for Development economics, Delhi School of Economics. <http://www.cdedse.org/pdf/work296.pdf> Accessed 5 June 2020.

Chhokar, Jagdeep S., ‘Migrant Worker Crisis: The Supreme Court Has Abdicated All Responsibility’, The Wire, 19/May/2020 <https://thewire.in/law/supreme-court-migrant-workers-crisis-abdicate-responsibility>

Gopalakrishnan, Ramapriya, 'Changes in Labour Law Will Turn the Clock Back by Over a Century', The Wire, 20 May 2020. <https://thewire.in/labour/labour-laws-changes-turning-clock-back> Accessed 31 May 2020.

Govt. of India, Ministry of Labour and Employment, Annual Report 2019-20, (includes Chapter 8 on Unorganised Worker) <https://labour.gov.in/annual-reports>, PDF Accessed 19 Sep 2020

Govt. of India, Ministry of Labour and Employment, Chief Labour Commissioner (Central), The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, <https://clc.gov.in/clc/acts-rules/interstate-migrant-workmen-act> Accessed 9 May 2020

Govt. of India, Ministry of Law and Justice, The Unorganised Workers' Social Security Act, 2008, [legislative.gov.in › sites › default › files › A2008-33.pdf](https://legislative.gov.in/sites/default/files/A2008-33.pdf) Accessed 9 May 2020

Govt. of India, National Statistical Commission, Report of the Committee on Unorganised Sector Statistics, February 2012

[www.lmis.gov.in › sites › default › files › NSC-report-unorg-sector-st...pdf](http://www.lmis.gov.in/sites/default/files/NSC-report-unorg-sector-st...pdf) PDF Accessed 9 May 2020

Gupta, Anil K. (2020), "A manifesto for 'migrants': Towards a new social contract", 6 June 2020. Anil k Gupta blog <http://anilg.sristi.org/a-manifesto-for-migrants-towards-a-new-social-contract/> Accessed 12 June 2020.

Jha, Somesh, 'More regular-income labour denied social security before Covid-19 hit India', Business Standard, June 6, 2020 https://www.business-standard.com/article/economy-policy/more-regular-income-labour-denied-social-security-before-covid-19-hit-india-120060501032_1.html

Jigeesh, AM., 'Provide more money to construction workers, welfare fund not enough: TUs', BusinessLine, March 26, 2020, <https://www.thehindubusinessline.com/news/provide-more-money-to-construction-workers-welfare-fund-not-enough-tus/article31175847.ece#> Accessed 22 June 2020

Kapoor, Radhicka and PP Krishnapriya, 'Facts and myths on rise of contract labour', The Hindu BuisnessLine, March 18, 2019 <https://www.thehindubusinessline.com/opinion/facts-and-myths-on-rise-of-contract-labour/article26571045.ece> Accessed 9 May 2020

Khetrapal, Sonal, 'Why UP labour law ordinance is unconstitutional', Business Today, May 12, 2020 <https://www.businesstoday.in/bt-buzz/news/bt-buzz-why-uttar-pradesh-labour-law-ordinance-is-unconstitutional/story/403509.html> Accessed 21 June 2020

Khotkar, Pravin, 'Maharashtra's Mathadi Workers', Economic and Political Weekly, April 13, 2013, Vol. 48, No. 15, pp. 20-21, 23. <http://www.jstor.com/stable/23527116> Downloaded 12 June 2020.

Krishnan, K.P., Burman, Anirudh, and Rai, Suyash, 'Migrant Workmen Act, 1979, must be rationalised to remove requirements that disincentivise formalisation', The Indian Express, May 9, 2020 <https://indianexpress.com/article/opinion/columns/india-lockdown-inter-state-migrant-workmen-act-6400710/> Accessed 12 June 2020

Kumar, Arun, 'The Pandemic is Changing the Face of Indian Labour', The Wire, 09 May 2020, <https://thewire.in/economy/covid-19-pandemic-indian-labour> Accessed 31 May 2020

Kumar, Nirbhay, 'UP labour law reforms: The big climbdown', Business Today, May 11, 2020 <https://www.businesstoday.in/current/economy-politics/up-labour-law-reforms-the-chronology-of-yogi-adityanath-decision/story/403425.html> Accessed 21 June 2020

Kumar, Krishna, 'Mathadi Act: Maharashtra sets up panel to hear complaints', The Economic Times, Jan 07, 2017 <https://economictimes.indiatimes.com/news/politics-and-nation/mathadi-act-maharashtra-sets-up-panel-to-hear-complaints/articleshow/56383604.cms>. Accessed 12 June 2020.

Mathew, Joe C., "RSS affiliate BMS finds key provisions in Modi's umbrella social security code objectionable", Business Today, April 23, 2018 <https://www.businesstoday.in/current/policy/bms-finds-key-provisions-in-narendra-modi-umbrella-social-security-code-objective/story/275432.html> Accessed 21 June 2020

Mehrotra, Santosh, 'Informal Employment Trends in the Indian Economy: Persistent informality, but growing positive development', Working Paper No. 254, Employment Policy Department, ILO: 2019

Misra, Udit and Nushaiba Iqbal, 'What labour law changes by states mean', The Indian Express, May 16, 2020 <https://indianexpress.com/article/explained/what-labour-law-changes-mean-coronavirus-6403611/> Accessed 12 June 2020.

Mukherjee, Mitali, 'UP Labour Law Ordinance: 'An Attempt at Labour Exploitation, India Pushed Back to 19th Century', Video, 10 May 2020, <https://thewire.in/labour/watch-up-labour-law-exploitation> Accessed 31 May 2020

Nanda, Prashant K., 'Uttar Pradesh invokes ordinance to exempt businesses from all key labour laws', livemint, 08 May 2020 <https://www.livemint.com/news/india/uttar-pradesh-invokes-ordinance-to-exempt-businesses-from-all-key-labour-laws-11588876096259.html> Accessed 21 June 2020

National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, 2007, [dcmsme.gov.in > Condition_of_workers_sep_2007](http://dcmsme.gov.in/Condition_of_workers_sep_2007)

Pal, Sumedha, 'Informal Sector Workers Continue Struggle: Low Wages, High Debts', NewsClick, 08 Nov 2020 <https://www.newsclick.in/informal-sector-workers-continue-struggle-low-wages-high-debts-actionaid-report> Accessed 09 Nov 2020

Papola, T. S. and Jesim Pais, 'Debate on Labour Market Reforms in India: A Case of Misplaced Focus', The Indian Journal of Labour Economics, Vol. 50, No. 2, 2007

Patel, Anand, 'Cat finally out of the bag: Unemployment at 45-year high, government defends data', India Today, May 31, 2019 <https://www.indiatoday.in/business/story/india-unemployment-rate-6-1-per-cent-45-year-high-nss-report-1539580-2019-05-31> Accessed 06 June 2020

Ramaswamy, E.A. Worker Consciousness and Trade Union Response, Delhi: Oxford, 1989

Rodgers, Gerry, 'Labour and Employment in India: A 50-Year Perspective', The Indian Journal of Labour Economics (2020) 63: 1-19

Saikia, Dilip, 'Migrant Workers in Kerala: A Study on Their Socio-Economic Conditions', Journal of Economic and Social Development, Vol. 11, No. 2, pp. 29-43, 2015.

Sharma, Yogima Seth, 'National Database of workers in informal sector in the works', The Economic Times, Jan 19, 2020 <https://economictimes.indiatimes.com/news/economy/indicators/national...Accessed 2 May 2020>

Sinha, Bhadra, 'This 1979 inter-state workmen law could help avert migrant crisis if enforced strictly', The Print, 8 June, 2020 <https://theprint.in/judiciary/this-1979-inter-state-workmen-law-could-help-avert-migrant-crisis-if-enforced-strictly/437494/> Accessed 12 June 2020

Sircar, Jawhar, 'A Long Look at Exactly Why and How India Failed Its Migrant Workers', The Wire, 29 May 2020; <https://thewire.in/labour/lockdown-migrant-workers-policy-analysis> Accessed 31 May 2020

Venkatanarayana, M., and Suresh V. Naik, 'Growth and Structure of Workforce in India: An Analysis of Census 2011 Data', Online at <https://mpra.ub.uni-muenchen.de/48003/MPRA Paper No. 4803, posted on 05 Jul 2013 04:14 UTC. Downloaded 19 May 2020>



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