

Migrant Workers & Indian Labor Legislation: A Review

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This article highlights the relevance of the two important Indian labor legislations in relation to migrant workers. A few observed gaps in these legislations are discussed. The article addresses the research questions and objectives through an understanding of both the laws. ISMA and the Occupational Safety, Health and Working Conditions code (2020) (OSH). The identified gaps in these legislations could be a reason for their ineffectiveness at critical situations like the crisis caused by the Covid 19 lockdown. The study takes a timely review to bring some suggestions to enhance the applicability and effectiveness of the upcoming Occupational Safety, Health and Working Conditions Code 2020

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Introduction

After the outbreak of COVID 19 pandemic, a countrywide lockdown was announced in India from March 24, 2020, to restrain the spread of the disease in the country. However, the lockdown created enormous distress to Indian migrant labor. A panic situation was created among migrant workers due to the major shutdown of industrial and commercial activities. The workers perceiving the loss of their future income and livelihood, and because of the fear and insecurity, many of the migrant workers began returning to their native places (located in different Indian states) from metropolitan cities like Delhi, Mumbai, Ahmedabad, etc.

While hearing writ petitions for the redressal of grievances of the migrant laborers in different parts of the country Chief Justice of India S.A. Bobde and Justice L. Nageswara Rao on March 31, 2020, said: "It is well-known that panic can severely affect mental health... the anxiety and fear of the migrants should be understood by the police and other authorities... they should deal with the migrants in a humane manner... we expect

those concerned to appreciate the trepidation of the poor men, women and children and treat them with kindness.” (Sinha, 2020).

The extraordinary effort of migrant workers to get back home indicates that these people have very low resilience to reside in their employing cities without jobs.

In India, migration of workers was not a new phenomenon but its recent occurrence has witnessed the highly distressing episodes with home bound journeys of migrant laborers. The depressing images will not be wiped away from our memory too soon, and have created lasting effects. In the aftermath of the Covid-19 lockdown, such devastating images of the migrant workers have drawn the attention of the public and policymakers and brought the population into the spotlight. The entire incident has raised many issues for discussion and deliberation. First, it has made us think of the magnitude of dependence of the country's industrial and commercial activities on migrant population. Next, the extraordinary effort of migrant workers to get back home indicates that these people have very low resilience to reside in their employing cities without jobs. Accordingly, the questions of legal protection and welfare rights of the migrant workers also arise. The plight of migrant workers has drawn our attention towards the “Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979” (ISMA). The act was formed to improve the working

conditions of migrant workers. It works to regulate employment and to protect the rights of migrant workers. The ISMA is now subsumed with the Occupational Safety, Health and Working Conditions Code. In 2019, as a part of its labor law reform initiative, the Government of India started the exercise of consolidating 44 Central labor laws into four major labor codes, namely: The Code on Industrial Relations, 2020; The Code on Wages, 2019; the Code on Social Security, 2020, and The Code on Occupational Safety, Health and Working Conditions, 2020 (OSH Code). According to the Ministry of Employment and Labor, the objective behind this initiative was “to generate employment and to facilitate ease of doing business” which reflected an approach focused on macroeconomic growth rather than workers' welfare. While the Code on Wages was passed in 2019, the remaining three codes were passed in 2020.

The revised labor codes could be a way to make amendments in favor of millions of migrant and informal sector workers to offer social security to them against severe calamities like Covid 19, and to provide them with dignity and meaningful life ahead. This study reviews the Code on Occupational Safety, Health and Working Conditions, 2020 (OSH Code) to understand the effectiveness of the code in dealing with issues of migrant workers in the background of recent calamity at the life of migrant workers after lockdown at Covid 19 pandemic. Thus, the study will explore the existing gaps in the occupational safety, health and working conditions code to find the

scope for improvement in the code in the interest of migrant workers.

Objective of the Study

With the background of the recent a devastating picture of migrant workers movement after the imposed lockdown at India (due to Covid 19), the present article reviewed the 'Inter-State Migrant Workmen Act 1979' to comprehend why the law did not seem effective to tackle migrant workers crisis during Covid 19 lockdown? The study has further assessed the recently introduced occupational safety, health and working conditions code 2020 to explore the appropriateness of the action against the crisis of migrant workers in order to explore the possibility of improvement in the Act. For this purpose, the study has reviewed both Inter-State Migrant Workmen Act 1979 and the Occupational Safety, Health and Working Conditions Code 2020 along the line of following research questions.

- What are the reasons behind ineffectiveness/ impracticality of the Inter-State Migrant Workmen Act 1979' to handle the issues/problems of migrant workers in the background of the Covid 19 lockdown aftermath?
- How is the recent merger of Inter-State Migrant Workmen Act 1979 with the Occupational Safety, Health and Working Conditions (OSH) Code 2020 helpful to deal with its limitations? What could be the measures/ ways to improve the applicability of the OSH code to help the migrant workers?

This article tries to address these research questions and objectives through the understanding of both the laws (i.e., ISMA and OSH 2020 code). Based on the review, this study brings a few suggestions to enhance the applicability and effectiveness of the OSH code 2020 (proposed by the government after merger of 13 labor laws related to safety, health and working conditions under a single code of occupational health and safety).

Migrant Workers in India

Migration is a strategy adopted by Indian workers to access their livelihoods, uplift their economic conditions and fulfil their aspirations for a decent lifestyle. As per Census 2011 data, more than 41 million people had migrated to urban locations from rural areas in search of employment. After approximately one decade, a manifold increase in numbers could be expected (400 to 450 million) (Census, 2011). With over 90 percent of the population working in the informal economy, ILO has predicted that as a result of the crisis and subsequent lockdown, about 400 million workers will fall deeper into poverty while forcing many of them to return to their places of origin in the rural areas (ILO, 2020). The Ministry of Labor and Employment was unable to give any concrete figures on the number of migrant workers. However, the officials quoted data from the Railway Ministry, about 1.08 crore migrant workers had travelled on Special Shramik express trains initiated by the government to ferry migrant workers. It was pointed out that students and family members of the workers too used these

trains and thus this figure does not accurately record the number of migrant workers (Nair, 2020).

Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act 1979

The Inter-state Migrant Workmen Act 1979 covers all establishments and contractors that employ more than five workers from other states. As per the Act, all establishments hiring inter-state migrants need to be registered under appropriate government. The contractors employing interstate migrant workers need to get license from states from where they intend to hire workers. As per the Act, the contractor has to give details on migrant laborers within fifteen days of hiring to the appropriate authority. The Act forbids employment of inter-state migrant labors without registration or having license with relevant authority. For effective implementation of the law, there is also the provision to appoint inspectors. The Act requires employers to maintain register for migrant laborers, and also to provide a passbook to all workers with necessary employment records.

The objective for formation of the Inter-state Migrant Workmen Act 1979 was to safeguard them from prevailing exploitation, and to provide them with fair and decent work conditions. As per the Act, migrant workmen are entitled to wages similar to other workmen, displacement allowance, journey allowance, and payment of wages during the period of journey. Contractors are also required

to ensure regular payment, non-discrimination, provisioning of suitable accommodation, free medical facilities and protective clothing for the workmen.

The provision for registration of establishment and licensing of contractors forms a formal system.

The Inter-state Migrant Workmen Act 1979 may help the workers and government in many ways, if implemented properly. For instance, the Act develops a system of accountability. It creates the initial level of formalization for the employment of migrant workers. The provision for registration of establishment and licensing of contractors forms a formal system. Further, the provision of employment of migrant laborers through proper registration channel helps the government to maintain the database of migrant laborers in the states and in the country as well. The provisions of the Act related to wage, welfare, and other work conditions are the basis of a legal framework for safeguarding the interest of migrant workers. The provisions prescribed in the Act on wages, allowances, holidays, work conditions, and on other essential amenities explain the legal rights of the migrant workers. The terms in sections given in the Act on inspection and penalty ensures effective and proper implementation of the law. For example, the Act has a provision for a jail term of up to a year and a fine of Rs 1,000 for any violation of the law and two-year jail for any obstruction to their work. It gives labor inspectors powers to conduct inspections and take testimonies from workers any time.

Why Has the Law Been Ineffective?

In the immediate aftermath of the lockdown, the pictures of migrant workers desperately returning home have been coming from all corners of the country. The entire episode has raised questions on the viability of Interstate Migrant Workmen Act. There are many instances that indicate about the ineffective implementation of the Act. For instance, state governments were unaware of the exact figures of inter-state migrant workers in the state. Further, workers had to choose returning home due to job loss, and their poor affordability to sustain (including expenses for food, rent, medicines etc.) at lockdown. In fact, workers had to move across states on their own.

As observed, no state in India has implemented the Act in full spirit. The state government must have the full records of migrant workers through establishments and contractors, if the law would have been implemented in full and proper way. In the absence of complete data on migrant workers, government had to face difficulty in the formulation of effective strategies to help the migrant workers, and thus prevented the government to extend the support to vulnerable groups of migrant laborers.

The experts have inferred that there has been increased movement of workers from one state to another (mainly towards urban locations and industrial cities) after liberalization (between 1991 and 2011). As per census 2011, there are 56.6 million inter-state migrant workers in In-

dia. Majority of these workers belongs to Uttar Pradesh, West Bengal, Bihar, Madhya Pradesh, Jharkhand, and Rajasthan (Census, 2011). State labor bureaus also found that approximately only less than 5 % migrant laborers are registered with state government agencies. The state Odissa is an exception where the percentage is somewhat high. Odissa has some exemplary provision for migrant laborers, e.g., helpline and facilities for children of migrant workers (Chauhan, 2020).

The shocking aftermath of lockdown has made us to realize that the Act is barely implemented in true spirit in of the states of India. Thus, the question arises then on the utility of such a meaningful but impractical law. The capacity of the states to enforce such a law also becomes debatable. Thus, to make the law helpful for the wellbeing of migrant workers, it is necessary to analyze the situation to understand the underlying causes of ineffective enforcement of the law.

It is imperative to understand that these laws were evolved in the socialist era when the enactment of the acts backed by legal coercions with some aspirations was considered as sufficient for bringing expected outcomes. Now we are four decades forward since the legislation was enacted, hence it is high time to analyze the law in the present context, to understand the reasons for its partial implementation. The primary reasons could be related to high compliance costs. The law sets out onerous compliance requirement like wages equal to those within the states, various allow-

ances (journey, displacement etc.), and other social protection and well-being provisions. These compliance requirements make the cost of hiring equal or even higher than the hiring cost from within the states. The state can barely keep up with the task of enforcement of the law with high compliance costs requirements. Further, the Act has made provisions of enrolment of workers through registration of establishment/ licensing of contractors but had not taken in to consideration the governments capacity to handle such enforcement. The whole responsibility lies with registering officers and inspectors. 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. The entire law is based on powers of inspectors, which could have been misused. Such provisions in the law create rent seeking opportunities for these officers rather than fulfilling its core objective. The high compliance costs disincentives of the law worsen with government incapacity to enforce.

The state can barely keep up with the task of enforcement of the law with high compliance costs requirements.

The law has a major shortcoming due to formalization of migrant labor employment through registration and licensing. For example, the Act applies to migrant labor hired through contractors in differ-

ent states but does not include the migrant labor hired directly from the employers in other states. Further, the Act requires the registration of establishments employing five or more migrant workers but the it does not seek registration of migrant workers directly. There is another observation that migrant workers should be registered at both host and home states to make effective formal channels of registration, and proper enforcement of legal entitlements. The Act also does not explain the clear responsibilities of state and central governments, and carries ambiguity in this regard. The Act has also no provision for a social security fund. It is also observed that there is no mandate for companies to file annual reports with information on employment of migrant workers (including payment of wages and allowances to them.)

The Occupational Safety, Health & Working Conditions Code 2020

As per one estimate, internal migrant workers constitute around 40 million in India and majority of them belongs to informal sector (characterized by structural precarity and lack of legal regulation). The primary Act related to protection and entitlement of migrant workers, the inter-state migrant workers has been subsumed under the Occupational Safety, Health and Working Conditions Code (OSH Code) with other 13 related laws. The other laws pertaining to occupational safety and conditions included in this code are: The Contract Labor (Regulation and Abolition) Act, 1970; The Mines Act, 1952; The Dock Workers (Safety, Health and Welfare) Act, 1986; The Building &

Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; The Plantations Labor Act, 1951; The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; The Working Journalist (Fixation of rates of wages) Act, 1958; The Cine Workers and Cinema Theatre Workers Act, 1981; The Motor Transport Workers Act, 1961; The Sales Promotion Employees (Conditions of Service) Act, 1976; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

While the Bill consolidates existing acts, it falls short of simplifying their provisions.

The 2020 Bill replaces 13 laws regulating health, safety and working conditions of workers. The National Commission on Labor (2002) recommended consolidation and simplification of these laws. Further, the statement of objects and reasons of the Bill maintains that it seeks to simplify and amalgamate the provisions of the 13 Acts. While the Bill consolidates existing acts, it falls short of simplifying their provisions. The Bill contains general provisions which apply to all establishments. These include provisions on registration, filing of returns, and duties of employers. However, it also includes additional provisions that apply to specific type of workers such as those in factories and mines, or as audio-visual workers, journalists, sales promotion

employees, contract labor and construction workers.

Gaps in the OSH Code

The OSH Code introduces several changes for the regulation of migrant workers. The review of the Code reveals certain limitations in dealing with the interstate migrant workers. Most of the changes do not support the requirement of need for a rehaul in ISMA. The observed gap in the existing OSH code is as follows:

Coverage: The Code shrinks the net for the inclusion of workers which is critical as well as risky. ISMA applies to the establishments employing 5 or more persons whereas the Chapter on Inter-state Migrants in OSH code covers establishments employing 10 or more persons. Due to such a threshold, it is projected that many establishments could be left out of the scope of regulation because as per Economic Census of 2016, only 1.66 percent of the total establishments employ 10 or more workers in the non-agricultural sector. Similarly, the Contract Labor Act covers establishment hiring 20 or more contract workers, while the Chapter on Contract Labor in OSH code includes the establishments hiring 50 or more people. Subsequently, majority of the workers could be vulnerable to exploitation due to lack of coverage under the Act and net of legal protection.

Definition: Another important issue is related to definition of migrant workers. The ISMA defines, an inter-state migrant worker as a person “recruited by

or through a contractor in one State ... for employment .. in another State". The OSH Code modifies the definition and does away with the need for a contractor. As per OSH Code it has widened the definition of contract workers. Such a move could be useful to extend the workers' coverage by including the workers who were not employed via a contractor. The OSH code covers those who are employed directly by the employer (without the contractor) at the destination state. Any individual (including self-employed worker) who has migrated on their own to another state will be considered as a migrant worker. A registration portal to be managed by Central Government and the state governments is mandated to be set up by the Code. Still, there is some ambiguity in this regard, like who will operationalize the portal and the related mechanism, the implementation of the portal among various institutions (state, center, or destinations). The challenges of database management to accommodate the heterogeneity of internal labor migration are also critical. Keeping record of a certain group of informal workers like workers employed in micro enterprises; daily-wage workers with no fixed employer; self-employed workers; home-based workers; workers regularly moving from one state to another with a single contractor is difficult. The OSH Code also brings the income as a criterion to define the migrant workers. The workers earning more than 18,000 rupees are moved out of the definition thus not liable for social protection under such scheme. The rationale of the income-based distinction is ambiguous, and brings discussion around the issue of vulnerabil-

ity which could not be necessarily related to earnings.

Intrastate Migrant Workers

The Chapter XI from Part II of the OSH Code does not talk about the intrastate migrants, the migrants who move within state. As per the Census 2011 data indicates that 88% of internal migration (about 39.6 crore Indians) covers workers moving within the state boundaries. Government of India's Working Group report on Migration also highlights the issue of underestimation of internal migration. The vulnerabilities faced by both intra-state migrants and inter-state migrants are similar, and difficulty faced by intra-state migrants is not mitigated by moving or remaining within state boundaries. The OSH Code has completely left out of the scope, and the opportunity to expand the protection to intra-state migrant workers is missed.

Loss of Important Provision

There are also some important provisions which deemed to be lost in the transition from ISMA to OSM. For example, ISMA has a provision for the passbook for employees that entails the details of employees' wages, workdays, place of work etc. The passbook is a source of credible records of employees, and helpful to diminish the chances of exploitation. The OSH Code does not

The OSH Code does not prescribe any detail on provision of passbook.

prescribe any detail on provision of pass-book. The ISMA also asks the employers to provide the details to the home and destination state labor department at the time of recruitment as well as end of employment of migrant workers. Such a process was a way to create records and data, has no mention in the OSH Code. The obligation of contractor to pay displacement allowance to interstate migrant workers also has no space in the OSH Code. Such displacement allowance was the significant support and legislative guarantee to migrant workers. The ISMA categorically explain the obligation of contractors towards migrant employees. The workers have a right to claim if contractor fails to provide the statutorily mandated amenities and facilities. On the other side, the OSH Code leaves the duties of the contractors as prescribed by rules. Every state can adjust or reduce the duties of the contractors for the sake of “ease of doing the business”. Further, the Occupational Safety, Health and Working Conditions Code also does not sufficiently answer the issues related to occupational safety and working conditions for many groups of unorganized sector workers. No concrete legal framework for workers in agriculture sector (except those in plantations) and workers employed in small establishments is not given in the Code. Other than this, regular working hours are also not strictly defined in the Code. The clause on working hours in OSH Code mentions as “may be notified by the appropriate government”. The progressive rights brought after a long fight could not be omitted and take us decades back.

Some Suggestions

To simplify the complex labor system of India is a welcome move but such initiatives could never be an easy job. A few ideas could be useful to promote the welfare of migrant workers.

Government should allocate the social security numbers to the migrant workers especially, to cover the workers employed in the unorganized sectors

For example, the Parliamentary Standing Committee has recommended for a separate chapter on migrant workers at the OSH Code (on health, welfare, and safety of migrant workers) instead of a combined chapter including provisions of contract workers and migrant workers as at present. After witnessing the struggle of migrant workers to reach their homes after lockdown caused by Covid 19, data (numbers, place of employment, home location etc.) of migrants is most important to ensure their self-return to home. Indian government is planning to set up a website to facilitate the registration of migrant workers. The Aadhaar card of the workers would be used for registration purpose. Later on it was realized that Aadhaar card number could not be sufficient. As per the suggestion of the Parliamentary Standing Committee on Labor the Government should allocate the social security numbers to the migrant workers especially, to cover the workers employed in the unorganized sectors (those who do not come under the purview of migrant work-

ers). Creating such a portal for maintaining the database could be useful to avoid the previously witnessed situation of massive return of workers after Covid 19 lockdown. The data could be further used to map the migration pattern of workers. Moreover, the codification process may also serve different purposes like leveraging technology to collect data and management, creating accountability, and mechanism of management and reporting.

However, it is also realized that migrant workers may not have internet access. Hence, a mall arm of administration could be developed through roping in the gram sabhas, municipality or panchayat. A few evidences are available in this regard. For example, Bihar follow a migration tracking system (to track contact detail, destination details, identity, migration purpose etc.) with the help of panchayat. The registration is performed with the help of different institutions like community vigilance committee (at village level), civil society organizations, panchayati raj institutions, and labor department at district level. Such collaborative and cohesive approach could be useful for data collection.

It is also emphasized that both Central and state governments should take responsibility to maintain the data. Migrant workers fall into both formal and informal sectors, hence legal protection for both the groups is important. Code in social security has some provisions but they are tokenistic and should be refined more. For example, a provision for so-

cial security fund given in Social Security Code Bill 2019 carries some ambiguity. There is no detail on who will contribute to the fund or how the fund will be utilized. Social Security Code Bill 2019 has no scheme for workers employed in unorganized sector.

The new Code specifies the limit of 10 workers for implementation of legal provisions for registering, protecting and for the welfare of migrant workers. Earlier, ISMA held the limit as five. It is also observed that the present Code also goes away with the exemption of providing protection like equality of working conditions, displacement allowance, accommodation, and medical facilities irrespective of the number of migrant workers in establishments. Such criteria are also disconnected from real situations. As per the Aajeevika Bureau of an industrial suburb of Mumbai, an average manufacturing unit employs six people to work on shop floor, all of them being migrants themselves.

Concluding Remarks

The present article has highlighted the relevance of the two important Indian labor legislations in relation to migrant workers. A few observed gaps in these legislations are discussed. Such gaps in these legislations could be the main reason for the ineffectiveness of these legislations while dealing with the crisis of migrant workers caused by Covid 19 lockdown. A few suggestions are also discussed to deal with aforementioned crises of Covid 19 workers.

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