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LIBERALISING LABOUR LAW

JS Mann



2023

Centre for Transparency and Accountability
in Governance,
NATIONAL LAW UNIVERSITY, DELHI

Liberalising Labour Law

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2023

Centre for Transparency and Accountability in Governance,

National Law University, Delhi

Published by

Centre for Transparency and Accountability in Governance,
National Law University, Delhi.
Sector 14, Dwarka, New Delhi- 110078

Print Subscription: Free Online

ISBN: **978-93-84272-34-0.**

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Acknowledgement

This book is a compilation of nineteen articles written by scholars from various fields based on the four new labour reforms introduced in India. I am grateful to all my friends and colleagues for their support in publishing this book.

First of all, I take this opportunity to thank all the authors of the articles published in this book for their valuable contributions and sharing their insights and knowledge regarding the labour law reforms and recommendations and choosing this book as a medium for conveying their message.

I would also thank Dr. Ellina S, Fellow, VVG National Labour Institute, Govt of India, NOIDA, Dr. Florence, Senior Consultant Fortis Hospital, & Former CMO, Govt of NCT Delhi, Dr. R. K. Elangovan, Director General, DGFASLI, Ministry of Labour & Employment, Government of India, Dr. Sven Timm, Vice-President ISSA Information, Director of Central Prevention Division, German Social Accident Insurance (DGUV), Germany, Mr Saji Narayanan, Former National President of BMS, India, Mr. Bimal Kanti Sahu, Director, Indo-German Focal Point, India, Mr. P.K Goswami, Deputy Director, Industrial Safety and Health (Factories) Govt of NCT Delhi, Mr. S.P Rana, Deputy Director, Industrial Safety and Health (Construction) Govt of NCT Delhi, Mr. Sultan Ahmad, ILO South Asian Region India and Prof. BT Kaul, Former Chairperson, Delhi Judicial Academy and Professor of Law, Faculty of Law Delhi University for their valuable suggestions and instructions.

Finally, I thank Dr. Vani Kesari A, Hon. Director, Interdisciplinary Centre for Research Ethics and Protocols, CUSAT, Prof. S. K. D. Rao, Former Vice Chancellor NLU Delhi and Prof. V Vijayakumar, Former Vice Chancellor, NLIU Bhopal for their academic support.

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Preface

Labourers play a vital role in running the society as they are the lifeblood of the growth of the society. For the benefit of the society, it is necessary to improve the working conditions of the labourers and ensuring them of social security and raising the standard of their living. The labour laws in India seemed to have been inadequate to cater to the needs of the labourers in the 21st century. In this regard enough deliberations and discussions were held for a massive overhaul in the labour laws of the country. Keeping the welfare of labourers in mind, the Centre has amalgamated 44 labour legislations into 4 broad Codes i.e., The Code on Wages 2019, The Occupational Safety, Health and Working Conditions Code 2020, The Code on Social Security 2020 and The Industrial Relations Code, 2020.

The enactment of these Codes is considered to a gateway for a new era in social security and industrial laws in India. The Union government has termed these new labour laws as them “landmark” and “game-changer” laws. The Code guarantees many benefits for the workers. Areas which were overlooked in the previous labour laws were brought into the present 4 labour Codes.

However, there exist certain lacunae in the new Codes. A major issue that can be found in the Codes are that for any workers to avail the benefits of the Code, it is essential for that particular industry to have employed more than ten employees. This would mean that any industry that employs less than ten workers are exempted from providing the basic social security to the workers.

Another issue is the exclusion of gig-workers or platform workers from the ambit of social security. The number of gig-workers are on the rise and excluding them from social security benefits seems to be a saddening fact. The impact of such tedious labour to make ends meet would pave way for numerous physiological and psychological problems for such workers and depriving them of social security could not be considered a suitable reform in a civilised world.

Nevertheless, there are numerous promises and pitfalls in the new labour Codes which are studied in this book “Liberalising Labour Law”, which is a compilation of 19 articles from scholars, activists, lawyers and students on various issues relating to the new Codes and also provides insights into the pros and cons of the Codes.

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OCCUPATIONAL SAFETY AND HEALTH: LABOUR LAW AND POLICY

*Prof. S.C. Srivastava**

Abstract

Occupational health and safety is an area in public health that emphasizes upon the physical as well as mental injury and illness caused to the employees at their respective place of occupation. Occupational hazards could be due dangerous working conditions, hazardous materials or even the spread of diseases. Ensuring occupational safety at all levels is the responsibility of the employer. It is often found that in many workplaces the safety measures for the employees are overlooked by the employer and millions suffer as a result of such disasters. In this paper we embark upon the requirement of Occupational Health and Safety and the International and national frameworks in this regard along with looking at the reaction of the judiciary towards certain grievances of the employees regarding the same.

Keywords: Occupational Health and Safety, Occupational hazard, Labour Code, Judiciary, Risk Management etc.

1. INTRODUCTION

Occupational safety and health are major problems around industrialized world. Modernization and innovation in industries and rapid growth in chemical hazards and polluting industries in recent years have not only resulted in unsafe working conditions but have created problems of safety and occupational health hazards which not only affect the workers but also the residents. Every year millions of workers are affected by occupational injuries or diseases and unsafe working conditions caused by workplace hazards. The ILO global estimates, 2.78 million work-related deaths are recorded every year, of which 2.4 million are related to occupational diseases.¹ These data are very much disturbing which depicts the severity of the prevailing situation. It may also be noted that many deaths and injuries due to occupational hazards are not reported. Quite apart from the unsafe working conditions and inadequate health and safety measures it

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¹ *International Labour Standards on Occupational Safety and Health*, International Labour Organisation, Available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>, last seen on 14/10/2022.

also has many psychological, social, and economic effects on victims' families and communities. social security

2. ILO ON OCCUPATIONAL SAFETY AND HEALTH

ILO has adopted more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice.² The Key instruments on occupational safety and health are (I) Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187)³, (ii) Occupational Safety and Health Convention, 1981 (No. 155)⁴ and (iii) Occupational Health Services Convention, 1985 (No. 161)⁵. Recently ILO Centenary Declaration on the Future of Work declared that "safe and healthy working conditions are fundamental to decent work. Likewise, the 2030 Agenda for Sustainable Development, recognized the importance OSH.

3. NATIONAL POLICY ON OCCUPATIONAL SAFETY AND HEALTH

In India, the formulation of policy, priorities and strategies in occupational safety, health and environment at work places, is undertaken by the Government in consultation with social partners professional safety and health organizations. The Government of India firmly believes that without safe, clean environment as well as healthy working conditions, social justice and economic growth cannot be achieved. Thus, the government of India in its national policy, laws and regulations, has provided for the protection of safety, health, and well-being of all workers. However, the changing job patterns and working relationships, the rise in self-employment, greater sub-contracting, outsourcing of work, homework and the increasing number of employees working away from their establishment, pose problems to management of occupational safety and health risks at workplaces.⁶ New safety hazards and health risks will be appearing along with the transfer and adoption of new technologies. In addition, many of the well-known

² Ibid.

³ C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 last seen on 14/10/2022.

⁴ C155 - Occupational Safety and Health Convention, 1981 (No. 155) Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155 last seen on 14/10/2022

⁵ C161 - Occupational Health Services Convention, 1985 (No. 161) Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C161 last seen on 14/10/2022.

⁶ Ministry of Labour and Employment, Government of India, *National Policy on Safety, Health and Environment at Workplace* para 1.6 Available at <https://labour.gov.in/sites/default/files/SafetyHealthandEnvironmentatWorkPlace.pdf>, last seen on 15/10/2022

conventional hazards will continue to be present at the workplace till the risks actually happen.⁷ Further the increasing use of chemicals, exposure to physical, chemical and biological agents with hazard potential unknown to people; the indiscriminate use of agro-chemicals including pesticides and alarming influence of stress at work in many modern jobs pose serious safety, health and environmental risks.⁸

4. LABOUR LEGISLATION ON OCCUPATIONAL SAFETY AND HEALTH

In India the Factories Act, 1948; Plantations Labour Act, 1951; Mines Act, 1952, Plantation Labour Act, 1951, Motor Transport Workers Act, 1961, Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Cine Workers and Cinema Theatre Workers Act, 1981, Dock Workers (Safety, Health and Welfare) Act, 1986; and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 seeks to regulate the occupational safety, health and working condition the factories , mines, plantations, ports and dock motor transport and building and construction.

Quite apart from this the Indian Judiciary has displayed in the absence of any legislative enactment a creative role to protect the interest of workers for premature incapacitation to do the required due to occupational disability.

5. CONTRIBUTION OF INDIAN JUDICIARY ON OCCUPATIONAL SAFETY AND HEALTH

In *M.C. Mehta v. Union of India*⁹ the Supreme Court in an epoch-making judgment. The Court evolved a new concept of liability to deal with problems of hazardous and inherently dangerous industries. The Court departed from the rule *Ryland v. Fletcher*¹⁰ and ruled that an enterprise which is engaged in a hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of the hazardous or inherently dangerous nature of the activity which it has undertaken. The

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *M.C. Mehta v. Union of India*, AIR 1987, SC 1086.

¹⁰ *Rylands v. Fletcher* 1866 L.R 1 Exch 265, the Court held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability.

enterprise engaged in such nature of activity indemnifies all those who suffer on account of the carrying on of such activity regardless of whether it is carried on carefully or not. The Court also held that the measure of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

In *Anand Bihari v. Rajasthan State Road Transport Corporation*¹¹ the Supreme Court of India formulated a scheme for compensatory relief to safeguard the interest of such workers who had to face premature termination of service on account of disability contracted due to occupational hazards. Here the state transport corporation employed a number of drivers who were required to drive heavy motor vehicles. Some of the drivers, who had put in service with the corporation for long periods and were above 40 years of age, developed a weak or subnormal eyesight. The corporation, therefore terminated the services of thirty such drivers. The court was called upon to decide (i) whether the termination of services of the drivers is covered by sub-clause (c) of section 2(oo) of the Industrial Disputes Act, 1947, and (ii) whether the drivers were entitled to compensation for occupational injury under the Employees' State Insurance Act, 1948. The court held that the termination of the services of the workers in the present case, being covered by sub-clause (c) of section 2(oo), would not amount to retrenchment under the section. Regarding the availability of benefits under the ESI Act, the court held that the present case would not be covered by item 4 of part I and items 31, 32 and 32A of part II of the second schedule of the Act as no provision is made there for compensation for a disability to carry on a particular job. In order to fill the gap left by the legislature and to provide compensatory relief to workmen who are disabled to carry on a particular job but are not incapable of taking any other job, the court directed the corporation that:

- (a) *"It should in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which might be available and which he was able to perform,*
- (b) *In case no such alternative job was available, each workman should be paid, along with his retirement benefits, an additional compensatory amount, as calculated for the remainder of his service years, as follows:*
- (i) *seven days' salary per year where the employee had put in five years or less;*

¹¹ *Anand Bihari v. Rajasthan State Road Transport Corporation* 1991 Lab. IC 494.

- (ii) *fifteen days' salary per year for service of more than five years but less than ten years;*
- (iii) *twenty days' salary per year for more than ten years but less than fifteen years' service; equivalent to one month's salary per year for more than fifteen years, but less than twenty years' service;*
and
- (iv) *two months' salary per year for more than twenty years' service."*

The aforesaid decision not only paved for the legislator but shows determination of the Court to fill the gap created by the social security legislation such as the Employees State Insurance Act, 1948 and the Workmen's Compensation Act, 1923 which has now been replaced by the Employees State Insurance Act, 1923. Further the decision highlights the anxiety of the Court to protect the suffering caused by workers at advance age due to loss of required vision by premature termination of service but also to the members of their families. Moreover, the Court adopted the humanitarian approach when it made the observation that:

"The workmen are not denizens of an animal form to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of the family and other dependents and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stand multiplied. They may no longer be of use to employer for the job which they are employed but the need of their patronage to other intensifies with the growth in their family responsibilities."

It is submitted that the aforesaid line of approach adopted by the Supreme Court of India represents to a large extent the viewpoint of Justice Homes that the life of law has not been logic but experience.

We now turn to examine the recent development in legislative sphere and more so in relation to Occupational Safety, Health and Working Conditions Code, 2020.

6. LABOUR CODE ON OCCUPATIONAL SAFETY AND HEALTH

The year 2020 witnessed the passing of the Occupational Safety, Health and Working Conditions Code, 2020(hereinafter referred to OSH Code).¹² This is the first specific legislation on OSH. It seeks to amalgamate, simplify and rationalise the relevant

¹² The Occupational Safety, Health And Working Conditions Code, 2020 (NO. 37 OF 2020) Available at https://labour.gov.in/sites/default/files/osh_gazette.pdf, last seen on 16/10/2022.

provisions of thirteen Central labour enactments relating to occupation, safety, health and working conditions of workers.

7. APPLICATION OF OSH CODE

The OSH Code applies to: (i) every place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed; or (ii) motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, in which ten or more workers are employed; or (iii) factory, for the purpose of Chapter II, in which ten or more workers are employed, notwithstanding the threshold of workers provided in clause (w); or (iv) every mine or port or vicinity of port where dock work is carried out. But the notable feature of OSH Code that in any establishment, in which hazardous or life-threatening activity is carried on it would be applicable even a single person is employed. However, the informal sector, which constitute about 92 percent of working population is more or less out of purview of the Code¹³ unless hazardous or life-threatening activity is carried on deprived in terms of access to OHS measures.

7. 1 Registration

The Code imposes an obligation upon the employer of every establishment to make an application electronically to the registering officer who is required to register the establishment and issue a certificate of registration electronically to the employer thereof within the prescribed period failing which such establishment shall be deemed to have been registered under this Code immediately on the expiration of such period and the electronic certificate of registration shall be auto generated and the responsibility of such failure shall be on the registering officer.¹⁴

7.2 Authorities to Regulate Occupational Safety and Health Standards

In order to regulate occupational safety and health standards OSH Code provides for setting up the National Occupational Safety and Health Advisory Board at Central level and State Occupational Safety and Health Advisory Board.¹⁵ Further it provides for setting up Safety Committee and appointment of Safety Officers in order to see that the provision of the Code is observed. Furthermore, the Code requires that research related activities, safety and occupational health surveys and collection of statistics and portal for Inter-State migrant workers be carried out. Quite apart from this

¹³ Working peoples Charter, *Craftily Written Labour Codes Exclude Millions, Pay Little Heed to Equality*, The Wire, (26/07/2019) Available at <https://thewire.in/labour/cabinet-passes-labour-codes-wages-occupational-safety> last seen on 17/10/2022.

¹⁴ S. 3, The Occupational Safety, Health and Working Conditions Code, 2020.

¹⁵ Ibid, S. 16.

the Government of India has constituted four Expert Committees for the purpose of framing standards relating to Safety, Health and Working conditions pertaining to Factories, Dock Works and Building & Other Construction Works.¹⁶ One Expert Committee has been exclusively formed for framing Fire Safety Standards under Section 18 of the Occupational Safety Health and Working Conditions Code, 2020. However, the OSH Code like factories, mines, plantation does not comprehensively deal with building worker. Section 78 of the OSH Code prohibits employment of any person who is deaf or he has a defective vision or he has a tendency to giddiness in building work. It is felt that similar provision may also be incorporated for workers employed in factories and mines.

7.3 Duties of Employer

The OSH Code imposes a duty upon employer¹⁷ to comply with occupational safety and health standards,

- (i) annual health examination free of costs to such employees of such age or such class of employees or establishments or such class of establishments, as may be prescribed by the appropriate Government, maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees; ensure the disposal of hazardous and toxic waste including disposal of e-waste.
- (ii) responsible for the safety and health of persons employed in the factory, mine, dock work, building or other construction work or plantation, shall include provisions for (i) maintenance of the plant, (ii) information, instruction, training and supervision as are necessary to ensure the health and safety of all employees at work; (iii) the maintenance of all places of work and (iv) monitoring of working environment.

7.4 Duties of Owner and Agent of Every Mine

The OSH Code makes the owner and agent of every mine shall jointly and severally responsible for making financial and other provisions and for taking such other

¹⁶ Shreeja Singh, *Labour Ministry Sets Up Panels To Review The Existing Rules Under The OSH&WC Code*, Money Control (01/04/2021) Available at <https://www.moneycontrol.com/news/business/labour-ministry-sets-up-panels-to-review-the-existing-rules-under-the-oshwc-code-6720111.html> last seen on 17/10/2022.

¹⁷ S 6 (1), The Occupational Safety, Health and Working Conditions Code, 2020.

steps as may be necessary for compliance with the provisions of this Code and the regulations, rules, bye-laws and orders made thereunder.¹⁸

7.5 Duties of Manufacturers, Designer, Importers or Suppliers

The Code also imposes a duty upon manufacturers, designer, importers or suppliers¹⁹ to ensure that the article is so designed and constructed in the establishment is safe and without risks to the health of the workers when properly used. They are also required to take necessary steps to ensure that adequate information will be available about the use and conditions necessary to ensure that the article (including plant and machinery).

7.6 Duties of Person Who Erects or Install, Manufactures, Imports or Supplies Any Substance

The OSH Code also imposes duty of person who erects or install, manufactures, imports or supplies any substance any article for use in a factory,²⁰ Similarly the Code fixes the Responsibility of architect, project engineer or designer at the planning stage.

7.7 Duties of Employees

The OSH Code also requires the employee to:²¹

- (a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at the workplace;
- (b) comply with the safety and health requirements specified in the standards;
- (c) co-operate with the employer in meeting the statutory obligations of the employer under the Code;
- (d) report any situation which is unsafe or unhealthy, that comes to his attention, as soon as practicable, to his employer or to the health and safety representative and in case of mine to the owner or agent or manager referred to in section 64, safety officers or an official for his workplace or section thereof, as the case may be, who shall report it to the employer;
- (e) not wilfully interfere with, or misuse, or neglect any appliance, convenience or other thing provided at workplace for the purpose of securing the health, safety and welfare of workers;
- (f) not do, wilfully and without reasonable cause, anything, likely to endanger himself or others; and
- (g) perform such other duties as may be prescribed by the appropriate Government.

¹⁸ S. 7 (1), The Occupational Safety, Health and Working Conditions Code, 2020.

¹⁹ Ibid, S. 8 (1).

²⁰ Ibid, S 8 (6) (a).

²¹ Ibid, S. 13.

The aforesaid provision has been inserted because employees who are employed to do the work are in a better position or first to know about the unsafe or unhealthy conditions. It is therefore provided that employees should report as and when it comes to his notice about all unsafe acts, unsafe conditions, illnesses and injuries to the employer or other persons specified in the section. The idea behind this section is that once the employee finds that a job or task is unsafe, stop the work and communicate your concerns with your employer. However, safety is the business and responsibility of every employee and can be achieved through proper education, training, use of protective equipment and by following safety rules, regulations, standards, and laws

7.8 Rights of Employee to Obtain the Information from the Employer

The OSH Code confers following rights to employee.²²

- (1) Right to obtain the information from the employer relating to employee's health and safety at work and represent directly or through a member of the Safety Committee, if constituted by the employer for such purpose, regarding inadequate provision for protection of his safety or health in connection with the work activity in the workplace, and if not satisfied, to the Inspector cum-Facilitator.
- (2) Where there is a likelihood of imminent serious bodily injury or death or imminent danger to health, they may bring the same to the notice of their employer.
- (3) The employer shall take immediate remedial action and send a report forthwith of the action taken to the Inspector-cum-Facilitator.
- (4) If the employer is not satisfied about the existence of any imminent danger as apprehended by his employees, he shall, nevertheless, refer the matter forthwith to the Inspector-cum-Facilitator whose decision on the question of the existence of such imminent danger shall be final.

8. CONCLUSION

The occupational safety and health (OSH) scenario in India seem very complex. The establishment a zero-tolerance policy toward workplace violence is of utmost importance. Thus, attempts required to be made for covering all workers, patients, clients, visitors, contractors, and anyone else who may come in contact with employees of the working facility. However unprecedented growth of gig and platform workers, contract workers, huge workforce in unorganized sector, availability of cheap labour, meagre public spending on health, inadequate implementation of existing legislation, lack of reliable OSH data, shortage of OSH professionals, multiplicity of statutory controls, apathy of stakeholders and infrastructure create hurdle. Further globalization,

²² S 14, The Occupational Safety, Health and Working Conditions Code, 2020.

transfer of technologies, newer type are biggest challenges which create hurdle in achieving the goal of zero tolerance.

The most important OSH needs are: (i) legislation to extend OSH coverage to all sectors including the unorganized sector; (ii) designing suitable control systems of compliance, enforcement and incentives for better compliance.²³ (iii) spreading the awareness about OSH among workers (iv) develop of OSH infrastructure and OSH professionals. Other issues include integration of occupational health with primary health care. Indeed, there is a need to involve of social partners to meet the challenges to such working population and vulnerable groups where social protection is not adequate. The main goal of safety and health programs is to focusing on prevention strategies and monitoring performance through improved data collection system on work related injuries and diseases ²⁴ prevent workplace injuries, illnesses, and deaths, as well as the suffering and financial hardship these events can cause for workers, their families, and employers. Needless to add that effective safety and health facilities would not only help businesses and increase productivity but would also prevent workplace injuries and illnesses, improve compliance with laws and regulations, reduce costs, including significant reductions in workers' compensation premiums and enhance their social responsibility goals.

We strongly feel that there is one principle which admits of no exceptions. No establishment has a right to exist unless it is able to provide minimum occupational safety and health standards prescribed by the State keeping in view the minimum standards of occupational safety and health laid down by ILO and in particular the one ratified by the country. The employment of labour without providing minimum safety and health standards cannot be tolerated and be discouraged in a modern democratic welfare state. If the employer of any establishment cannot provide minimum occupational safety and health standard laid down by the State, he would have no right to conduct his enterprise.

²³ Supra 1.

²⁴ Ibid at para 2.6.

APPLICATION OF TECHNOLOGICAL INNOVATIONS IN OSH: NEW CHALLENGES FOR RISK ASSESSMENT

Prof. Partha Pratim Mitra*

Abstract

The paper attempts to bring out the importance of applications of technology innovations in the area of Occupational Safety and Health (OSH). Significant shifts that have taken place from a prescriptive to a preventive safety of OSH. In the process of this shift, the role of technological innovations has influenced OSH to a great extent. It allows safety managers to monitor behaviour and to communicate safety and health advice and information to workers in real time. The importance of application of technological innovations in risk assessment has been brought out. Since each organisation has human resources, a comprehensive assessment of the work processes in which such resources are engaged is necessary to understand the interphase between human resources and the emergence of risks in the work processes so that risk analysis becomes integral to the functioning of the enterprise.¹

Keywords: Occupational Health and Safety, Technology, Innovation, Artificial Intelligence, Building Information Modelling etc.

1. INTRODUCTION

Beyond the COVID-19 crisis, and particularly due to digital and green transitions, workers could face more frequent changes in the world of work as industries are impacted today by the three key drivers of structural change-digitalization, decarbonization, and demographic change in the labour markets with more people joining the ranks of non- standard forms of employment. Adapting OSH policies and instruments are necessary to address the challenges in the changing world of work.²

We would in this paper examine the role of international organisations in bringing about an OSH culture in member countries and their approaches to OSH and

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¹ Lucian-Ionel CIOCA & Larisa IVASCU , *IT Technology Implications Analysis on the Occupational Risk: Cloud Computing Architecture*, 16, Procedia Technology, 1548, 1556 (2014), Available at https://www.researchgate.net/publication/275244605_IT_Technology_Implications_Analysis_on_the_Occupational_Risk_Cloud_Computing_Architecture/link/ last seen on 15/10/2022,

²*G20 Policy Principles on Adapting Labour Protection for More Effective Protection and Increased Resilience for All Workers*, G20 2022, Available at <http://www.g7.utoronto.ca/g20/2022/4-LEMM-Labour-Protection.pdf>, last seen on 14/10/2022.

the manner in which technological innovations have been adopted in OSH. Taking into consideration the applications of technological innovations and the legislative provisions we would also propose a risk assessment framework.

2. GLOBAL DEVELOPMENTS AND APPROACHES TOWARDS OSH: ROLE OF ILO, WHO AND UN

2.1 International Labour Organisation

It is estimated that globally 2.78 million workers die annually from occupational accidents and work-related diseases,³ and an additional 374 million workers suffer from nonfatal occupational accidents. About 4% of the world's gross domestic product is reduced due to lost work days, going upto 6% in some countries.⁴ The constitution of the International Labour Organization (ILO) calls on member states to improve working conditions, including “the protection of the worker against sickness, disease and injury arising out of his employment.” While occupational hygiene, along with occupational medicine, toxicology, and epidemiology, grew rapidly, along with safety design and engineering, the approach to controlling and regulating occupational safety and health (OSH) risks remained relatively the same with prescriptive measures which imposed duties based on established legal employment relationships, in relation either to identified hazards and harmful substances or to entire industries such as mining and construction. Apart from its normative role, the ILO focused on the development of codes of practice and guidelines on OSH. Recently, changes in global production, developing technologies, changes in the world of work labour market demographics, and major industrial disasters demanded a different approach to OSH policy. Challenges for both employers and workers at the country level showed that the traditional regulation of single OSH risks or single economic sectors had become too narrow which warranted the establishment of a more holistic approach that could address increasingly divergent OSH challenges. The ILO adapted to these global changes by shifting to a culture of prevention⁵.

³ Ilo: 2.78 Million Workers Die From Occupational Accidents Annually, Safety4Sea, (06/05/2019), Available at <https://safety4sea.com/ilo-2-78-million-workers-die-from-occupational-accidents-annually/>, last seen on 14/10/2022.

⁴ Ibid.

⁵ Greenfield, Deborah, *Safety and Health at the Heart of the Past, Present, and Future of Work: A Perspective From the International Labour Organization* 110 (5) Am J Public Health 646, (2020) Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144443/pdf/AJPH.2020.305633.pdf>, last seen on 20/10/2022.

Two major developments defined the post war period in OSH. The first was the increasing use of the notion of the work environment, to convey a more holistic approach to its understanding and improvement, exemplified, for example, by the OSH policies of Scandinavian countries from the 1960s onwards.⁶ The second was the shift of focus from prescription to more outcome-oriented and process-based approaches to OSH regulation that were perhaps first most influentially articulated in the United Kingdom in 1972(Robens Report which got reflected in the ILO Occupational Safety and Health Conventions 1981 (No. 155) and its accompanying Recommendation (No. 164), Occupational Health Services Convention, 1985 (No. 161) and its accompanying Recommendation (No. 171).⁷ Systematic approaches to OSH management became central to both policy and regulatory discourse on OSH and their effects were widespread in reforms not only in Europe but in post-industrial economies all over the world. At the same time standards on OSH management systems were being developed on a voluntary basis and systems for their certification introduced.

In 2001, the ILO published Guidelines on safety and health management systems (ILO-OSH 2001). These developments helped to embed the systems-based approach to OSH management in global OSH policies at both national and workforce levels. If the early phases of ILO activity on OSH were characterized by standard setting and establishment of a base for scientific activities, followed by a second phase in which standards setting and guidance were expanded to address global needs and provide technical assistance, a third phase in development came in the form of responses to the challenges of globalization and the changes in political and economic policies that accompanied it.⁸ The response of the ILO to meet the needs for less prescriptive approaches towards regulation and control of OSH were evident in Convention No. 155 and Recommendation No. 164, as well as the Protocol to the Convention, adopted in 2002, which addressed requirements to improve OSH governance at national levels. Global Strategy on Occupational Safety and Health adopted by ILO in 2003 made international labour standards a central plank for the promotion of OSH, calling for integrated action and continued promotion, awareness raising and advocacy on OSH as well as continued technical assistance and cooperation and international collaboration to develop national programmes.⁹ The ILO also got involved with host national authorities and the International Social Security Association in the organization of the

⁶ ILO, *Safety And Health At The Heart Of The Future Of Work* Building on 100 years of experience 20, (International Labour Office, 2019) Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_687610.pdf, last seen on 20/10/2020.

⁷ Ibid.

⁸ Ibid at 23.

⁹ Ibid.

World Congress on Safety and Health at Work. This event brings together researchers, regulators, OSH practitioners and other stakeholders in OSH. Declarations concerning OSH, such as the Seoul Declaration of 2008 and the Istanbul Declaration of 2011. In 2017 and 2018, the Standards Review Mechanism (SRM) of the ILO – established in 2011 were also held.¹⁰ In June 2022, when the International Labour Conference (ILC) decided to include a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work (FPRW) ,¹¹ designating the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) as fundamental Conventions.¹²

2.2 World Health Organisation

A new paradigm for OH emerged called health risk management with its focus on workplace hazards and risk to health to include the medical aspects of sickness absence and rehabilitation, the support and management of chronic non-communicable diseases, and workplace health promotion. There was a paradigm shift from a “labour approach” to a “public health approach” which meant that OH practitioners will be concerned with not only employed workers, that is, those under some form of employment contract, but also self-employed and informal workers.¹³ Interventions will extend to families and communities, and will not be restricted to actions at the workplace. The promotion and maintenance of health and well-being will involve a consideration of all health determinants and will not be restricted to work-related health issues. Importantly, the health of workers will not be seen as only the responsibility of employers, but also of the wider stakeholder group which included health, work, and environment authorities; insurance companies; and other healthcare practitioners. Companies have now developed health and well-being strategies to encourage healthy behaviours at work and at home, and promote participation in physical activity challenges. The outputs may be used for both motivational purposes and construction

¹⁰ Ibid at 27.

¹¹ *A Safe And Healthy Working Environment Is A Fundamental Principle And Right At Work*, International Labour Organisation, Available at <https://www.ilo.org/global/topics/safety-and-health-at-work/areasofwork/fundamental-principle/lang--en/index.htm>, last seen on 23/10/2022.

¹² *Safety And Health At Work*, International Labour Organisation, Available at <https://www.ilo.org/global/topics/safety-and-health-at-work/lang--en/index.htm>, last seen on 24/10/2022

¹³ *Extending occupational safety and health to the informal economy - Article for the XVIII World Congress on Safety and Health at Work*, International Labour Organisation, Available at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_094253/lang--en/index.htm, last seen on 19/10/2022.

of organizational risk profiles using social media and other digital communication channels¹⁴

2.3 United Nations

In 2015 United Nations Headquarters adopted the Sustainable Development Goals (SDGs) which are a series of ambitious objectives and targets to end extreme poverty and hunger, fight inequality and injustice, and tackle climate change, by 2030.¹⁵ The 2030 United Nations Goal 8 for sustainable development focuses on decent work: job creation, social protection, rights of workers, and social dialogue and OSH happens to be an integral part of the decent work agenda.¹⁶

2.4 United Nations Development Programme

Human Climate Horizons, a platform created by the United Nations Development Programme's Human development Office. They Quantify the effects of warmer temperatures on death rates, energy use, and time spent working for every country and territory, and for cities and regions within those borders.¹⁷ Launched in the lead-up to COP27, the platform provides the first evidence based finding that climate impacts will fall disproportionately on the poor, helping to frame the debate over the unequal harms caused by rising global greenhouse gas emissions and highlighting the imperative that how the choices made today could shape human development in the future.¹⁸

¹⁴ Harrison, John and Leonie Dawson, *Occupational Health: Meeting the Challenges of the Next 20 Years*, 7(2)

Safety and Health at Work, 143, 145 (2016) Available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4909849/pdf/main.pdf>, last seen on 11/10/2022.

¹⁵ Department of Economic and Social Affairs, *The 17 Goals*, United Nations, Available at
<https://sdgs.un.org/goals>, last seen on 20/20/2022.

¹⁶ Paul A Schulte, Ivo Iavicoli, Luca Fontana, Stavroula Leka, Maureen F Dollard, Acran Salmen-Navarro, Fernanda J Salles, Kelly P K Olympio, Roberto Lucchini, Marilyn Fingerhut, Francesco S Violante, Mahinda Seneviratne, Jodi Oakman, Olivier Lo, Camila H Alfredo, Marcia Bandini, João S Silva-Junior, Maria C Martinez, Teresa Cotrim, Folashade Omokhodio & Frida M Fischer, *Occupational Safety and Health Staging Framework for Decent Work*, 19, *Int. J. Environ. Res. Public Health*, 1, 2 (2022). Available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9518038/pdf/ijerph-19-10842.pdf>, last seen on 19/10/2022.

¹⁷ *Changing Climate Will Exacerbate Global Inequalities In Health, Energy, And Labor Impacts*, Climate Impact Lab, Available at <https://impactlab.org/news-insights/global-inequalities-humanclimatehorizons-undp/> last seen on 19/11/2022.

¹⁸ Ibid.

3. APPLICATION OF TECHNOLOGICAL INNOVATIONS AND THEIR IMPACT ON OSH

The world of work is going through what has been described in the literature as a ‘fourth industrial revolution’¹⁹ driven by the digitalization of information. Digitalization and ICT (Information and Communications Technology), along with related developments such as AI (Artificial Intelligence), advanced analytics, robotics, automation, autonomous vehicles, drones, smart devices, 3-D printers, novel human-machine interfaces, the Internet of Things (IoT), Big Data, cyber-physical systems, advanced sensor technologies, cloud computing, quantum computing, communications networks, e-retail, e-waste and so on, are all increasingly becoming commonplace. The development, use and communication of digitized information are key technological developments which are driving the ‘fourth industrial revolution’ and this has implications for safety and health at work.²⁰ An important impact on safety and health at work is that technological developments have, in some cases been able to take over dirty, dangerous and less dignified jobs previously. A related but important development has been the growing use of Artificial Intelligence (AI) – that is, the use of computers to try to replicate human thinking. AI is increasingly being used to support workers’ safety and health in medical diagnosis.²¹ However, in some cases the use of technology has also led to the replacement of workers, for instance, financial analysts or personal assistants affecting worker’s psychosocial health. A key change for the world of work has been the ‘virtualization’ of work, leading to an increased demand for ‘flexibility’ in relation to work organization,²² working time arrangements and telework resulting in new risks from increased human-machine interfaces, including those linked to ergonomic risks (for example, from the increased use of mobile devices and sedentary work) and cognitive load. Smart technology and wearable smart devices can create

¹⁹ *Fourth Industrial Revolution*, World Economic Forum, Available at <https://www.weforum.org/focus/fourth-industrial-revolution>, last seen on 25/11/2022.

²⁰ Jeehee Min, Yangwoo Kim, Sujin Lee, Tae-Won Jang, Inah Kim & Jaechul Song, *The Fourth Industrial Revolution and Its Impact on Occupational Health and Safety, Worker's Compensation and Labor Conditions*, 10 (4) Safety and Health at Work, 400, 401,(2019), Available at <https://www.sciencedirect.com/science/article/pii/S2093791119304056>, last seen on 22/10/2022.

²¹ Kashyap Kompella, *How AI Can Transform Industrial Safety*, Tech Target, Available at <https://www.techtarget.com/searchenterpriseai/tip/How-AI-can-transform-industrial-safety#:~:text=AI%20tools%20can%20help%20ensure,adoption%20and%20understand%20its%20benefits.&text=Workplace%20hazards%20have%20long%20plagued%20companies%2C%20their%20employees%20and%20their%20profitability.,> last seen on 26/10/2022.

²² Sara Angeles, *What Is Workspace Virtualization? And Does Your Business Need It?*, Business News Daily, (03/05/2023) Available at <https://www.businessnewsdaily.com/5951-workspace-virtualization.html> last seen on 24/05/2023.

opportunities for safety and health. It allows safety managers to monitor behaviour and to communicate safety and health advice and information to workers in real time.

There is at the same time the fear that workers increasingly working with smart devices can lose autonomy in how they carry out their work and forego opportunities for interaction with their colleagues, which can lead to stress and feelings of isolation. work itself. With the growing use of robots in agriculture, horticulture and logistics as well as manufacturing, the likelihood of increased interaction with robots and similar occupational accidents is set to increase.²³ Risk of injury may also increase through human contact with the equipment that robots are using.²⁴ The early decades of the 21st century have also seen continued developments in the introduction of new materials and processes, which have implications for the identification and control of risks arising from their use such as the use of nanomaterials which are generally defined as those containing materials with one or more external dimension between 1 and 100 nanometres.²⁵

The European Agency for Safety and Health at Work indicates that the most impactful health effects of nanomaterials have been found in the lungs, with evidence of oxidative stress, inflammation and tissue damage, fibrosis and tumour generation. In addition, nanomaterials have been found to translocate from the lungs, into the blood stream, to be taken up by secondary organs including the brain, kidney and liver, among others.²⁶ Also some types of carbon nanotubes can lead to asbestos-like effects.²⁷ While there is growing awareness of the potential impact on both human health and the environment, it is generally recognised that, sufficient detailed understanding of the relationships between the physio-chemical properties of nanomaterials, their biological toxicities, and their human and environmental health effects is further required. ²⁸

²³ Chris Lytridis Vassilis G. Kaburlasos, Theodore Pachidis, Michalis Manios, Eleni Vrochidou, Theofanis Kalampokas & Stamatis Chatzistamatis, *An Overview of Cooperative Robotics in Agriculture*, 11(9), Agronomy, 1, 4 (2021), Available at <https://www.mdpi.com/1660-4601/19/17/10842>, last seen 23/10/2022.

²⁴ Ibid

²⁵ Ronald Wennersten, *Nanotechnology: A New Technological Revolution in the 21st Century*, 943, 945, in Handbook of Performability Engineering, (Krishna B Misra 2008) Available at https://link.springer.com/chapter/10.1007/978-1-84800-131-2_57 last seen on 24/10/2022.

²⁶ *Managing Nanomaterials In The Workplace*, European Agency for Safety and Health at Work, Available at <https://osha.europa.eu/en/emerging-risks/nanomaterials> last seen on 22/10/2022.

²⁷ Ibid.

²⁸ Supra 6, at 35.

4. A CONCEPTUAL FRAMEWORK FOR OSH RISK MANAGEMENT

An important development in the 1980s was the move towards a more risk-based focus for policies on OSH. There were various influences on this development, including those arising from the analysis of major industrial disasters in the mid -70s, which triggered worldwide attention and concern.²⁹ Other developments in the science of identification, analysis and control that was by then well-developed in occupational hygiene, in relation to hazardous exposures to chemical, physical and biological agents, and a wider application to the identification, assessment and control of risks in process engineering.³⁰

Current methodologies for risk management in OSH come to the conclusion that the entire process of risk assessment should basically consist of five steps: (a) identifying hazards; (b) assessing and prioritising the risks arising from hazards; (c) planning implementation of risk prevention and control measures; (d) taking actions to eliminate the risk or reduce it until it is admissible; and (e) monitoring, reviewing and updating the risks regularly to ensure that implemented measures are adequate and effective.³¹ In typical workplace situation in industry, where dynamic changes in working conditions are not too common, risk assessment for a given workstation is carried out no more frequently than every few months. A literature review shows that ICT-based solutions have been utilised in the area of risk assessment.³² The framework utilising these ICT based solutions is based on a new paradigm for dynamic and personalised OSH risk assessment and management that consists of the continuous assessment of risks on a real-time basis, and the capacity to assess and monitor the risk level of each worker individually. The process involves two partly overlapping spheres: the Manufacturing Sphere and the Worker Sphere. These spheres are covered by networks of integrated smart objects that should act collectively to fulfil two equal and complementary objectives: (a) to ensure workers' safety and comfort; and (b) to

²⁹ Vitor Sousa, *Risk-Based Management Of Occupational Safety And Health In The Construction Industry – Part 1: Background Knowledge*, 66(1), Safety Science, 75,78, (2014), Available at https://www.researchgate.net/publication/260521320_Risk-based_management_of_occupational_safety_and_health_in_the_construction_industry_-Part_1_Background_knowledge last seen on 22/10/2022.

³⁰ Supra, 6 at 12.

³¹ Vision Zero Fund, *Methodology For OSH Hazard Identification And Risk Assessment And Evaluation In The Coffee Sector*, 12,17,20,21 & 22 (International Labour Organisation, 2020) Available at <https://vzf.ilo.org/wp-content/uploads/2021/09/Methodology-for-OSH-hazard-identification-and-risk-assessment-and-evaluation-in-the-coffee-sector.pdf> last seen on 15/11/2022.

³² Hadi Fadlallah, *How Information Technologies influenced Risk Management?*, Towards Data Science, Available at <https://towardsdatascience.com/how-information-technologies-influenced-risk-management-7eb3a38d253>, last seen on 19/11/2022.

maintain the highest possible productivity and quality of manufacturing processes.³³ However, to meet these expectations in a much more effective manner further research and innovation activities are needed.

4.1 Elements of Risk Assessment: Role of BIM in Construction Safety

Safety is an important aspect of the building construction industry. Building Information Modeling (BIM) can help, and some frameworks of BIM have addressed safety management in limited phases of the project lifecycle.³⁴ However, BIM as a safety tool could be useful in all stages of the construction process. In the BIM a building construction process map is developed which could be automated with the help of digital tools to enhance effective safety management.³⁵ The process map utilizes relevant data from BIM of the individual construction and the centralized ‘Hazard Information Database’ if available for the industry or sector to generate safety reports and propose appropriate safety controls for project execution.³⁶ The main objective of the proposed process map is to encourage an integrated application of BIM for safety management.

The BIM model involves preparation of a workflow model with a high level of detail for all architectural, structural, and MEP (Mechanical, Electrical and Plumbing) components along with quantitative data on all aspects of the workflow.³⁷ Since the central focus is safety, stand-alone safety data at the activity level and individual task as a part of the workflow can be generated for highly hazardous construction equipment and elements such as tower cranes, scaffolding, formwork, etc. The BIM must be adopted by organizations willing to embrace technological innovation. The weak link between safety planning and activity execution lies in the utilization of 2D drawings for hazard identification. Since most approaches to safety planning are manual, perceived results can be subjective and not flawless. By using different features of BIM, such as

³³ Podgórski D, *Towards A Conceptual Framework Of OSH Risk Management In Smart Working Environments Based On Smart PPE, Ambient Intelligence And The Internet Of Things Technologies*, 23(1) International Journal of Occupational Safety and Ergonomics 1, 10 (2017), Available at <https://www.tandfonline.com/doi/epdf/10.1080/10803548.2016.1214431?needAccess=true&role=button> last seen on 15/10/2022.

³⁴ Dr. Stephen Hamil, *What is Building Information Modelling (BIM)?*, The NBS, Available at <https://www.thenbs.com/knowledge/what-is-building-information-modelling-bim>, last seen on 17/10/2022.

³⁵ Ibid.

³⁶ Zhaoqiu Liu & Fei Zhang, *A BIM-Based Preliminary Database Framework for Structural Hazard Prevention Analysis*, 10, The Open Civil Engineering Journal, 695, 697, (2016) Available at <https://opencivilengineeringjournal.com/VOLUME/10/PAGE/695/> last seen on 19/10/2022.

³⁷ *BIM for MEP Engineering*, Autodesk, Available at <https://www.autodesk.com/industry/aec/bim/mep>, last seen on 19/10/2022.

3D modeling, visualization, clash detection, sustainability detection, walkthroughs, and 4D simulations, strategies have been synthesized for safety planning.

After developing a BIM model, hazards can be visually identified and their control mechanisms can be devised accordingly.³⁸ Additionally, 4D simulations can be generated focusing on safety procedures to show the transition of temporary elements and high-risk areas of work.³⁹ This can be further enhanced to remove conflict areas in the activity execution timeline since most workspace conflicts, leading to injuries and accidents, occur due to confined execution space. At the project execution phase the elements of a simulated exercise done at the project planning and design phase on risk assessment as a part of the BIM, which includes hazard identification and safety risks at each stage of the work process become available as a guide to assess and minimize safety risks.⁴⁰ The most hazardous stage of a project from the safety point of view is execution because most construction accidents occur on-site during this phase. Thus, the novelty of this framework lies in the proposition and integration of all BIM-based safety implementation strategies in a single framework, which not only improves safety management but also provides the opportunity to exploit all other BIM advantages. In safety management framework for developing countries, BIM adoption is still in its early stages. Further research can improve upon this limitation by positioning in a safety-compliant culture⁴¹

4.2 Awareness About the Potential Benefits of BIM in India

The implementation of BIM in India is still at a nascent stage due to a lack of knowledge of the advantages of BIM. Besides, there have been only a few case studies conducted in India about BIM. A study to assess the benefits accrued if BIM is applied, in a residential project, before the construction was conducted which had taken a residential project located in Gujarat, India, for a case study.⁴² The 3D and 4D models

³⁸ Sulankivi. K, Kähkönen. K, Mäkelä. T & Kiviniemi. M, *4D-BIM for Construction Safety Planning*, Research Gate, Available at https://www.researchgate.net/publication/228640694_4D-BIM_for_Construction_Safety_Planning last seen on 11/10/2022.

³⁹ Ibid.

⁴⁰ Supra 36.

⁴¹ Ramsha Akram, Muhammad Jamaluddin Thaheem, Shamraiza Khan, Abdur Rehman Nasir & Ahsen Maqsoom

Ahsen Maqsoom, *Exploring the Role of BIM in Construction Safety in Developing Countries: Toward Automated Hazard Analysis*, 14(19), Sustainability, 1, 7, (2022), Available at <https://doi.org/10.3390/su141912905> <https://www.mdpi.com/journal/sustainability>, last seen on 13/11/2022

⁴² Harshil S. Thakkar, Bhishma V. Pandya, Mihir B. Rabadiya, Rakesh C. Prajapati & Dhwani S. Thakkar, *Application Of Building Information Modelling In A Residential Project In India :Benefit –Cost Analysis*, 8(7), International Journal of Engineering Technologies and Management Research 1, 2, (2021)

of the project were generated and 8 errors were identified that could have been detected prior to the construction of the housing project if BIM had been applied. It was estimated that the cost needed to make a BIM model was ₹ 171,050, While the amount that could have been saved if BIM was implemented prior to construction was discovered as ₹ 246,773. Consequently, the benefits to cost ratio for two weeks in delay was estimated at 1.44.⁴³

Another study observed that in the beginning of this millennium, there was a noticeable shift in the activities in the building construction industry. Construction of buildings with advanced HVAC (Heating, Ventilation and Air Conditioning) systems, security needs and energy requirements were on the rise.⁴⁴ While 2D CAD drawings were being created and accessed in digitized formats, they continued to be not very easy for interpretation and use. A need was therefore felt for a more interactive tool which was able to simulate the complexities of the project closely, assembles all information at one place and cross-links the data among all objects of the model. The need gave rise to the initial interest in BIM.

However cultural resistance came in the way in the beginning. Most people in the industry weren't initially interested in this tool.⁴⁵ Due to the lack of familiarity of a new technology tool, lack of expertise, costs involved, unwillingness to change the traditional practices and a general lack of interest in adoption of BIM. In the next 5–7 years, BIM earned the status of what the authors call 'Nice-to-Have' tool. Appreciation for BIM gradually seeped into the industry. Many began to see BIM as a better design tool and clients were told about the cost saving aspects in the long term and yet others, began to see using it as a competitive advantage. Around 2015 onwards, project stakeholders began to see BIM as a 'Must Have' tool.⁴⁶ A paper published by the Asian Journal of Civil Engineering stated that there was a sharp increase in the awareness among the construction professionals in India as per the 2019 survey conducted by the Journal. Most BIM users claimed to have worked on Revit software as a major BIM tool. Even in that year, non-BIM users mentioned that they were better

https://www.granthaalayahpublication.org/ijetmr-ojms/ijetmr/article/view/IJETMR21_A06_2610/801 last seen on 19/11/2022.

⁴³ Ibid at 1

⁴⁴ Dhopate.Sonali & Arti Daga, *Exploring The Journey Of BIM In The Indian AECO Industry (2008–2022) An Excelize Perspective*, 10(2) Computer Society of India, 159, 161 (2022) Available at <https://link.springer.com/article/10.1007/s40012-022-00364-9>, last seen on 15/11/2022.

⁴⁵ Ibid at 164.

⁴⁶ Ibid at 161.

off with Auto CAD as a design tool. In 2021, BIM has graduated from ‘Must Have’ tool to ‘What More Can I do with BIM’.⁴⁷

There’s a newfound interest around advanced applications of BIM such as integration with Enterprise Resource Planning (ERP) to help manage material procurement, bill verification and cash flow. The awareness about the various benefits of BIM and their application has been a gradual process. clearly identifying metrics for BIM modelling services to setting up mandatory BIM frameworks at an organization level this could be seen in the Request for Proposal (RFP) documents drafted by customers, allocation of dedicated team and infrastructure, decision making approach by teams, involvement of teams in applying the information from the models to the construction onsite and so on.⁴⁸ An elaborate BIM Execution Plan (BEP) is still not so common in architecture, engineering, construction & operations (AECO) projects but there has been a clear impetus towards BIM implementation at a policy level for public infrastructure projects as well as private sector projects.⁴⁹ As of 2021, the conversations have moved towards advanced applications of BIM, yet there’s a long way to go as far as complete dissolution of resistance is concerned.

5. APPLICATION OF BIM TO OTHER INDUSTRIES AND SECTORS

The elements of BIM model could be extended to all industries for safety management. The elements of the model typically consist of a digitized breakup of workflows into activities at the project planning and design stage and also involves identification of the tasks involved in each stage of the work flow. The information on every aspect of the work flow and the tasks involved in the work flow is collected and fed into a digitised software to identify the hazards and the risks associated with each stage of the project from the designing to actual implementation and maintenance.

The Occupational Safety, Health and working Conditions Code 2020 (NO. 37 OF 2020)⁵⁰, has three schedules appended to it. These schedules give (a) List of Industries involving hazardous processes in the first schedule⁵¹ (b)Matters on which the Central Government shall declare, by notification, standards on occupational safety and health for workplaces relating to factory, mine, dock work, beedi and cigar, building

⁴⁷ Ibid

⁴⁸ Ibid at 162.

⁴⁹ Ibid.

⁵⁰The Occupational Safety, Health And Working Conditions Code, 2020 (No. 37 Of 2020).

⁵¹ Ibid, S. 2 (za).

and other construction work and other establishments in the second schedule⁵² and List of Notifiable Diseases in the third schedule.⁵³

These three schedules give the parameters for assessing the OSH risks of each activity for any work flow. The parameters are governed by processes (hazardous), standards and notified occupational diseases. The risk assessment for any activity and individual task which is a part of the work-flow needs to be done within these sets of parameters through a suitable model be it a BIM or any other model which incorporates the essential elements of the BIM model. The OSH exposure of each activity and individual task in a work flow would be governed by the three sets parameters given by the three lists. Every activity which is apart from any work flow may not be exposed to all the risks given in the First and Third Schedule but may or may not adhere to the permissible standards given in list of matters in the Second Schedule. The work of assessing OSH risk within the three sets of parameters although complex needs to be estimated in some details through a modelling exercise for each industry/Work flow/activity /task for that industry or establishment or sector for the OSH systems to be strengthened in the country.

6. CONCLUSION

The shift in the global and national OSH regimes from a prescriptive to preventive has cast greater responsibilities on individual establishments and workers for observing OSH standards and procedures. Application of technological innovations have no doubt facilitated the shift to a preventive culture of OSH but these applications are also not free from problems if not applied judiciously. Herein lies the challenge of industry and workers. OSH legislations and government inspections can only ensure that the preventive OSH culture is brought about smoothly with minimal cost to the individual workers, particularly the unorganised workers who do not have social protection either in the form of safe and healthy work environment through good OSH practices or financial security. To meet these challenges of the unorganised sector a stronger governmental intervention will be required.

⁵² Ibid, S.18(2)(f)(c).

⁵³ Ibid, S. 12(1).

CHANGING LABOUR JURISPRUDENCE IN A LIBERALISED ERA

Adv Saji Narayanan*

Abstract

Liberalisation, Privatisation and Globalisation in the 1990s has changed the Indian economic landscape to a great extent which in turn had a negative impact on the labour economics. Loss of jobs and rising unemployment were overlooked by the government that focused more on opening up of the economy. Introduction of the labour reforms made the working class to bear the brunt of its failure. However, the Atma Nirbhar Bharat mission brought by the NDA government has again made certain other changes in the labour landscape which could possibly make things right for the working class. This paper lays down an account of the disasters caused by the labour reforms of the 1990s and the way forward.

1. THE HISTORICAL BACKGROUND

Post independent India saw three trajectories that tried to revolutionise the economy and labour sector. First was the Russian model of socialism of the Nehruvian era. The Labour sector saw a period of increased class conflict, strikes and lockouts. Its failure was endorsed by Dr Manmohan Singh by inaugurating the second stage, i.e., a U-turn to the era of globalisation, which in fact, was the American model of capitalism. Again, its “jobless growth” was a declaration of its failure.¹ It said the LPQ raj (License, Permit, Quota) of the socialist era is being replaced by the LPG raj (Liberalisation, Privatisation and Globalisation) of the capitalist era.² The first one proposed “industry versus labour” and the second one “industry minus labour”. We need to discover an India-centric paradigm that can cater to our present conditions’ needs. On 12th May 2020, Prime Minister Sri Narendra Modi ji began the third stage in the economic history of independent India, the “Atma nirbhar bharat” or India 3.0, the swadeshi paradigm.³ It proposes “industry and labour”. It manifests the Atma or soul of India, provided such

* Former National President of BMS, India.

¹ Sanjay K Hansda, *Employment And Poverty In India During The 1990s*, 41(27-28), Economic & Political Weekly, (2006), Available at <https://www.epw.in/journal/2006/27-28/special-articles/employment-and-poverty-india-during-1990s.html>, last seen on 18/10/2022.

² *LPG Reforms in India*, Journals of India, Available at <https://journalsofindia.com/lpg-reforms-in-india/>, last seen on 20/10/2022.

³ Nithin Pai, *Swadeshi and Atmanirbhar Bharat: Reinventing Nationalism*, Peepul Tree, Available at <https://www.peepultree.world/livehistoryindia/story/eras/swadeshi>, last seen on 19/10/2022.

a people-centric paradigm is kept safe from being hijacked by the proponents of capitalism.

The process of globalisation was initiated in the 1980s as the postmodern face of capitalism called “neoliberal capitalism”.⁴ Since the beginning of the 1990s, it acquired momentum when India experimented with a new face called LPG reforms. The word “globalisation” and “liberalisation” soon became catchwords among the educated intelligentsia of the society. After the advent of globalisation in India in the 1990s, our country witnessed labour issues like job losses of lakhs of workers, massive closures, retrenchments, VRS, contractualisation, casualisation of jobs, decent jobs being converted to jobs without quality, unorganised workers without minimum wages and social security, the suicide of two lakh farmers etc.⁵ The coal sector had 8 lakh workers in the 1990s, and now it is 2.5 lakhs. Till 1990, the port sector had 2 lakh employees, and now it is hardly 40,000. In the defence sector, PSUs have shed 25% of staff during a span of 5 years. Handloom workers were ending their lives by suicide. These are some of the effects of liberalisation in the labour sector.⁶

It has become a core idea of the capitalist paradigm that the first and easiest measure is to reduce labour costs as a major cost reduction exercise. Successive governments have also followed a cost reduction pattern to address fiscal deficit and revenue generation. Ban on recruitment is a glaring example. Departments abolished many posts called right-sizing and reduced staff, known as downsizing. Employees were offered VRS (Voluntary Retirement Scheme) and, if not, CRS (Compulsory Retirement Scheme).⁷

The major result of several reforms initiated in the banking sector is massive job losses and job reduction. Khandelwal Committee on HR recommended the reduction of clerical staff. The Leeladhar Committee report proposed “right-sizing” of branches and “downsizing” of staff.⁸ McKenzie’s report proposed cutting 30% of branches and staff in the banks.⁹

⁴ Supra at 2.

⁵ Dr. Abhishek Tripathi, *Globalisation and Downsizing in India*, 2, International Journal of Multidisciplinary and Current Research, 932, 932, (2014), Available at https://www.researchgate.net/publication/324694125_Globalization_and_Downsizing_in_India/link/5add978ca6fdcc29358b933f/download, last seen on 15/10/2022.

⁶ *Ibid*.

⁷ *Ibid* at 935.

⁸ V Leeladhar: *Contemporary And Future Issues In Indian Banking*, Bank of International Settlements, available at <https://www.bis.org/review/r050321g.pdf>, last seen on 20/10/2022.

⁹ *Machines Could Take Over 30% Of Bank Jobs: McKinsey*, Finextra, Available at <https://www.finextra.com/newsarticle/30864/machines-could-take-over-30-of-bank-jobs-mckinsey>, last seen on 15/10/2022.

2. IMPACT OF LIBERALISATION ON LABOUR

The capitalist system is not ready to treat workers as human beings. It treats human beings, labour, nature, land, women, knowledge (patent) and social relationships as mere commodities. They are to be exploited, extracted, bought and sold like a commodity. This is the “commodification” in the capitalist system. The words “labour market” imply that labour is a commodity for sale. In the annual international conferences of ILO held in Geneva, Bharatiya Mazdoor Sangh (BMS) repeatedly demanded that the words “labour market” be removed from all the documents related to ILO.¹⁰ Labour should not be treated as a commodity, as pointed out by ILO through its Philadelphia declaration in 1948.¹¹

Until 2009, World Bank included “labour” as an indicator that hinders “ease of doing business”. But ILO and other bodies objected that it is against the spirit of the ILO mandate that the human element should not be considered a hindrance to the progress of the business. As a result, World Bank w.e.f. 2009 April, rightly stopped using labour as an indicator in its “ease of doing business”.¹² It is unfair to think of capital and labour as two adversarial entities. Labour itself is a capital in economic terms that contributes to national wealth. Labour reforms facilitating easy closures and retrenchment through the exit policy or dropping of Chapter VB in the Industrial Disputes Act, 1947 promote “ease of closing business” rather than “ease of doing business”.

For labour cost reduction, capitalists use the term “flexibility”, which stands for easy “hire and fire” of workers in the name of industrial progress. Flexibility also meant in different sectors employing less than minimum wages and increasing working hours from 8 hours to 12 hours. Increased working hours limit jobs in the hands of a few already inside, thereby denying it to the long army of job seekers waiting outside. Instead of addressing the causes of industrial failure and developing new management and entrepreneur skills, employers desperately try to reduce labour costs and curtail labour rights, wages and service conditions.

¹⁰ Saji Narayanan C K, *A Firm No to Labour Reforms*, Bharathiya Mazdoor Sangh on Labour Reforms, 1, 3 (2005), Available at <https://vvgnli.gov.in/sites/default/files/A%20Firm%20NO%20to%20Labour%20Reforms.pdf>, last seen on 25/10/2022.

¹¹ *The Benefits of International Labour Standards*, International Labour Organisation, Available at <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>, last seen on 30/10/2022.

¹² World Bank Group, Doing Business 2017, 4 (The World Bank, 2017).

China has adopted the capitalist path since the end of the 1970s, even though they like to call it the contradictory term “market socialism.”¹³ China is notorious for not having democracy, respect for human rights, independent trade unions, labour law protection, etc. During the global financial crisis, “gory reactions” as it happened in the US took a worse form in China. Rampant riots and distress killings were reported in China. Hence India cannot compete with China in the undemocratic mad run to provide “cheap labour”¹⁴

3. RAPID PACE OF CASUALISATION

The biggest issue the LPG reforms have created in the labour sector is the generation of below quality jobs replacing quality jobs in the name of casualisation or increasing contractualisation. The country is losing quality jobs. Most jobs, including government jobs, are gradually becoming temporary and casual. So-called “employees” are being converted into “workers” or cheap “labour”. More than four-fifths of the workers are employed as casual labour in the construction sector. Nearly 80% of jobs are under the contract labour system in many industries.¹⁵ In BSNL and MTNL, there was a record VRS of almost one lakh employees who had decent salaries and working conditions. They are being replaced by contract labour, outsourced workers, temporary workers, fixed-term employees etc.¹⁶

Research studies in Europe say fixed-term employment has increased unemployment, facilitated easy automation,¹⁷ easy closing down of units and reduced incentive to invest in labour as a form of capital.

4. FTAs AND LABOUR

West looks at countries like India merely as a hub of cheap labour and raw materials. When WTO is failing with many constraints at the global level, developed countries resort to bilateral trade treaties like Free Trade Agreements.¹⁸ One major

¹³ Gerard Greenfield and Apo Leong, *China's Communist Capitalism: The Real World Of Market Socialism*, The Socialist Register (1997), Available at <https://socialistregister.com/index.php/srv/article/download/5684/2581/7579>, last seen on 20/10/2022.

¹⁴ Ibid.

¹⁵ Prasanna Mohanty, *Labour Reforms: Contractual Workers' Hiring On Rise In Organised Sector; Is Informal The New Formal?*, Business Today, (19/07/2019), Available at <https://www.businesstoday.in/latest/economy-politics/story/labour-law-reforms-contractual-workers-organised-sector-informal-sector-indian-economy-213098-2019-07-19>, last seen on 28/10/2022.

¹⁶ Aashish Aryan, *Almost 93,000: Half at BSNL, 80% employees at MTNL opt for VRS*, The Indian Express, (14/02/2020), Available at <https://indianexpress.com/article/business/voluntary-retirement-scheme-mtnl-bsnl-employees-6267104/>, last seen on 28/10/2022.

¹⁷ Employment Impact of Digitalisation, Eurofound, (15/12/2021), Available at <https://www.eurofound.europa.eu/data/digitalisation/research-digests/employment-impact-of-digitalisation>, last seen on 29/10/2022.

¹⁸ Douglas A Irwin, *International Trade Agreements*, Econlib, Available at

attraction for developed countries to have FTA with India is that India has the least separation benefit, i.e., 15 days per year.¹⁹ Labour liberalisation in FTAs will decrease wages and working conditions to increase profit, avail cheap labour for ‘competitiveness’, bring their imported workforce, prevent permanent migration or regularisation, and restrict rather than encourage new entrants into the labour pool. ILO proposes inclusion of labour protection clauses in all the trade agreements.²⁰

5. EXPLOITATIVE SUPPLY CHAINS

Capitalism is so vibrant that every time it comes with novel ways of getting out of the frequent crises with new exploitative methods. The multinational corporate giants have cleverly established a new model of a sweet coated exploitative practice called “global supply chain.”²¹ The global supply chain giants know that developing countries will blindly swallow anything novel that they propose. They will engage a subservient chain of tiny factory units that produce components of their requirement. These units will enrol workers to work for them. The global giant MNC at the top denies any relation with the end worker, even though it builds up their empire upon the day and night toil and sweat of these hapless people.²² They create artificial competition among smaller units and workers to increase quality and reduce the component price. In India, where the manufacturing sector is still trailing, MSMEs and unorganised workers desperately surrender to become a mere link in a large chain of supply. They lose their independent existence. Often, the craze for investment, FDI, foreign trade etc., blinds us to many ground-level realities.

Members of the European Union are very much worried about how to legislate a framework to relate the end worker with the giant corporation at the top of the chain. International Labour Organisation (ILO) is also trying to bring some balance to this new capitalist order.

<https://www.econlib.org/library/Enc/InternationalTradeAgreements.html>, last seen on 29/10/2022.

¹⁹ Rajiv Luthra & Shinoj Koshy, *Doing Business in India: Overview*, Thomson Reuters Practical Law, Available at [https://uk.practicallaw.thomsonreuters.com/4-500-8980?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/4-500-8980?transitionType=Default&contextData=(sc.Default)&firstPage=true), last seen on 15/11/2022.

²⁰ *Free Trade Agreements and Labour Rights*, International Labour Organisation, Available at <https://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm>, last seen on 20/11/2022.

²¹ Srijana Mitra Das, MNCs Need To Increase Sourcing Transparency With Growing Focus On Global Supply Chains’ Carbon Footprint: Dan A. Iancu, Economic Times (14/01/2022), Available at https://economictimes.indiatimes.com/news/et-evoke/mncs-need-to-increase-sourcing-transparency-with-growing-focus-on-global-supply-chains-carbon-footprint-dan-a-iancu/articleshow/88884782.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpp_st, last seen on 19/11/2022.

²² E. Aisbett, A. Harrison, Jason Scorse & Jed Silver, *Do MNCs Exploit Foreign Workers?*, 4, Available at https://www.brookings.edu/wp-content/uploads/2019/12/Aisbett-et-al._Brookings-draft-2019.11.26_Harrison.pdf, last seen on 20/10/2022.

6. THE EMERGENCE OF GIG WORKERS

In a fast-moving world, everyone is struggling for existence, and the survival of the “fastest” will be the new rule in a liberalised era. Balance or equilibrium in life is getting difficult as the world catches up with chaotic trajectories. Anarchic or chaotic, or uncertain behaviour spreads among economies. Chaotic theory in economics works in the new economic activities like the gig, online platform, cloud working, freelance work, e-commerce, supply chain, contract labour, fixed-term employment etc. ILO explains this type of work as ‘crowd-work’ or “work on-demand via apps”.²³

Most people want settled life. Traditionally we have seen an industry run by successive generations with a tag of a reputed trademark. But that is going to be an old story. It is now propagated that the life span of an industry will be up to four or five years, and it has to diversify to another business if it wants to survive. The said temporary nature is in short conveyed by the term “gig”. We often hear about the word “gig” as the gig economy, gig industries, gig workers, and the like are replacing the current economic activities. Everything becomes transient, and economics becomes an unpredictable branch of study. The gig workers are given excess workloads and targets, which are inhuman. They come as a part of Industry 4.0, just like the invading effect of disruptive automation. Many predict that it is going to be the new normal. The oft-repeated claim with every new economic reform that has lost its charm is that the gig nature of work will open up new avenues of employment.

Food delivery services like Zomato, Swiggy, as well as e-commerce platforms like Amazon, Flipkart etc., use gig workers. Gig workers cannot claim, as of right, regular benefits such as minimum wages, hours of work, overtime, leave, etc., compared to most traditional employees.²⁴ The recent cases of many app-based businesses like Uber, Lyft, TaskRabbit, DoorDash and so on show that they are facing backlash, as the gig workers are demanding more benefits and equal rights as other workers. Studies reveal that many food delivery boys of Swiggy, Uber Eats and Zomato say they have taken up the jobs only as a temporary means to support themselves till they find appropriate employment. The daily working hours for these delivery boys are atrocious, and their targets are extremely difficult to achieve. Ernst and Young’s study of 2017 on

²³ Valerio De Stefano, *The Rise Of The «Just-In-Time Workforce»: On-Demand Work, Crowdwork And Labour Protection In The «Gig-Economy»*, 1, (International Labour Organisation, 2016), Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf, last seen on 29/10/2022.

²⁴ Malavika Rajkumar, *The Law For Gig-Workers In India*, Nyaaya, (14/02/2022), Available at <https://nyaaya.org/guest-blog/the-law-for-gig-workers-in-india/>, last seen on 30/10/2022.

the “Future of Jobs in India” found that 24% of the world’s gig workers come from India.²⁵

The new Code on Social Security is the first attempt to define these types of works and bring them within the ambit of labour laws.²⁶ The Central Government will frame social security schemes for the gig and online platform workers. The major challenge in addressing them is identifying the worker, locating the related employer etc. California state has laid down the ‘ABC test’ to identify them.²⁷ The European Parliament has adopted a directive on ‘Transparent and predictable working conditions in the European Union’ for such workers identified by the duration and nature of their work in a week.²⁸

7. ROLE OF ILO

During the last 103 years, ILO has created a distinct labour jurisprudence at the global level through the so-called “Conventions” and “Recommendations”.²⁹ It is heralding the implementation of uniform international labour standards at the global level. Standards on labour laws are set through “Conventions”, which member countries need to ratify through their legislative bodies. India has been traditionally known as a major country with poor ratification records, i.e., only 47 conventions are ratified by India out of a total of 190.³⁰

During the rise of unipolar capitalism, ILO has made several endeavours to weaken the adverse impact of LPG reforms in the labour sector.³¹ They have the “report of the World Commission on the Social Dimension of Globalization, February 2002”, “ILO Declaration on Social Justice for a Fair Globalisation, 2008”, report on “Making

²⁵ Ernst & Young, *Future of Jobs in India: a 2022 Perspective*, 54 (NASSCOM & EY, 2022) Available at <https://eoivienna.gov.in/?pdf8808>, last seen on 29/10/2022.

²⁶ Chapter IX, Code on Social Security 2020.

²⁷ Lynn Rhinehart, Celine McNicholas, Margaret Poydock, & Ihna Mangundayao, *Misclassification, The ABC Test, And Employee Status*, Economic Policy Institute, (16/06/2021) Available at <https://www.epi.org/publication/misclassification-the-abc-test-and-employee-status-the-california-experience-and-its-relevance-to-current-policy-debates/>, last seen on 03/11/2022.

²⁸ *Transparent And Predictable Working Conditions*, European Commission, Available at <https://ec.europa.eu/social/main.jsp?langId=en&catId=1313>, last seen on 04/11/2022.

²⁹ *Conventions and Recommendations*, International Labour Organisation, Available at <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>, last seen on 04/11/2022.

³⁰ *Ratifications for India*, International Labour Organisation, Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:102691, last seen on 04/11/2022.

³¹ T S Papola, *Role Of Labour Regulation And Reforms In India*, 3, (ILO, 2013) Available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf, last seen on 04/11/2022.

Globalization Socially Sustainable, Sep 2011”, and “Trade unions in transition: What will be their role in the future of work? 2021”

8. LABOUR CODES- THE NEW LABOUR JURISPRUDENCE EMERGING

The four labour codes consolidating 29 central labour laws have rewritten our conventional industrial jurisprudence.³² The drafting of Labour Codes started as an effort to promote liberalisation in the labour sector. Simplification and codification of labour laws is a long pending demand of central trade unions also. There were drastic adverse social implications of the changes proposed in labour law reforms. The drafts were contaminated with many anti-worker provisions. But due to the objection and constant dialogue with the Government by BMS and some other unions, many changes beneficial to the workers have been brought about. There are now several benevolent provisions in the Labour Codes that will promote both labour welfare and industrial progress. Still, many things need to be achieved further.

The draft Labour Codes followed the Rajasthan model of labour reforms which many employer organisations hailed.³³ There are two conflicting studies about the impact of liberal labour reforms on industrial progress. The Economic Survey, 2018-19 says employment and investment have increased in Rajasthan due to labour law amendments.³⁴ But there is a 2017 contrary detailed study report about four states by the V. V. Giri National Labour Institute, called ‘Amendments in Labour Laws and Other Labour Reform Initiatives Undertaken by state governments of Rajasthan, Andhra Pradesh, Haryana and UP: An Analytical Impact Assessment’, found that amendments to labour laws did not necessarily attract significant investments, boost industrialisation or create more jobs.³⁵

The significant jurisprudential changes brought about by the new Labour Codes are as follows:

³² The Code on Wages, 2019, The Code on Social Security, 2020, The Industrial Relations Code, 2020 and The Occupational Safety, Health and Working Conditions Code, 2020

³³ Prashant K Nanda, *Economic Survey Cites Rajasthan's Labour Reform As Ideal Model To Boost Jobs, Productivity*, The Mint, (04/07/2019), Available at <https://www.livemint.com/budget/economic-survey/adopt-rajasthan-labour-reform-model-to-boost-employment-economic-survey-1562234277334.html>, last seen on 04/11/2022.

³⁴ Chapter 3, Economic Survey 2018-19, Available at <https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/echapter.pdf>, last seen on 05/11/2022.

³⁵ Dr. Sanjay Upadhyaya and Pankaj Kumar, *Amendments in Labour Laws and Other Labour Reform Initiatives Undertaken by State Governments of Rajasthan, Andhra Pradesh, Haryana and U.P. An Analytical Impact Assessment*, 48 (V V Giri National Labour Institute, 2017) Available at <https://vvgnli.gov.in/sites/default/files/122-2017%20-%20Sanjay%20Upadhyaya.pdf>, last seen on 05/11/2022.

1. The question of “Universalisation of labour laws” has been discussed in length during the draft stage. India has the largest informal sector globally, with about 93% of the total workers. Hence for formalising the informal sector, the universal application of labour laws is a major solution. In that sense, Code on Wages, 2019 is historical and revolutionary, that for the first time, the last worker in the country is ensured the right to minimum wages.³⁶ The current schedule system and limited applicability confines minimum wages and social security to about 7 to 10% of the total workers, which are now done away with in the Code. We have two of the largest social security laws in the world, i.e., ESI and EPF laws. Even though the new Code on Social Security, 2020 does not envisage uniform social security for all, it carries social security to the last worker.³⁷ In the new Codes, the definition of “worker” includes self-employed, casual worker, Commission worker, informal worker, out-worker, seasonal worker, domestic worker, home-based worker, foreign worker, owner working units etc. Still, the four labour codes maintain different levels of application. The future challenge is applying the labour laws and taking the unorganised workers on the path of liberation from the unexpected calamities in life.

2. The notorious face of liberalising labour laws is its “hire and fire policy”. The labour law reforms give statutory recognition to hire and fire. Increasing the threshold limit in Chapter VB of the present Industrial Disputes Act, 1947, one of the most contentious issues comes under this. Chapter VB says if an industry with more than 100 workers wants closure, retrenchment or layoff, it needs to get prior permission from the Government. Industrial Relations Code, 2020 raised the threshold to 300 so that only a few industries in India will need Government permission. Fixed-term employment, contractualisation, union-free workplaces, lawless workplaces etc., also facilitate hire and fire.

3. A strong demand by the advocates of liberalisation was the withdrawal of the inspector system from the labour sector citing corrupt practices. In fact, LPG reforms were introduced to counter the LPQ raj (Licence, Permit, Quota raj) or inspector raj. Thus, Government withdraws from the labour sector, and inspectors will be converted to “facilitators” or advisors relying on self-certification from the employers. This can create lawless workplaces and rampant exploitation of workers, especially in the non-unionised units. China gives the example of such a lawless situation leading to a gory or violent reaction from the side of frustrated workers.³⁸ But the issue was objected to by BMS and other unions since India has long ago ratified ILO Convention No. 81 on mandatory inspection. Hence inspection system has been reinstated in the Labour Codes

³⁶ S. 5, Code on Wages 2019.

³⁷ Chapter III & IV, Code on Social Security.

³⁸ Supra 13.

in the name of “Inspector cum Facilitator”.³⁹ It also provides prior web-enabled inspection.

4. Liberalised system wants to supersede the tradition of tripartism and consultation. But India has ratified the ILO Convention No. 144 on tripartism.⁴⁰ Further in the Indian Labour Conference, 2015, Prime Minister assured that the system of tripartism would be maintained in the spirit of synergy.⁴¹ Both the alien adversarial notions of constant class struggle and the struggle for existence and competition have to be deconstructed. The labour sector needs to move from conflict to confluence. BMS has proposed the concept of “Udyog Parivar” (Industrial Family) or extended family concept in the labour sector, which got the support from the employer organisations.

5. The reformists find trade unions a hindrance to the exploitative methods adopted in the labour sector. In a democracy, a multiplicity of organisations is required to strengthen vigilance. Many similar hurdles in the Codes were done away with during consultations.

6. Restricting strikes, the most effective weapon in workers’ hands, is an essential agenda for liberalising the labour sector. The restrictions on strikes in public utility services earlier have now been applied to all sectors. Fourteen days’ notice is required for every strike, valid for up to 2 months.⁴² After notice, if conciliation proceedings start, then the strike stands prohibited. Thus, practically strike has become impossible. The earlier provision of dies non for the illegal strike is also retained.

7. The most pathogenic contribution of liberalisation is casualisation or contractualisation of labour. In many sectors, up to 80% of jobs are contractual. The worker has only a causal relationship with the establishment. Fixed-term employment is another form of casualisation, though with some better legal rights. But labour codes insist that the principal employer has the liability to ensure wages and social security contribution of the contract labour.⁴³

8. Liberalised labour laws expand further the “exemption” regime. The rule of law is fundamental in a civilised society. But exemption creates lawless areas. The OSH & WC code has raised the threshold limit of applicability of law on contract labour in units with more than 50 workers and factories working on power for more than 20 workers. This is a primary objection in the Labour Code.

³⁹ Chapter VII, The Code on Wages, 2019.

⁴⁰ Supra 30.

⁴¹ 46th Session of Indian Labour Conference, Ministry Of Labour & Employment, Government Of India, Available at <https://labour.gov.in/46th-session-indian-labour-conference>, last seen on 05/11/2022.

⁴² S. 22, Industrial Disputes Act, 1947.

⁴³ S. 21(4), Contract Labour (Regulation & Abolition) Act, 1970.

9. Another disgusting trend not only in labour laws but also in all recent legislations is the bureaucracy replacing parliamentary powers. Many of the powers hitherto exercised by the parliament are now given or delegated to bureaucracy. This is against the functioning of democracy.

10. Privatisation is an integral constituent of LPG reforms. Privatisation appears in different names like disinvestment, strategic sale, divestment, denationalisation, PPP mode etc. For the workers, privatisation results in loss of jobs, casualisation, reduced wages and working conditions, transfers, replacing decent jobs with below-quality jobs etc.

11. In a liberalised regime, Government withdraws from Labour Welfare. Withdrawal of inspection, privatisation, involving private insurers in social security and labour welfare, investing EPF amount in share market, increasing employer liability etc., are examples. Earlier provisions in the Code on Social Security of reducing Government contribution of 1.16% in EPS, shifting EPS to NPS, opting out of ESI etc.,⁴⁴ were withdrawn due to objection from BMS.

12. Liberalisation of working hours was taken up by most State Governments by increasing it to up to 12 hours. Convention No.1 adopted by the ILO was on eight hour-work and was ratified by India. But many feel that due to mechanisation, AI etc., working hours needs to be reduced.

13. Universal safety law or “Safety for All” is a demand of BMS. Liberalisation is not concerned with the safety or lives of workers or people around a factory. Hence OSH & WC Code does not provide universal safety provisions in the labour sector. Safety provisions cover only establishments with more than ten workers in the new Code.⁴⁵ It is reported that there are, during 2014 and 2017, Delhi has recorded approximately 1,550 industrial accidents.⁴⁶ We often hear about drainage deaths, illegal mine tragedies etc., in our country. Hence our laws have to reflect a safety culture ensuring safety for all.

⁴⁴ *Higher EPS Pension: Additional Contribution Of 1.16% For Higher Pension To Be Drawn From Employers' Payout*, Economic Times, (04/05/2023) Available at https://economictimes.indiatimes.com/wealth/invest/higher-eps-pension-additional-contribution-of-1-16-for-higher-pension-to-be-drawn-from-employers-payout/articleshow/99977694.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps, last seen on 17/05/2023.

⁴⁵ S. 2(1)(u)(v)(i), The OSH Code 2020.

⁴⁶ Damayanti Saha and Srishti Chourasia, *Industrial Accidents Common As Delhi Factory Owners Brazenly Ignore Worker Safety Rules*, Citizen Matters (01/12/2021) Available at <https://citizenmatters.in/delhi-industrial-accidents-factory-labour-laws-28439>, last seen on 09/12/2022.

9. CONCLUSION

There are several other changes in the new Labour Codes. Apart from all these, the new Industry 4.0 brings the threat of disruptive technology in which machines, computers and artificial intelligence will replace human beings in all sectors. Hence the million-rupee question will be, is our country prepared to handle these job killer reforms? It calls for giving a human face to the liberalised reforms. Government has to bring out a white paper on the pros and cons of 30 years of LPG reforms. It is time for India to revisit the route maps of our economy and not allow it to float aimlessly in the name of liberalisation.

Trade unions also have to realise that the old conventional trade union methodology will not suit the emerging challenges in the world of work. New styles and methods are to be adopted while going to the vast area of the unorganised sector. Nothing short of total transformation is acceptable for the poor who strive for a living. The concept of development reaching the last man is called 'Antyodaya', and fast changes should reach the last man. This is important for labour since labourers constitute 40% of the total population.

UNIVERSALIZE SOCIAL INSURANCE BEFORE ITS DEMOGRAPHIC DIVIDEND ENDS? THE PRINCIPLES AND ARCHITECTURE FOR UNIVERSALIZING SOCIAL SECURITY BY 2030

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Abstract

As much as 91% of India's workforce out of the total 475 million is informal. However, the latest effort on social security to workmen, India's Social Security Code 2020, which merges eight existing laws, does not offer a roadmap to universalise social insurance for its informal workers. We examine the Code and find the Code wanting and hence spell out the principles that should guide social insurance for informal workers in India. In the light of those principles, it also examines the issues with the Social Security Code 2020. Then, drawing upon the preceding analysis, lays out the design and architecture of what a social insurance system for India should look like; its contribution is to both analyse the existing law, but also set out a normative goal. It spells out the roadmap, which will be a long-drawn out and challenging one in India, given the size of the country, the immensity of its population, its diversity, and the complexity of informality in the workforce. The goal remains that over the next 10 years, social insurance should cover the entire workforce, in accordance with ILO Conventions. It closes by estimating the fiscal cost to the federal as well as the state governments.

Keywords: J26 Retirement Policies, J32 Non-Wage labour costs and benefits, J46 Informal markets.

1. INTRODUCTION

Social insurance has very limited coverage in India. This reality has not changed since independence, one of the greatest failures of the development strategy India adopted in the early fifties. We estimated from the NSO's Periodic Labour Force Survey (2018-19)¹ that as much as 91 per cent of the labour force are in informal

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¹ Ministry of Statistics & Programme Implementation, Government of India, *Periodic Labour Force Survey (PLFS) – Annual Report [July, 2018 – June, 2019]*, Available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1629366>, last seen on 09/06/2022.

employment, (i.e., without any social insurance). This is barely down 2 percentage points from 93% in 2011-12 (NSO's 68th Round).

Informality of the worker is defined by the ILO as essentially a work arrangement wherein the worker has no access to social security. This paper spells out the design, architecture and cost of a social insurance system for India's informal workers. The terms unorganized sector and informal sector are interchangeably used throughout this paper (though informal workers without social insurance exist also in the organized sector).

This paper is organized as follows. Section 1 spells out the principles that should guide social insurance for informal workers in India. Section 2 examines, in the light of those principles, the issues with the latest Social Security Code (SS Code 2020) passed by India's Parliament, one of four laws that cover supposedly all subjects related to labour welfare: minimum wages, industrial relations, occupational health and safety and finally, social security for organized and unorganized sector workers. Section 3 then lays out the design and architecture of what a social insurance system for India could look like. The goal remains that over the next 10 years, social insurance should cover the entire workforce, in accordance with ILO Conventions. Section 4 examines the fiscal cost to the Union as well as the state governments. The final section concludes the paper.

2. PRINCIPLES UNDERLYING THE PROPOSED ARCHITECTURE OF SOCIAL INSURANCE FOR INFORMAL WORKERS

2.1 Universality Of Coverage

The first principle, in accordance with SDG 1.3 is that there should be a goal to universalize social insurance within a defined time frame.² The SS Code 2020³ does not. The universal principle (as stated in these ILO Conventions 102 (1952) and 202 (2012)),⁴ is that all workers will be eventually covered. Such a commitment could still be done in a policy statement by the Union government, even if it is not stated in the SS Code 2020.

² *Insurance and the Sustainable Development Goals*, Access to Insurance Initiative, Available at <https://a2ii.org/en/sustainable-development-goals>, last seen 10/06/2022.

³ The Code On Social Security, 2020.

⁴ *R202 - Social Protection Floors Recommendation*, 2012 (No. 202), International Labour organisation, Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524, last seen on 10/06/2022.

2.2 Incremental Coverage

If 91% of the workforce is without social insurance,⁵ a second principle is that they will be covered incrementally, in two ways. First, expanding the coverage of regular workers into the existing Employee Provident Fund Organization (EPFO) for old age pension and death/disability insurance, and for health insurance under the Employee State Insurance Corporation (ESIC), through contributory social security.⁶ This will also mean that the EPFO threshold of 20 workers will be reduced progressively. Also, it means that e-firms registered in the GST should also be included in EPFO and ESIC.⁷ Second, it means rapidly ensuring all such workers will be captured within a 10-year time frame, at most.

2.3 Poor Treated Differently from Non-Poor

The poor (as defined by a national poverty line) should be treated differently than the rest of the population who are non-poor for purposes of financing their social security.⁸ Planning Commission (2013) had estimated that 22% of India's population was below the national poverty line.⁹ To clarify, the poor should not be expected to contribute until their incomes rise above the poverty line beyond a minimum flat amount (e.g., say Rs 1000) per annum towards the accumulated fund. The organized sector workers at the top end of the wage distribution in the workforce are already part of a contributory system of social security, (EPFO and ESIC). Meanwhile, the rest of the unorganized workers, who are *non-poor*, should contribute towards their social security, with some contribution from government on a declining scale as the incomes of such unorganized sector workers rise.

2.4 Register Establishments and Workers

All establishments should be registered on a mandatory basis, and workers working for them should also registered by the same enterprise.¹⁰ There are 64.6 mn enterprises in the non-agricultural sector alone, along with at least 130 million owner-cultivator

⁵ Supra 1.

⁶ *Overview of Employees' Benefits Laws in India*, Rodl & Partner, (20/04/2022), Available at <https://www.roedl.com/insights/india-employees-benefits-labour-law>, last seen on 11/06/2022.

⁷ *Registration for EPFO, ESIC Must As Govt Unveils New E-Form Spice+ To Start Business*, Zee Business, (25/02/2020), Available at <https://www.zeebiz.com/india/news-registration-for-epfo-esic-must-as-govt-unveils-new-e-form-spice-to-start-business-120645>, last seen on 10/06/2022.

⁸ Even after using the national poverty line as a marker, the identification of groups and households will still remain. This issue is discussed in Section 4.

⁹ *Poverty Estimation in India*, PRS Legislative Research, (05/08/2013), Available at <https://prsindia.org/theprsblog/more-privatisation-on-the-cards>, last seen on 11/06/2022.

¹⁰ Supra 7.

farmers.¹¹ Does this Code apply to them all? Moreover, there is no connection drawn between registration of establishments and the registration of workers. (The latter figures in clause 113 of the Code, while registration of establishments is in Clause 3). This issue can still be resolved at the current stage, given that the Rules of SS Code 2020 have not been notified.

2.5 The Fragmentation of The Social Security System Should End

The SS Code 2020 does not deal with the extreme fragmentation of social security provision for the unorganized sector, limited as it is in coverage. Central and state governments provide a variety of what are termed welfare funds,¹² but those often do not meet the criteria of social insurance since they don't all cover old age pension, death/disability benefit, and maternity benefit, nor health insurance. To reduce fragmentation, it is critical that these cess-based funds are merged into one fund, a National Fund for Unorganized Workers, at least for all central funds created by the national Parliament.

2.6 Social Security for All of India's Workforce Should Be Mandatory, And Not Voluntary

One would have expected that the enactment of the SS Code (2020) would make social security mandatory for the currently included. All schemes for informal workers in India have been voluntary, and non-statutory, including ones introduced since 2014.

2.7 Health Insurance Need Not Be Considered as Part of Social Insurance for The SS Code

The reason is that, while ESIC (which started in 1952) may remain an exception, the objective of social security is not to ensure health services. In a developing country that should remain the function of the state (central and state governments together): to ensure that all citizens, as a right and without exception, have access to free preventive, primary and basic curative care, through general tax revenues, and not through an insurance mechanism. This is the objective of India's National Health Policy 2017.¹³ Post the Covid 19 pandemic, this has become urgent. Health services are a public good and basic right of citizens, and should be provided by the state largely from general tax

¹¹ Santosh Mehrotra, *Building a Social Security Architecture for Informal Workers in India, Finally!*, CSE Working Paper #28, 18, Azim Premji University, Available at https://cse.azimpremjiuniversity.edu.in/wp-content/uploads/2020/10/Mehrotra_SocialSecurity_Informal_Workers_July_2020.pdf, last seen on 10/06/2022.

¹² S. 108, The Code on Social Security, 2020.

¹³ Ministry of Health and Family Welfare, Government of India, *National Health Policy 2017*, Available at <https://main.mohfw.gov.in/sites/default/files/9147562941489753121.pdf>, last seen on 11/06/2022.

revenues, not as is now being proposed by NITI Aayog, merely as health insurance for hospitalizations alone.¹⁴

3. ISSUES NEEDING RESOLUTION WITH SOCIAL SECURITY CODE 2020

Other than incorporating the principles outlined above in a government policy statement (since the SS Code has already been passed by Parliament), there are other issues in the SS Code 2020 that need resolution. The SS Code 2020 has amalgamated eight existing social security legislations. Merging a number of Acts does not amount to an advance. The objective of a single Code cannot be to merely consolidate Acts that in 7 out of 8 cases belong to the 20th century.

There are other problems with the SS Code. The first seven of its 15 chapters are all about the organized sector workers, before one chapter is devoted to construction workers and another to unorganized/gig/platform workers, who are unorganized. Then the remaining six chapters are again focused on various dimensions of organized workers. In other words, for 91% of the India's workforce, the SS Code devotes precisely 4 pages in a 104-page Code. Clearly, informal workers are not exactly the focus of the Code in the first place. There are mainly two main substantive clauses about unorganized workers in general.¹⁵ In addition, there are 8 clauses¹⁶ about construction workers; they have received more space because there was an existing law about them, and provisions of that law had to be incorporated. However, the substantive problems go beyond these basic facts.

First, the SS Code 2020 does not recognize that informal workers always have multiple sources of livelihood, which are evolving in response to their own needs as well as the demands of the labour market. The poorly educated change their form of employment periodically (and often within a year): they may be agricultural workers, then in the farming lean season they may become construction workers; then, they could be selling fruits or vegetables as street vendors; then they may go back to agriculture for some months. They may turn from being such informal workers to becoming formal workers, and back again. There is no mention anywhere in the Code of such workers.¹⁷

¹⁴ The Union government (in 2018) expanded hospitalization insurance for those identified as 'poor' (under Ayushman Bharat, an extension of the Rashtriya Swastha Bima Yojana, started in 2008), simply increased the amount of hospitalization coverage expenses from Rs 30 000 to Rs 500 000 per family of five for poor households. Neither programme provides universal basic public and personal health services, of both preventive and curative nature.

¹⁵ Ss. 109 & 110, The Code on Social Security, 2020.

¹⁶ Ibid, Ss 100-108.

¹⁷ The portability of his registration as well as that of his benefits has been resolved in this Code, but only in respect of construction workers ("Article 47").

Second, a Social Security system cannot be dependent upon the size of enterprise, defined by number of workers. However, the Code relies upon a system of thresholds defined by number of workers employed in an establishment (e.g., 10 workers for ESIC, 20 for EPFO).¹⁸ This system of thresholds that exists in existing labour laws has been retained in the Code. This is not a system that has worked for the benefit of any worker (organized or unorganized), regardless of whether the employing unit is registered under any Act or not. This is because for the organized sector, employers are able to underestimate the actual number of workers with impunity to escape registering under EPFO. Gradually these thresholds will need to be lowered, at least for those who are regular salaried workers in the non-agricultural sector, whose numbers have shot up to 104 million (in 2017-18, though falling since then), which is 40% of the non-agri workforce. International experience shows reducing thresholds is one means of incrementally increasing coverage of workers within the formal sector social insurance net.

70% of India's non-farm enterprises are not registered anywhere, making it difficult to capture them either in the indirect tax net or the social insurance net.¹⁹ The current Code merely wants "Every establishment to which Code applies" to be registered. There seem to be no sanctions applicable if the establishment does not register. It does not recognize that there are over 64.6 million non-farm establishments in India, both registered and un-registered, in the organized and unorganized sectors. Of the unorganized sector establishments, over 43 million (or 67.7%) are unregistered anywhere, under any Act. Only 31% of the unorganized establishments (or over 19.5 million) are registered, but under different Acts which have nothing to do with social security.²⁰

All establishments, without exception, should be required to be registered for the purposes of this Social Security with one body, which should be responsible for social security in India, for all types of workers. We have to reduce transaction costs of registering all enterprises as well as all workers. This could be done by harnessing the infrastructure set up for the formal sector (EPFO, NPS, ESIC) as much as possible. This

¹⁸ Santosh K. Mehrotra, *Can India Universalize Social Insurance Before Its Demographic Dividend Ends? The Principles And Architecture For Universalizing Social Security By 2030*, 5, (Centre for Development Studies University of Bath, 2022), Available at <https://www.econstor.eu/bitstream/10419/263279/1/1800781288.pdf>, last seen on 12/06/2022.

¹⁹ Santosh K. Mehrotra & Tuhinsubhra Giri, *The Size Structure of India's Enterprises: Not Just the Middle is Missing*, CSE Working Paper 2019-06, 19, Azim Premji University, Available at https://cse.azimpromjiuniversity.edu.in/wp-content/uploads/2019/12/Mehrotra_Giri_Not_Just_Missing_Middle.pdf, last seen on 09/06/2022.

²⁰ Ibid.

includes systems of recordkeeping and account maintenance as well as management of funds.

The implementation of such a comprehensive social insurance would also require the registration of all unorganised sector workers. These registered workers would have their Aadhar identity cards (biometric card) seeded with the registration number. The Act also provides for the constitution of a National Social Security Board, chaired by the Labour Minister, with representation of both workers and employers in the unorganised sector.²¹ Similarly, the Act provides that every state government shall constitute a State Social Security Board. In other words, the institutional structure for rolling out a social insurance system exists.²²

3.1 Social Security Organizations.

The Code on SS 2020 provides for a Central Board for EPFO and a separate body for the ESI Corporation (ESIC).²³ In addition, it provides for a National Social Security Board for unorganised workers and for every State Government to constitute an Unorganised Workers' Social Security Board and a National Social Security Board for Gig Workers and Platform Workers.²⁴

No country in the world has multiple organizations governing social security, including large, populous, federal countries. Having multiple organizations implies that the implicit vision underlying the Code is a continuation of the fragmented system of social security that currently exists.²⁵

There is need for comprehensive, universal social security for all 466 million workers of India, provided by one body. In a federal country like India, it is inevitable that such a body will have a hierarchical structure, with arms and legs spread across the length and breadth of India, but reaching down to the village Gram Panchayat level and Urban Local Body Ward level. What this means is that the responsibility of registration and implementation should rest with an expanded version of the EPFO/National Pension Scheme. While the funds of “organized” segment of workers will remain separate from the fund for the “unorganized” segment of workers (as demanded by some national trade unions in 2018 when the SS Code was under negotiation), for purposes of administration of social security they will be one body, with several levels at central, state, district and sub-district level.

²¹ S. 6(1),(2)&(3) The Code on Social Security 2020.

²² Ibid S. 6(9).

²³ Ibid S. 4(1).

²⁴ Supra 21&22.

²⁵ Supra 18, at 7.

3.2 Maternity Benefit

ILO defines maternity as an essential element of social insurance (as we noted at the beginning of the paper).²⁶ In India, maternity Benefit for 26 weeks was extended to organized sector workers.²⁷ Again the threshold comes into the picture as maternity benefit is applicable to establishments employing 10 or more workers. This implies that in practice there is no maternity benefit for the entire informal sector workers. There is, however, a lump sum maternity benefit for the mothers categorized as ‘poor’, who are given Rs 5000 (plus Rs 1000 for institutional delivery) which is outside this Code.²⁸ This was extended to all below poverty line mothers-to-be (the poor were identified by means of the Socio-Economic and Caste Census), from 1 January 2017, across the entire country. However, the vast majority of women who work in agriculture or as domestic workers or are self-employed, who might not qualify as poor, are still without maternity benefit.

The SS Code 2020 does not even mention this non-contributory maternity benefit for poor pregnant mothers (identified in accordance with the Socio-economic and Caste Census, 2011-13).

3.3 Final Remarks About the Social Security Code 2020

The SS Code provides for unorganised sector social security boards at the Central and State levels,²⁹ but major part of the organization seems to be with States. Presently States have Unorganized Workers Welfare Board under the Unorganized Workers’ Social Security Act 2008.³⁰

There is no explicit mention either in the Code or in the draft Rules, about the continuation of existing social security schemes run by State Governments. As and when the Code becomes operational, unorganized workers need to register themselves on the Central portal. They are presently registered as beneficiary with the respective State Governments. But it is not only about registration. There are no directions in the Rules how existing SS schemes align with proposed new landscape.

²⁶ *International Labour Standards On Maternity Protection*, International Labour Organisation, Available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm>, last seen on 11/06/2022.

²⁷ Chapter VI, The Code on Social Security, 2020.

²⁸ *Pradhan Mantri Matru Vandana Yojana*, Department of Women and Child Development, Available at <http://wcddel.in/PMMVY.html#:~:text=Under%20PMMVY%2C%20a%20cash%20incentive,to%20Maternal%20and%20Child%20Health>, last seen on 10/06/2022.

²⁹ Supra 25.

³⁰ S. 6, The Unorganised Workers’ Social Security Act, 2008.

For example, West Bengal has already registered about 1.3 crore unorganized workers as beneficiaries under different existing social security schemes.³¹ Such a database is maintained with the State Government and the State also formulates and implements various social security schemes for different segments of unorganized workers. Now, it is not clear what will happen to these millions of beneficiaries when the Code becomes operational.

Finally, we should note that the Code is still not law until the State governments notify the Rules of the law, individually. It is the State governments that are to implement the law, and they have not notified the Rules of the law. The new laws (all four of them) will not be implemented until 2022, when there is an expectation that Covid might subside.

4. Social Security for Unorganized Workers: The Coverage and Architecture

India will be an aging society by 2036, and its demographic dividend will be over. This is making the imperative of preparing the architecture of Social Insurance for informal workers urgent.

Of the projected increase in population of 310 million in India during 2011-36, 170 mn are likely to occur in the five States spreading from east to west: West Bengal, Bihar, Uttar Pradesh, Madhya Pradesh and Maharashtra.³² In these five the population will grow at 1% pa, but in the 5 main southern states at 0.4% pa. The State of Kerala, where lower fertility and mortality rates have been achieved earlier than the other states, the proportion of older persons aged 60 years and above is expected to increase from 13 percent in 2011 to 23 percent in 2036. Thus, almost every fifth individual in Kerala is expected to be a senior citizen by 2036. In contrast, Uttar Pradesh, India's most populous at 230 million, is expected to have an increase of the proportion of old age population from 7 percent in 2011 to 12 percent in 2036, implying that the population of Uttar Pradesh will be relatively younger compared to that of Kerala – but UP will still be an aging society.³³

Already by 2031, the share of over 60-year-olds in India's population would have crossed the 10% mark – the threshold for an aging society – and be 12.5%, while

³¹ Kingshuk Sarkar, *For Unorganised Workers, New Social Security Code Creates Needless Confusion*, The Wire, (29/12/2020), Available at <https://thewire.in/labour/social-security-code-unorganised-workers>, last seen on 11/06/2022.

³² Ministry of Health and Family Welfare, Government of India, *Health And Family Welfare Statistics In India 2019-20*, Available at <https://main.mohfw.gov.in/sites/default/files/HealthandFamilyWelfarestatisticsinIndia201920.pdf>, last seen on 11/06/2022.

³³ Ibid.

that share would have jumped by 2036 to 14.5% of the population. The total population of >60-year-olds would have jumped from 101.4 million in 2011 to 228 million by 2036. That means that each year between now and 2036 nearly 12.5 mn workers must be added to those with social insurance. If in 73 years since independence, barely 42 mn workers have SI (i.e., less than 0.5 mn added pa), we can imagine what is the scale of the challenge to be met (an over 2500% increase in achievement is required).³⁴

Many informal workers fall below India's national poverty line; they constituted 22% of the country's population in 2012-12, the last year for which official poverty estimates are available. Our own estimate of the share of the population below the national poverty line is 21%³⁵ for 2020. This group of poor should be the first entitled to be covered by social insurance. How these 21% could be identified is spelt out clearly later in section 4.

Given the high differentiation among different groups of informal workers in India, there is a case for three categories of beneficiaries: one, non-contributory for the poorest; partial contribution by the non-poor regular (but informal) wage workers as well as the non-poor self-employed, complemented by government subsidies towards their contribution, while employers make the full contribution; and finally, for the formal workers, full employer and employee contribution under EPFO system. To eliminate fragmentation, the first two should be part of the same system, since they are the unorganized sector informal workers. The third category will consist of those who are formal workers in organized sector enterprises. So, there should be two funds only, one managed by the EPFO, and the other by National Social Security Board for Unorganized Workers (which is mentioned in the SS Code 2020).

What could be the rationale for the subsidization of the contributions of workers with insufficient contributory capacity? The rationale for such subsidization is that it is preferable to have workers and employers with low contributory capacity contribute to social insurance schemes, even at a reduced rate, assuming that they may be able to contribute more at other times. Second, such an approach is particularly relevant for young workers, for whom this approach facilitates joining the social insurance scheme at an early age, thereby enhancing their protection and preventing them from slipping into informal employment. The young were more likely to be informal than the older workers. Third, such an approach can also avoid a fragmentation of the social protection system, by providing for schemes to cover a large proportion of the population and

³⁴ Ibid.

³⁵ Dr Seema Gaur & Dr N Srinivasa Rao, *Poverty Measurement In India: A Status Update*, Working Paper No. 1/2020, 14, Ministry of Rural Development, Government of India, (2020) Available at https://rural.nic.in/sites/default/files/WorkingPaper_Poverty_DoRD_Sept_2020.pdf, last seen on 12/06/2022.

allowing for large-scale risk-pooling and sustainable financing based on the principle of solidarity.

4.1 Administrative Arrangements

What we propose is a two-pronged strategy to incrementally cover all the 91% of India's workforce that are informal through social insurance: the strategy should be a dual-track one, one track would involve a top-down approach, the other a bottom-up one. The top-down one involves increasing workers registered with EPFO/ESIC. That process has been set in motion, albeit slowly, through the GST registration and PMR PY. The larger un-registered MSMEs have since July 2017 found it in their self-interest to register with the GST, thus declaring themselves to tax authorities.³⁶ The PM's Rozgar Protsahan Yojana (PML PY) has incentivized registration with EPFO by the government of India committing to, for three years, pay for enterprises that register new workers (earning <Rs 15 000 per month, which is a very restrictive requirement) with EPFO, will actually be compensated by the government the full amount of EPFO contributions for workers.³⁷ We had suggested elsewhere³⁸ that on account of these two reasons the share of those with SI increased to 9% of the workforce in 2017-18 (compared to 7% in 2012). The expansion of this process would constitute the top-down part of the dual-track approach.

The other track will focus on coverage for the poor, in the first five years starting immediately. That, however, would require a totally new approach – the potential for which has been opened by SS Code 2020, although that door was already open since the Social Security for Unorganized Workers Act, 2008, was enacted.

Covering them as soon as possible should have been a moral imperative for decades. Poverty by the Tendulkar poverty line has increased between 2012 and 2020.³⁹ Covering them rapidly also has an economic imperative: the need for raising aggregate demand in an economy which is collapsing because of fall in demand.

All Indian enterprises with <10 workers are informal, and are not be covered by SI. A similar situation prevailed in Vietnam until 15 years ago. How did Vietnam increase coverage of SI for informal units? In Viet Nam, workers in enterprises with less than ten employees were not covered by social security legislation until 2005 and

³⁶ Rahul Ranjan, *Challenges and Opportunities of India's Micro Small Medium Enterprises in the New Era of Post COVID*, Research Square, 1, 5, (2021), Available at <https://assets.researchsquare.com/files/rs-153359/v1/843756c2-4ccb-48d7-8ab4-07de9d4502a8.pdf?c=1631872180>, last seen on 12/06/2022.

³⁷ Creation of New Employment through PMR PY, Ministry of Labour & Employment, Government of India, Press Information Bureau, (10/03/2021), Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1703746>, last seen on 10/06/2022.

³⁸ Supra 19.

³⁹ Supra 35.

were therefore not covered by social insurance until then. That changed after legislation in 2005.⁴⁰ Clearly the lesson for India is that it needs to do the same. However, the SS Code 2020 has not reduced the threshold of workers for coverage under EPFO, despite the Standing Committee on Labour recommending to the Government of India to do so. Therefore, the only way forward to cover the poorest informal workers is through a non-contributory mechanism to provide SI (by creating schemes that the Code promises).

However, without two prerequisites being met, it is difficult to provide SI to workers in unregistered enterprises: a. the enterprises are registered; b. given low incomes in these MSMEs of workers, especially if they micro units (employing 2-9 workers), the SI provided should be either non-contributory, or heavily subsidized by the government. We discuss each concern below.

Registration of unregistered units can be subject to several mechanisms to encourage formalization. According to the ILO, compliance to existing laws and regulations can be promoted by mechanisms of deterrence, incentives and persuasion efforts.⁴¹ The first, deterrence, refers to stronger inspection services, the existence of credible sanctions (such as high penalties) and their enforcement but also early detection and prevention of social evasion through the exchange of data between tax authorities and social security institutions. The second mechanism, the use of incentives, is obtained for example by linking the payment of firms and workers' contributions to the access by companies and workers to business support services, markets and subjecting the proof of social security registration to other interactions with public administration. The third mechanism, of persuasion, involves increasing legal awareness of employers and workers, promoting higher tax morale and a culture of compliance and making more evident the benefits of formalisation. Mehrotra discusses at length measures adopted in Asian countries to encourage formalization, and does a meta-analysis of these measures.⁴²

4.2 Registration of Workers For SI

We noted that the SS Code 2020 makes very limited provision for registration of units. However, in 2015-16 only 30% of all non-agricultural enterprises are registered – which is 1.95 million units.⁴³ In other words, for purposes of registration, the government could use these various sources of information to capture data about the

⁴⁰Kieu-Dung Nguyen, Van-Anh Thi Tran & Duc-Thanh Nguyen *Social Insurance Reform And Absenteeism In Vietnam*, 30(2), International Journal of Social Welfare, 193, 194, (2021).

⁴¹ ILO, *Monitoring Compliance With International Labour Standards*, 9, (ILO, 2019), Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_730866.pdf, last seen on 12/06/2022.

⁴² Supra 19.

⁴³ Ibid.

workers in these enterprises for the purposes of SI. However, the database available with the government on these registered firms will have to be merged for the purposes of capturing their workers into a SI net. This is a separate task to be undertaken with the explicit objective of collating and digitizing, while verifying this data.

There is another set of workers (requiring registration): the self-employed. Here there is a distinction between those SE that are - a. own-account units (henceforth OAEs, with no employees but possibly involving unpaid family labour who are also informal), either providing services (e.g. cobbler, hair dresser, iron-wala, street vendor, tailor) or manufacturing (buy in raw materials and other inputs and selling the product himself), and b. those in manufacturing which are in a sub-contracting relationship with another enterprise, with the latter being micro, small or medium (essentially, a home-based worker). We consider each group.

There would have to be systematic effort to register the OAEs as well as the micro-units (employing 2-9 workers). Once the micro units (2-9 workers) are registered, that database could be used to access the home-based workers, operating in a subcontracting relationship with MSMEs.

The approach for registration of the OAEs and micro-units (2-9 workers) that are in the services sector would be different from that related to manufacturing. Two-thirds of the 64 million units are in services. The services micro units usually are linked to Market-Based Associations in each small town and city. The information about them would be available with these Associations, and can be accessed by the state governments. Units that are in unorganized *manufacturing* which account for the remaining one-third (roughly 22 million units) would be linked with the Industry Associations or Business Member Organizations for each sector/cluster. Information about these micro units can be obtained by government from these Industry Associations in each sector/town/cluster.

Next, we consider the case of registering the micro units that are in a sub-contracting relationship with other bigger units in manufacturing. About 10 per cent firms of total MSMEs are practicing subcontracting. The firms that are giving out the sub contracts are predominantly in the small segment of Micro and Small enterprises. There are almost no states with any medium firms engaged in subcontracting. At all India level, 12.1 per cent small firms are into this subcontracting job.⁴⁴

One way of capturing in the registration dataset both MSEs and self-employed sub-contractees of the MSEs would be to ensure that first the MSEs are registered, and in the same portal the sub-contractee self-employed household enterprises/workers are

⁴⁴ Ibid.

also registered. This would enable both being included in SI, provided the political will existed at first central government level, and then state level, and thus a determined effort to register both the MSEs and the sub-contractee household units is made.

Finally, we need to discuss how to register the 53.4 million or so OAEs. For them, we need to consider the same mechanism that has been provided for inter-state migrant workers in the Code on Occupational Health and Safety, 2020 (one of the four labour Codes).⁴⁵ This states that all migrant workers, whether working through contractors or not, are entitled to register themselves in both the home state and the destination state on a web portal run by the state government.⁴⁶ A similar arrangement can be made to register OAEs. This online registration would involve an app on mobile phones. Given the ubiquity of mobile phones, OAEs may find this possible, although only 400 million smartphones which have an App facility limits this potential. Given that the entire population now has a Aadhar number, a form of biometric identification, the OAE can be verified using the Aadhar.

However, these are the most vulnerable of informal workers, and hence will need facilitation. Some progress is likely to have been made in registering these workers in the E-Shram Portal launched in mid-2021 post Covid⁴⁷ (with a view to documenting migrant and other casual workers and OAEs). The E-Shram portal could become the basis for e-registration of informal workers to create a social security database.

Piggy-backing on databases that exist or are currently being created should be feasible. There are two databases for the purposes of registering workers that should be utilized. First, there is the employment guarantee database for rural India of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).⁴⁸ This would be especially useful to registering one of the most potentially difficult groups, the mostly illiterate and relatively poor landless labourers in rural areas, who would almost all be in the MGNREGA data. In addition, there is a One Nation, One Ration Card database (serving the Public Distribution System), covering two-thirds of the country's least well-off. will also involve taking databases and de-duplication with Aadhaar, de-duplication with ESIC, EPFO databases, and then allowing for registration,

⁴⁵ Occupational Safety, Health and Working Conditions Code, 2020.

⁴⁶ Ibid S. 21(2).

⁴⁷ *About eShram Portal*, Ministry of Labour and Employment, Government of India, Available at <https://eshram.gov.in/e-shram-portal>, last seen on 13/06/2022.

⁴⁸ Digitally Capturing Attendance Of Workers Under MGNREGS Mandatory From January 1, The Hindu, (30/12/2022), Available at

<https://www.thehindu.com/news/cities/Coimbatore/digitally-capturing-attendance-of-workers-under-mgnregs-mandatory-from-january-1/article66320422.ece>, last seen on 06/01/2023.

either on their own or through CSCs (Common Service Centres), that exist across all 700+ districts of India.⁴⁹

The government estimates about 200-250 million unorganised workers will be added on the portal over the next four or five years. There are around 80-100 million workers registered under MGNREGA. About 1-1.5 million would be gig and platform workers. One Nation, One Ration card database has around 300-350 million people under it. Even gig and platform workers might have worked earlier in organised sectors with EPF contributions and so, there could be duplication. So, the de-duplication will be required.⁵⁰

Given that a SI system would preferably work through the banking system for collection and transfer of payments, whether contributions by insured persons, or payments to them by the insurer, the fact that India has achieved good progress in ensuring bank accounts. The all-India NFHS 5, figures show close to 80% women now have a bank account that they use — from 53 per cent in 2015-16 to 78.6 per cent in 2019-21.⁵¹ Those excluded must be provided a bank account.

5. The Cost to Governments and Financing Arrangements

We rely upon two principles to estimate the cost for Central and State governments of Social Security for poor unorganized workers:

Firstly, we know that above 21% of the population lived below the poverty line (Tendulkar poverty line), in 2012. These poor unorganized workers will be covered in a SI system through a non-contributory mechanism, in which most of the cost is borne by the Central and State governments. We have estimated in Tables 1 and 2 below the number of beneficiaries for the three types of benefits: a. old age pension; b. death and disability insurance; and c. maternity benefit for the poor beneficiaries of a national SS for unorganized workers. Logistically, covering even only the poor unorganized workers will take at least five years, given the administrative issues that need to be resolved, (see the previous section).

The second principle underlying this costing is that the non-poor Unorganized Workers will be part of a Contributory system of SS, in which both Workers and

⁴⁹ *Govt In Process Of Integrating E-Shram Portal With One Nation One Ration Card Scheme: Bhupender Yadav*, The Indian Express, (18/05/2022), Available at <https://indianexpress.com/article/india/govt-integrating-e-shram-portal-one-nation-one-ration-card-scheme-bhupender-yadav-7922540/>, last seen on 09/01/2023.

⁵⁰ Supra 18.

⁵¹ A Women-Centric View of NFHS-5, Smile Foundation, (10/01/2022), Available at <https://www.smilefoundationindia.org/blog/a-women-centric-view-of-nfhs-5/>, last seen on 19/06/2022.

Employers, and self-employed (shop owners, and such employers among the self-employed) will contribute to a fund towards their SS. However, we believe that even among the non-poor unorganized workers, who will be part of a contributory system of SI, there will those whose earnings are close to the poverty line, i.e., possibly the third and fourth deciles from the bottom in the income distribution, who will need some government subsidy. For that reason, provision could be made for a Minimum Income Guarantee (an unconditional cash transfer) for them, that could serve as a subsidy towards their contribution to their own SS funds.⁵²

Table 1 estimates the number of poor beneficiaries for each type of benefit, and the addition each year to the number of beneficiaries. The Stock (column 1) consists of those who are both poor and over 60 years of age in the total population. Columns 2-5 estimate the number of beneficiaries that will get added to the pre-existing Stock, each year. This addition takes place because of the following reasons. First, more workers age, and attain the age of 60 years each year, and get added to the beneficiary Stock in column 1. Second, more workers die and hence receive life insurance payments in one go. Third, more workers become disabled each year, and get added to the Stock of disabled in column 1.

Please note that the Ministry of Rural Development already runs a Widow Pension and a Disabled Pension for poor households.⁵³ Since these will need to be continued, the costs of these must also be counted.

Table 2 estimates the costs on an annual basis. Note that these are Total costs to governments of social security provision, not the additional costs. Governments, central and state, are already spending on the a. Central Welfare Funds (e.g., Building and other Construction Workers, 6 types of mines' funds, Beedi Workers Welfare fund); the Atal Pension Yojana; the PM-ShramYogi Maandhan (in which 4.3 million unorganized workers are registered). b. State Welfare Boards, to which state governments contribute. Finally, there is expenditure being undertaken by the central government on PM Matrit Sahayog Yojana (PMMSY), the maternity benefit given to BPL mothers, in addition to the Rs 1000 given to encourage institutional delivery.

From the total costs presented in Table 2, the current expenditures already being undertaken by the state and central governments must be deducted. We have official estimates on what the central and state governments are currently spending annually from the consolidated fund of India. In 2019-20, according to the Ministry of Labour &

⁵² Supra 19.

⁵³ *About Us*, National Social Assistance Programme, Available at [https://nsap.nic.in/circular.do?method=aboutus#:~:text=Indira%20Gandhi%20National%20Widow%20Pension%20Scheme%20\(IGNWPS\)%3A%20BPL%20widows,200%2F%2D.](https://nsap.nic.in/circular.do?method=aboutus#:~:text=Indira%20Gandhi%20National%20Widow%20Pension%20Scheme%20(IGNWPS)%3A%20BPL%20widows,200%2F%2D.), last seen on 13/06/2022.

Employment Annual Report, the total expenditure is approximately Rs 19 000 crore (or Rs 190 billion). However, Rs 18000 crore of this is on organized sector social insurance (Rs 5097 cr on the EPFO Employees' Pension Scheme, Rs 12000 cr on ESIC). ⁵⁴The remaining schemes absorb minuscule amounts of funds (Rs 155 cr and Rs 300 cr in 2019-20) for two unorganized sector workers.

State governments of India spend much more on social security: Rs 146629 cr (or Rs 1466 billion). These are expenditures for all states of India on a head called 'Social security and welfare'. However, these are all citizen-centric schemes, and are not intended to provide comprehensive coverage to informal workers – which is our intention. What is clear, though, is that the state governments are already spending a significant sum, which in our view, should be redirected to cover all informal workers. Citizens, meanwhile, who are not workers could still be captured in social assistance schemes.

We estimate that the TOTAL cost of providing social security comes to Rs 1,37,737 billion (or 1.37 trillion rupees to cover all the poor elderly, the pregnant and the costs of death/disability) in 2019-20 to cover only the bottom two deciles of the worker population, i.e., the designated poor. This amount could be compared with the central government's annual total expenditure under all heads of approximate Rs 34 trillion in 2019-20. This amount is 0.69% of GDP in 2019-20 (i.e., at 2019-20 prices); since this will be shared equally between central and state governments (on a 50-50 basis), the cost to all state governments together will barely be 0.35% of GDP annually; similarly for the Union government it will be 0.35% of GDP.

The cost will DECLINE with each year as a share of GDP to 0.61% of GDP in the fifth year, after assuring benefits to the existing stock of all types of beneficiaries, who are currently uncovered. This decline is explained by the rise in GDP every year (assumed here at the rate of 5% per annum from FY2023 onwards once 2019-20 level of GDP is achieved post- pandemic).

⁵⁴ Ministry of Labour and Employment, Government of India, Annual Report 2019-20, Available at https://labour.gov.in/sites/default/files/annualreportenglish2019-20_0.pdf, last seen on 13/06/2022.

Table 1: Details of Beneficiaries of the Social Insurance Scheme of the Government

Beneficiary Category	Stock of Beneficiary as in 2019-20	Annual Addition (Flow) to the existing stock
No of Poor (BPL) Elderly Population (Age 60 years & more)	28.1 million	1.7 million
No of Pregnant Women	---	1.2 million
No of Disabled Population	0.5 million	26 thousand
No of Widowed Women	5.6 million	0.5 million
No of Deaths among BPL(Poor) Population	---	1.3 million

SOURCE: Author's estimates, based on government data

Table 2: Cost of Social Insurance Scheme of the Government (Rs in Crores)

Type of social Insurance	Total Cost (Year 0) (Rs billion)	Total Cost (with annual increments) for the next four years would be as follows (Rs. billion)			
		Year 1	Year 2	Year 3	Year 4
Social Insurance to Elderly Poor (Age 60 years & more) @ Rs 3000 per month	101160	101524.2	101888.4	102252.5	102616.7
Social Insurance to Pregnant Women @	732	732	732	732	732

Rs 6000 per birth					
Social Insurance to Disabled Population @ Rs 1000 per month	724.8	906	1087.2	1268.4	1449.6
Social Insurance to Widow Women @ Rs 1000 per month	9120	11400	13680	15960	18240
Death Insurance @ Rs 200000 per death	26000	26000	26000	26000	26000
Total Cost Per annum (Rs trillion)	1.37737	1.40562	1.43388	1.46213	1.49038
Expenses % of GDP (If GDP continued to grow @ 5 % per annum)	0.69%	0.67%	0.65%	0.63%	0.61%

Source: Author's estimates.

Explanation:

1. Last two rows (Total Cost per annum in Indian rupees billion and expenses % of GDP for governments) are annual cost. The first column only shows the cost of covering the existing Stock of beneficiaries. The next four columns show the total cost (including Stock of beneficiaries in column 1) as beneficiaries increase. The increase in beneficiaries has been based on a. existing and past rates of death and disability per annum; b. rates of pregnancies for women in reproductive age; c. those turning over 60 to estimate old age pensioners annually. All these baseline data are from government sources.

2. These are total costs. The Ministry of Finance's concern should only be Additional Cost, over and above what the central and state governments are currently spending. All existing schemes will have to subsumed into a new Social Security system for unorganized workers. Hence, in fact, the additional cost will be lower.

6. CONCLUDING REMARKS

This paper proposes a comprehensive plan to cover the entire 91% of workers who are informal in a net of Social Insurance (old age pension, death/disability insurance and maternity benefit). Rising life expectancy – nearly two decades at age 60 today, and the tiny savings of excluded individuals – adds to their problems. Only 12 percent of Indians are covered by a formal pension scheme. As a result, most of the nearly five million Indians who join the ranks of the elderly every year are vulnerable in old age.

The paper proposes it is possible to put in place, even in post-Covid fiscally constrained conditions, a SI system, which is part non-contributory (for the extremely poor), and part contributory for the non-poor. The total cost of providing social security to the poor unorganized sector workers has been estimated at 0.69% of GDP. However, first the GOI should first announce there will be universal social security for all 91% workers, within a reasonable time frame, say within 8 years maximum, i.e., ending FY 2028-29.

RE-ARTICULATING THE LABOUR LAWS AND SOCIAL SECURITY

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Abstract

The labour reforms made in India is simply old wine in new bottles. The age-old practice of criticism on the laws rather than suggesting alternative measures continue even today. The change in the politico-economic context has not been understood properly by the legislature which might be reason behind sticking behind the decade's old basic principles. A comprehensive Social Security Code is still a distant dream from coming true. The dilapidated condition of the workers employed in the informal and unorganized sectors were on display when a severe economic crisis hit the nation during the pandemic. This paper focuses upon providing certain impetus in formulating better labour laws by keeping in mind the changes that took place in the politico-economic landscape of the nation.

1. INTRODUCTION

All laws and policies always have a context of particular time and space. Neither is it possible to understand the relevance of specific form and content of these laws and policies, nor it is possible to review and replace them with new ones without appreciating the new context that has emerged in the new time and space. This applies to the issue of labour law reforms as well. Unfortunately, we observe very little, if any, emphasis on articulating the labour reforms with this perspective, either by the state or those challenging the state led reforms.

The state largely copy-pasted the old text of labour laws in the four new codes, changing only few clauses and inserting a few new clauses. Hence, the codes, rather than emerging as consistent law, become a collection of laws, with far more complexities and inconsistencies. On the other hand, the trade unions and the academicians challenging the state led reforms, rather than proposing any alternative structure of labour laws and social security consistent with the new context of the new time and space, have been largely debating within the existing framework of labour laws and not going beyond challenging certain anti-labour clauses and certain obvious gaps in the codes. It may be noted that the structure of the existing labour laws originated

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more than 74 years back and it must be emphasized that there is a sea change in the whole politico-economic context. In this article, it is not possible to discuss various aspects of the changes in the overall context and its implications for the labour law and social security, as it requires comprehensive research. The article can, at the best, be considered a synopsis. It focuses only on highlighting some points to emphasize the need and urgency for initiatives to re-articulate the labour law and social protection based on the new politico-economic context.

2. COVERAGE UNDER LABOUR LAWS

The system of labour laws included three systems: a) laws for government/public sector; b) standard federal laws for private sector enterprises with a size cap (e.g. factories using power and engaging 10 or more workers, mines with 20 or more workers and or plantations of more than 5 acres etc) in 9 sectors (factories, plantations, mines, News Paper, Motor transport, Bidi-Cigar, Cinema, Dock, and Construction); and c) Residual sectors/units (which largely represented small scale sectors) covered under the State labour law-Shops and Establishments Act.¹

This system of labour law was largely consistent with the political economic context of that period, when: a) Medium-large scale private sector presence was significant largely in the above 9 sectors; b) many crucial sectors were reserved for public sectors; c) many products were reserved for small scale industrial units, they also enjoyed government support in terms of input subsidies and ensured markets; c) Theory of development represented two trends: i) capitalist development may gradually lead to a situation when small economies may gradually disappear and absorbed into the private corporate sectors and hence, employer-employee relations may emerge as dominant feature across the economy; and ii) co-operatives may be promoted to transform the small economies into the economies of the scale, and in that case also the dynamics of small economies may disappear.²

This system of labour law had inbuilt problems and it was bound to enter into a crisis.³ The crisis was created by two factors: a) diversification of forms of employment within sectors; and b) diversification and expansion of economic sectors.⁴ As the system

¹ The Print Team, *How Modi Govt's 3 New Labour Codes Were Passed In Parliament, And The Changes They Will Bring*, The print, (24/10/2020), Available at <https://theprint.in/opinion/how-modi-govts-3-new-labour-codes-were-passed-in-parliament-and-the-changes-they-will-bring/509385/>, last seen on 19/10/2022.

² *Labour Laws in India*, National Crime Investigation Bureau, Available at https://ncib.in/pdf/ncib_pdf/Labour%20Act.pdf, last seen on 15/10/2022.

³ Perona Sil, *Perspective: Employment Laws in India - Challenges, Changes and the Way Forward*, Lexology, Available at <https://www.lexology.com/library/detail.aspx?g=4beef791-e0c9-4ee8-9acf-2bc743d029a7>, last seen on 14/10/2022.

⁴ Amandeep Kaur, Akash Arora & S P Singh, *Employment Diversification in Rural India: Nature, Pattern and Determinants*, CEDDAR, Available at

was based on creating separate labour laws for broad sectors, there was no other way but to keep endlessly multiplying the labour laws. Crisis created by diversification in forms of employment within sectors led to enactment of separate labour laws for interstate migrant workers,⁵ contract labour,⁶ and sales promotion employees⁷ between 1970 to 1979. The crisis created by diversification of economic sectors led to the enactment of new labour laws for Cine workers in 1981,⁸ Dock workers in 1986,⁹ and Construction workers in 1996¹⁰ (laws for first 6 sectors were enacted between 1948 to 1966). Immense diversification in forms of employment within sectors and diversification of economic sectors after 1990s and particularly with advent of 21st century created a situation when it became simply impossible to resolve this crisis within the existing framework.

This crisis is most powerfully reflected in two sets of new conditions: a) exceptionally big private sector companies in IT sector, banking, finance, trade, real estate etc are covered under the shops and Establishments Act, which was actually meant for the small enterprises; and b) exceptionally high proportion of industrial workforce represents such forms of employment that are not covered under any labour laws,¹¹ e.g., home based workers in manufacturing, various forms of gig and platform workers in services as well as in manufacturing. The new Occupational Safety and Health code (OSH code) largely addresses only the first problem and brings all industrial sectors under one federal law; but simply rejects addressing the second one.¹² The loophole in the existing labour law system, that facilitated employers to use non-standard form of employment to escape from labour laws, is fully systematized in the new labour codes by simply denying to recognize them as workers and hence not including them under OSH code, IR code and Wage code, and declaring them as non-standard form of employment in social security code, along with a hollow talk of alternative social security system for them.¹³

<https://www.redalyc.org/journal/296/29662605011/html/>, last seen on 20/10/2022.

⁵ The Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Act, 1979.

⁶ The Contract Labour (Regulation And Abolition) Act, 1970.

⁷ The Sales Promotion Employees (Conditions Of Service) Act, 1976.

⁸ The Cine-Workers And Cinema Theatre Workers (Regulation Of Employment) Act, 1981.

⁹ The Dock Workers (Safety, Health And Welfare) Act, 1986.

¹⁰ The Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act, 1996.

¹¹ *Employment Act and Labor Laws in India*, Multiplier, Available at

<https://www.usemultiplier.com/india/employment-laws>, last seen on 14/10/2022.

¹² S. 2(1)(t), The Occupational Safety, Health And Working Conditions Code, 2020.

¹³ Chapter IX, The Code on Social Security, 2020.

The expansion of economy also led to technological advancements, which also, in turn, created some new conditions demanding restructuring of labour laws.¹⁴ We may cite few examples here: a) With technological advancement, it is really difficult to get any manufactory running without using power, even a self-employed carpenter now uses power run machines for its work; now the division emerges based on whether or not using computerized automated machines, rather than whether or not using power; and b) With technological advancement and automation, the productivity and paying capacity of the units engaging even one worker may be at least 20 times higher compared to 10 worker units in 1960s.¹⁵ In these new contexts there is no justification for: i) size caps based on work strength or size of plantation etc. for coverage under OSH code, and ii) there is no justification of using size caps for excluding workers in any unit (even those engaging one worker) from various benefits and welfare measures, like, coverage under PF, ESI, Gratuity, Bonus, Earned Leave, Maternity benefits, Crech facilities, retrenchment compensation, lay off compensation etc.

It may also be important to mention here that in two South Asian in Nepal¹⁶ and Bangladesh,¹⁷ the labour laws have been integrated into single labour code (not four as proposed in India), which cover all industrial workers in all industrial units employing one or more workers, even when some size cap for few provisions is there.

3. THE COVERAGE OF THE VALUE CHAINS UNDER LABOUR LAWS

Particularly after 1990s the structure of industrial operations underwent a systemic change, largely in terms of shifting from integrated operation systems (e.g., Fordism) to disintegrated operations systems (e.g., lean production systems). In simple words, largely before 1990s, the system of production and service operations was based on integrated production and service operations under one roof, completely managed and operated by the Brand company.¹⁸ But, largely after 1990s, the system of production and service operations became based on various levels of outsourcing of the operations creating a value chain (going up to home based workers), the brand company being at the top of value chain, controlling and supervising the operations across the value chain, in some cases they retained the responsibility of final assembling of the product (e.g.

¹⁴ Sonu Iyer, *Changing Landscape Of Labour Laws In India: What Businesses Should Do To Be Future Ready*, Ernst & Young, Available at https://www.ey.com/en_in/tax/india-tax-insights/changing-landscape-of-labour-laws-in-india-what-businesses-should-do-to-be-future-ready, last seen on 15/10/2022.

¹⁵ Ibid.

¹⁶ The Labour Act 2017 of Nepal, Available at <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf>, last seen on 14/10/2022.

¹⁷ Bangladesh Labour Act 2006, Available at https://mccibd.org/wp-content/uploads/2021/09/Bangladesh-Labour-Act-2006_English-Upto-2018.pdf last seen on 15/10/2022.

¹⁸ Tim Stobierski, *What Is A Value Chain Analysis? 3 Steps*, Harvard Business School Online, Available at <https://online.hbs.edu/blog/post/what-is-value-chain-analysis>, last seen on 10/10/2022.

automobile), but in other cases, they have generally become hollow organizations, without any role in production (e.g. garments).¹⁹

The brand companies largely control the finance, research and designing, and the markets, and by virtue of this, exercise their control across the value chain. By virtue of this system, the brand companies reap huge profits by way of cost savings: a) reducing the infrastructure costs to the minimum; b) no responsibility for investing in health and safety or providing social security to the workers in the value chain; c) creating intense competition between companies at lower levels of value chain to produce at cheaper rates in order to win work orders; and d) in case of global value chains, creating intense competition among countries to reduce overall costs in order to get investments.²⁰

Technological developments combined with almost unrestricted mobility of capital in the phase of liberalization facilitated these systems. This system is not only dominant in case of production/service operations of international companies, but also the local companies. Gig/platform systems are also a new form this disintegrated system of production/service operations facilitated by new technologies.

This system emerged as dominant form of production/service operations largely after the 1990s,²¹ and hence, naturally, the labour laws were not equipped with any provisions to address this problem. But the new code is also simply silent on this. There is an urgent need for legal provisions regulating this system, as the most serious problems of labour are created by this system:

- i) There is a need for legal provisions to recognize the brand companies as the principal employer for all practical purposes across their value chain. In contract labour legislation, the companies are considered as principal employer for the workers engaged through contractors in the company premises,²² but if the work is outsourced to contracting companies and done in the premises of contracting companies then principal employer has no responsibility, although the workers are doing the work of the principal employer. This is a big loophole that creates serious problems for workers as well as the employers at lower levels of the value chains.
- ii) There is no law mandating the brand to make long term written contracts with companies/home-based workers at lower levels of the value chains. Even if there are

¹⁹ Ibid.

²⁰ Ibid.

²¹ Susan Lund, James Manyika, Jonathan Woetzel, Jacques Bughin, Mekala Krishnan, Jeongmin Seong & Mac Muir, *Globalization In Transition: The Future Of Trade And Value Chains*, McKinsey and Company, Available at <https://www.mckinsey.com/featured-insights/innovation-and-growth/globalization-in-transition-the-future-of-trade-and-value-chains> last seen on 29/10/2022.

²² S. 2(g) Contract Labour (Regulation & Abolition) Act, 1970 & Rules 1971.

written contracts, that are order based contracts only. Absence of long-term contract for work orders, makes it impossible for the companies at lower levels of the value chains to make long term contracts with workers, and also it becomes impossible for them to maintain a particular size of workforce for longer periods.²³ Even when the brand companies continue working with the companies in their value chain for long periods, they never make a written contract for long periods, as they use the system of order based contracts as weapon to exercise control on value chain and create a consistent pressure to produce at cheaper rates. The fluctuation of orders, occasional discontinuities and the pressure of this system creates complex nature of problems that makes the life hell, not only for workers but also for employers.²⁴

The intensity of problems depends on nature of industries. For example, fluctuations are least in automobile industry, which also resulted in stability of workforce, not only of regulars but also of contract workers, and which in turn also facilitated emergence of trade unions and collective bargaining not only in case of regulars but also contract workers. While the fluctuations are highest in garment industry, particularly the export garment industry, where workers face hell, and employers literally appear to be production managers of the Brands.²⁵ It may be interesting to mention that the legal provision for fixed term contracts was initially introduced only for textiles and garments²⁶ keeping the above problems in mind; but till date this has not emerged as dominant practice in textiles and garment industry. This is particularly because large scale violations are allowed in the industries, and employers are virtually free to hire and fire without any costs, by simply compelling the workers to sign resignations, rather than legally retrenching/dismissing them. There are only rare cases where workers complete continuous period of service to be eligible for gratuity etc. On the other hand, if they use fixed term contract, they will be compelled to retain them for the fixed term, and also pay them gratuity etc. for the period. There is an urgent need for a law regulating the outsourcing practices, mandating at least for annual work contracts. There is a need for policies discouraging the order-based contracts in the value chains, and also the short terms contracts with workers.

²³ *Value Chain*, BCampus, Available at <https://opentextbc.ca/strategicmanagement/chapter/value-chain/>, last seen on 21/11/2022.

²⁴ Abdul Razak, *Critical Evaluation of Value Chain Analysis for Assessing Competitive Advantage-A Study on Select Companies of E-Tailing Industry*, 17(6)Academy of Strategic Management Journal, Available at <https://www.abacademies.org/articles/critical-evaluation-of-value-chain-analysis-for-assessing-competitive-advantagea-study-on-select-companies-of-etailing-industry-7652.html>, last seen on 22/10/2022.

²⁵ *Ibid.*

²⁶ *Govt Brings In Labour Reforms Via Rs 6,000cr Textile Pkg*, Times of India, (23/06/2016), Available at <https://timesofindia.indiatimes.com/india/govt-brings-in-labour-reforms-via-rs-6000cr-textile-pkg/articleshow/52877001.cms>, last seen on 27/10/2022.

4. HEALTH AND SAFETY

The health and safety laws have become outdated in the face of the fact that various new industries have emerged and end number of new chemicals and new hazardous production/service operations have emerged. We even lack sufficient studies of the hazardous effects of various new chemicals and production/service operations. Moreover, the exposure to microwave radiations, so common in electronics as well and various IT industries and other online works, are said to have serious impacts on health²⁷ but there are no systematic studies to create a compulsion for certain legal regulations on this aspect. It is possible that some standard OSH regulations may apply across specific sectors, but there are also specific threats in specific industries. Hence, it is advisable that OSH laws must always be industry specific, which also make it user friendly. It may really be painful for any industry person to go through the whole text of OSH regulations covering all sectors to sort out one by one that is applicable to his/her industry. It is also not advisable to create a general board on OSH to review the OSH regulations of all sectors and give general recommendations. There is a need to create industry specific OSH boards to review and recommend OSH regulations for particular industries. This task becomes urgent in the face of exceptional increase in occupational accidents in recent periods.

5. COLLECTIVE BARGAINING

In the above politico-economic context, the laws on Trade Union and Collective bargaining need to create space for workers across the value chains (including home based workers) of Brand companies to be able to collectively bargain with the principal employer.²⁸ The legal provisions must empower them to either directly join the trade unions formed in the principal employer companies or they can form their own unions and form federation of unions across the value chains.

In the new liberalized environment when the government offers single window clearance and automatic approvals in various arenas to employers/investors,²⁹ if no response received from relevant authorities in a fixed period of time, it is unjustified to not extend such provisions to trade unions. It may be advisable to include a provision

²⁷ John A. Eure, James W. Nicolls & Robert L. Elder, *Radiation Exposure from Industrial Microwave Applications*, 62(12), AJPH, 1573, 1575, (1972), Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1530558/pdf/amjph00734-0014.pdf>, last seen on 24/10/2022.

²⁸ *Collective Bargaining And Labour Relations*, International Labour Organisation, Available at <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm>, last seen on 22/10/2022.

²⁹ *National Single Window System for Investors and Businesses Launched by Shri Piyush Goyal*, Press India Bureau, Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1756966>, last seen on 15/11/2022.

in the law for automatic registration of trade unions if no response is received from relevant authority after 15 days of filing the application.

It is well known fact that trade union density in India has been dismally low, which dis-empowers workers and actually results in large scale violations of labour laws, along with exceptional downward pressure on wages, reflected in minimum wages becoming the maximum wages in many sectors.³⁰ Moreover, from the last few decades, significant proportion of industrial disputes started on the issue of trade union rights: the workers attempted to form or formed the trade unions and in retaliation, the employers unleashed various kinds of repression against the workers, and this led to strikes or lockouts. These situations necessitate special legal provisions to address this problem: a) restoring the legal provision requiring only 7 members to register the trade union, and automatic registration of union after 15 days of filing the application; b) compulsory provisions for participation in collective bargaining both for employers as well as trade unions; and c) automatic recognition of trade unions for collective bargaining in case of single union, and mandatory and time bound provision for holding ballot for recognizing the majority union or CB Council for collective bargaining, in case of multiple unions. The New Industrial Relations code³¹ actually defeats the whole purpose of right to collective bargaining by mandating representation of 51% of workers for the majority union, and 20% for eligibility to be part of the CB council.³² It is advisable to remove such conditions, and unions having highest membership must be recognized as the majority union; and in case of two or more unions with equal membership they may form the CB council.

6. MINIMUM WAGES, MINIMUM INCOMES AND SOCIAL PROTECTION

The meaning of a civilized society is a society where survival with dignity is fully ensured for all. In a civilized society the wealth of nations belongs to the people of nations. The meaning of the government is the delegation of powers by the people to its elected representatives to manage the wealth of the nations in such a way to promote sustainable development, to ensure survival with dignity to all citizens, and to create ensured democratic space for collective bargaining in such a way to enable them to claim re-distributive justice leading to consistent improvements in their working and living standards. Only by fulfilling this responsibility, the governments can get a legitimacy as the custodians of the nation states. It is in this light the social protection is the right of the people and the responsibility of the governments. It is in this light, the

³⁰ Sundeept Khanna, *Toothless Trade Unions Have Meant Helpless Workers*, The Mint, (08/04/2020), Available at <https://www.livemint.com/opinion/columns/toothless-trade-unions-have-meant-helpless-workers-11586364179180.html>, last seen on 16/10/2022.

³¹ The Industrial Relations Code, 2020.

³² S. 14(4), The Industrial Relations Code 2020.

right to employment/livelihood, and minimum insured wages/incomes and social security emerge as rights of the people. It can never be left to the demand-supply magic of ‘market god’, or the CSR of its ‘corporate priests’.

It is in this background, we may understand the consistent discourse in India on the issues on universal health protection, universal coverage of social security, the discourse related to minimum wages and minimum incomes.

The concept of minimum wage in India, as reflected in discourses in National Labour Commissions, Fair Wage Committee, Indian Labour Conferences and relevant judgments the Supreme Court, largely proposes a wage sufficient for an average size family to maintain minimum living standards and to live with dignity.³³ The same also applies to the concept of the minimum income for self-employed. We have well defined formula to calculate minimum wage and hence, rather than inventing any other formula for calculating the minimum income, the value of minimum wage may also be recognized as the value of minimum income.

The accepted criteria for arriving minimum wage includes: a) Food: 2700 calories per day per consumption unit for 3 consumption units (2 adult and 2 children); b) 66 meters cloth per year per family or 22 meters per adult and 11 meters per child; c) Housing rent equal to 10 % of total expenses in food and clothing; d) Expenses in Fuel, electricity and other miscellaneous items equal to 20 % of minimum wage; and e) Expenditure for children education, medical requirement, recreation and contingencies equal to 25% of minimum wage.³⁴

It was expected that the review of labour laws may revise this formula to upgrade the standards by way of: a) increasing calories from 2700 to 3000 (even in 1961 it was considered that the normal requirements for an average person usually varied between 3000 to 3500 calories (Sethuraman 1961³⁵); b) considering 4 consumption units for all purposes, as the expenses of food and clothing of child is not less than the adults in labouring families; moreover, the clothing requirements have increased and this also needs to be accommodated; c) Housing rent must be equal to the rent of relevant size of dwelling in the open market, which currently goes up to 30% of wages, as the low rent

³³ International Labour Organisation, *India Wage Report*, 95, (ILO, 2018), Available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_638305.pdf, last seen on 30/10/2022.

³⁴ Mr Anup Karan, *Setting National Minimum Wages In India: A Need-Based Approach*, 4, (ILO, 2021), Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/projectdocumentation/wcms_832070.pdf, last seen on 29/10/2022.

³⁵ Sethuraman, TV, *Towards a Rational Wage Structure in India Problems and Preconditions*, 13, The Economic Weekly, 983, 985 (1961), available at https://www.epw.in/system/files/pdf/1961_13/26-52/towards_a_rational_wage_structure_in_indiaproblems_and_preconditions.pdf, last seen on 01/11/2022.

industrial housing is no more available; d) unskilled workers must cross the minimum wage level after getting one year of work experience (this concept is included only in the Minimum wage law of Arunachal Pradesh, where minimum wages are determined with work experience of 0-5 years, 5-10 years, 10-15 years, 15-20 years and more than 20 years for both unskilled and skilled categories; however, locking the new unskilled workers at lowest wage for 5 years is really unjustified); e) including the new needs/expenses like, communication and transport; f) addition of DA every quarter in place of every six months, keeping in mind the new condition of rising inflation almost every months which actually decrease the real wages of workers; g) Revision of minimum wages every three years rather than every 5 years. However, the new wage code does not address any of these issues.³⁶

Even if we consider the existing criteria of minimum wage determinations, the minimum wage for unskilled workers does not come less than 21000 per month in any part of the country.³⁷ Trade Unions in recent general strike demanded a minimum wage of Rs 26000 per month.³⁸ It is interesting to note that the Vice Chancellor of NLIU Bhopal prof V. Vijayakumar in his Valedictory speech in a Global Symposium on Labour and Employment Law held in Bhopal on 25-27 March 2022 approached this issue from a different perspective and argued that the income slab exempted from the income tax is naturally the annual minimum income for survival and hence the minimum wage must be the value reflecting this annual income, and based on this approach we arrive at the minimum wage value of Rs 25000 per month.

However, the minimum wages of unskilled workers in most of the states is less than 10000 per month, only in some states it is little higher, for example, around 12000 in Kerala and around 16000 in Delhi.³⁹ This clearly reveals that even the accepted formula for minimum wage determination is violated.

It is generally accepted that wages of semiskilled workers may be at least 10% higher than the unskilled, that of skilled may be at least 10% higher than the semiskilled,⁴⁰ although this is not clearly spelled out in the Wage code.

³⁶ Ibid.

³⁷ *Minimum Wages and Salary Structures in India*, India Briefing, Available at <https://www.india-briefing.com/doing-business-guide/india/human-resources-and-payroll/minimum-wage>, last seen on 26/10/2022.

³⁸ *Increase Minimum Wage To Rs 26,000 Per Month: CITU*, Deccan Chronicle, (28/11/2022), Available at <https://www.deccanchronicle.com/nation/in-other-news/281122/increase-minimum-wage-to-rs-26000-per-month-citu.html>, last seen on 08/12/2022.

³⁹ Priyangi Aggarwal, *95% Of Workers Not Paid Minimum Wages In Delhi*, Times of India, (11/07/2022) Available at http://timesofindia.indiatimes.com/articleshow/92789450.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst, last seen on 19/12/2022.

⁴⁰ *Unskilled, Semiskilled And Skilled Labour Defined*, Lets Build, Available at

As we already discussed that the concept of minimum income is largely the same as that of minimum wage, hence, Rs 21000 per month may be considered as the minimum wage for unskilled workers as well as the minimum income for any citizen for all practical purposes. This may form the basis for calculating various social security assistance payable to individuals or families. The current practice of social security assistance in most cases is at-random, without any logic. The system of social security assistance based on minimum wage/income may resolve this problem, and provide a transparent and standardized system of calculating the financial assistance. If we consider the minimum wages as Rs 21000 per month, then, based on existing formula, we arrive at following breakup: a) Children education etc (25%) =5250; b) fuel etc (20%)=4200; c) food and clothing= 10500; d) house rent (10% of food-clothing)=1050. This clearly reflects the fact that house rent is far from real. Calculated on this basis, the family social assistance for those living in rented accommodation may be Rs 21000pm, for those having their own house may be 21000-1050=19950; Individual social assistance for those living in rented accommodation may be $21000/3$ (consumption units included in MW) =7000pm, for those having their own house may be $7000-1050=5950$ pm.

This may not be out of context to mention that largely from 1997 onwards, the public distribution system (PDS) was transformed from a universal system to targeted public distribution system for below poverty line people.⁴¹ The workers earning minimum wages cannot qualify to be considered below poverty line, and hence not eligible to claim the benefits of PDS. The impact of this actually resulted in effectively reducing the real wages: the food value of minimum wages being calculated based on open market prices, but workers were benefitted by getting at least some necessities from PDS at subsidized rates, however, after 1997 this was no more available to them.⁴²

The theory and practice of social security system must be based on insuring minimum income to all citizens and extending financial assistance to those unable to earn or to cover the short falls in the income for whatever reasons. In this light, the following aspects are required to be included in the social security:

- a) Enforceable right to employment/livelihood to all citizens. In case of unemployment/loss of employment or loss of income in livelihood or

<https://www.letsbuild.com/blog/unskilled-semiskilled-and-skilled-labor-defined>, last seen on 19/11/2022.

⁴¹ Neetu Abey George and Fiona H. McKay, *The Public Distribution System and Food Security in India*, 16(17), IJERPH, 1, 2, (2019), Available at <https://www.mdpi.com/1660-4601/16/17/3221>, last seen on 15/11/2022.

⁴² Shankar Ayyar, *Public Distribution System Turns Out To Be An Abject Failure, Multi-Crore Rupee Scam*, India Today (3/10/2005), Available at

<https://www.indiatoday.in/magazine/nation/story/20051003-public-distribution-system-turns-out-to-be-an-abject-failure-multi-crore-rupee-scum-786935-2005-10-02>, last seen on 15/10/2022.

- destruction of livelihoods: i) financial assistance is to be provided, based on concept of minimum income; and ii) skills training and other support is to be provided to insure re-employment or restoration of livelihoods. This becomes urgent in context of: a) growing unemployment due to industrial restructuring and fast growing automation, downturns in the economy and crisis of small and marginal farmers; b) an industrial system offering intermittent periods of employment and unemployment; and c) mass destruction of self-employed livelihoods due to natural calamities, exceptional scale of land acquisitions, destruction of livelihoods of fish workers due to expansion of port infrastructure and also due to entry of corporate in fishing sector; etc.
- b) Exemption of all those earning up to double the amount of minimum wage/income from income tax, and covering them all under PDS system, to empower them to manage normal kind of contingencies in life and not falling in poverty;
 - c) Pension/financial assistance to old age, disabled persons, non-earning widow/widowers with small children, based on the concept on minimum income
 - d) Compensation and assistance for those facing occupational or other accidents, and facing short term loss of earnings
 - e) Insuring health, education and housing at subsidized rate.

These social security benefits may apply to all citizens, however, the system of extending these social security benefits may be different for two broad categories of workers: a) Wage workers employed in all industrial units, and b) the self-employed/own account workers plus wage workers in casual employments (not in industrial units)

7. SOCIAL SECURITY SYSTEM FOR WORKERS EMPLOYED IN INDUSTRIAL UNITS:

As we discussed in earlier sections, there is no justification to exclude workers of industrial units (including those engaging one or more workers) from the coverage of standard labour laws and the standard social security systems (ESI, PF, Gratuity etc).⁴³ Hence, all workers in all industrial units may be extended standard social security benefits under this system. However, this system also requires to be improved to address the new problems:

- a) The unemployment allowance for short term job losses is provided not by ESI Law but through two separate schemes introduced in ESI, which means they are temporary in nature. Considering the present context of exceptional rise in

⁴³ Supra 14.

incidences of short-term job losses, which is actually inbuilt in new industrial practices, this provision is now required to be integrated in the law. Moreover, the total period of unemployment benefits must be increased from 90 days to 6 months.

- b) Old pension system must be restored
- c) Considering the rise in costs of social security, due to several factors, and also keeping in mind the proposed inclusion of all workers of all industries in this system may require expansion of ESI hospital infrastructures etc, the old rates of PF and ESI contributions from employers and employees must be restored. It is important to mention that recently the government decreased the rate ESI contribution from 4.75% and 1.75% to 3.25% and 0.75% from employers and employees respectively and also decreased the rate of PF contribution from 12% from both to 10% from both.⁴⁴

8. SOCIAL SECURITY SYSTEM FOR SELF-EMPLOYED/OWN-ACCOUNT WORKERS AND WAGE WORKERS ENGAGED IN CASUAL EMPLOYMENTS (NOT IN INDUSTRIAL UNITS):

The long discourse on theory and practice of social security for this section of workers in India have clearly demonstrated that the system of occupation based social security boards are most effective to extend standard social security benefits and also to address the specific nature of problems and needs of different sections of workers. However, various experiments of social security boards have also clearly demonstrated that they are on the whole downgraded social security systems focused only on survival aspects, and hence an overall restricting of systems is needed in order to empower the social security boards to be able to extend standard social security benefits. The following aspects need to be included in the occupation based social security boards:

- a) The Social security system must be designed on the lines of ESI and PF system, to extend all benefits included in ESI and PF system to this section of workers as well.
- b) The financing of this systems must be based on following aspects: i) a minimum contribution from workers, e.g., 2% of monthly earnings (1% for ESI and 1% for PF); ii) A Cess of 1-2% from Medium-large companies operating in particular occupational sectors; iii) Shortfalls to be covered by the government; iv) CSR funds applicable in particular occupational sectors may also be diverted to this social security fund; v) 1% social security Cess on all foreign investments in the country, direct or indirect, and diverting this to various occupation based

⁴⁴ Kewal Garg, *Revised/ Reduced ESI Contribution Rates 2019-20: Employer 3.25%, Employee 0.75%*, Caclub, (14/06/2019), Available at <https://caclub.in/revised-esi-contribution-rates-employer-3-25-employee-0-75/>, last seen on 19/10/2022.

social security funds, in proportion to the workers covered. The relevance of this kind of financing initiative becomes necessary keeping in mind: i) low paying capacity of workers; ii) government gradually losing its economic capacity to bear the cost of social security.

- c) The regular monthly contribution for workers to ESI and PF schemes must be deposited by the social security boards from the social security fund. But workers may be allowed to deposit monthly or annually, their membership must continue for two years even if they default in depositing contributions, only after two years their membership may be reviewed.
- d) These tripartite social security boards must be closely aligned with the government ministries responsible for particular occupations. The boards may be empowered to propose policies and programs aimed at increasing the sustainability of particular occupations, by way of: a) helping in building required infrastructure for self-employed/own-account workers required for compliance of relevant OSH standards; b) subsidizing the input costs; c) providing insured markets for their products; and e) helping in creating formality in outsourcing arrangements with companies.

It is also necessary to rearticulate the public distribution system as an instrument for boosting the economy, generating the employment and fighting against poverty. Self-employed/own-account represent the huge majority of workforce in India, and transforming their life for better may help transforming the whole economy, and removing the poverty. From this perspective, it is required to cover most of the daily necessities of working classes under PDS system and to build standard government shopping malls in every locality. These products may be procured from the self-employed/own account producers or small-scale units to provide them an insured market. The cumulative impact of this system may directly decrease the unemployment and poverty, and also boost the whole economy by increasing the purchasing power of society.

UNIVERSALIZATION OF SOCIAL SECURITY SCHEMES FOR WORKERS IN INDIA

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Abstract

The pandemic-induced lockdown has forced billions of workers in the informal economy, accounting for approximately three-fourths of the total informal employment worldwide, into severe unemployment and poverty. India was a badly affected nation by the pandemic on her economy. The migrant exodus and the collapse of the informal sector during the lockdown was a saddening sight to see. It was then the need for comprehensive social security measures in India. The lack of apathy of the authorities towards the plight of the persons in the unorganised sector was very much highlighted in the economy, and the recovery was very slow compared to the deep slump all due to the lack of Social Security measures. The paper provides an account of the issues and loopholes found in the new Social Security Code, as well as certain recommendations are made to protect the informal sector by universalising the Social Security Schemes in the future when the economy is confronted with such unprecedented crisis.

Keywords: Informal Sector, Social Security Code, Labour reforms, Migrant labour, Street vendors

1. INTRODUCTION

The world over concern for improving the social protection of workers engaged in what is referred to by ILO as non-standard employment¹ has been high in recent years. Approximately 2.5 billion people, or half of the global workforce, are employed in the informal economy.² In 2020, the ILO estimated that about 1.6 billion informal

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¹ International Labour Organization, *Work For A Brighter Future Global Commission On The Future Of Work*, 22, (International Labour Office – Geneva: ILO 2019), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/-cabinet/documents/publication/wcms_662410.pdf, last seen on 12/10/2022.

² The term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate,

economy workers, accounting for 76 per cent of informal employment worldwide, had been significantly affected by the lockdown measures and/or were working in the hardest-hit sectors.³

The Asia and Pacific region, which had high economic inequalities before COVID-19, suffered badly during the pandemic, resulting in worsening poverty and disruptions in the labour market, particularly in the informal sector, pushing unemployment to unprecedented levels. As the pandemic continued to affect these countries adversely, the need for social security of the vulnerable sections was keenly felt. A key challenge that all regional governments felt was ensuring adequate social security and roll-out of emergency safety plans. It has been estimated by the ILO in 2018 that the informal sector in the region consists of 1.3 billion people or 68.2% of the workforce, with migrant workers and women consisting of a large proportion of the informal sector which was badly affected by the pandemic.⁴

In this paper, we shall examine the various issues connected with the possibilities of universalising social security in India in the context of the labour law reforms being attempted through the Code on Social Security enacted by Parliament. In doing so we will bring out some of the key elements of these reforms, the context in which they are being made, and the complexities of the labour market in India with a vast unorganised sector⁵ and the difficulties of bringing this sector within the purview of social security in a bid to universalise social security.⁶ In doing so, we would briefly review the literature on the Code, the judicial pronouncements on unorganised labour,

burdensome, or imposes excessive costs (Informal Economy and Atypical Forms of Employment, available at https://www.ilo.org/actrav/areas/WCMS_DOC_ATR_ARE_INF_EN/lang--en/index.html, last seen on 10/10/2022

³ International Labour Organization, *Transition from the Informal to the Formal Economy Recommendation*, 11, (2015 (No. 204) Workers' Guide 2017), available at https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/publication/wcms_545928.pdf, last seen on 10/10/2022

⁴ *Prevention And Mitigation Of Covid-19 In The Informal Economy Through Safety And Health: An Action-Oriented Tool For Supporting Street And Market Vendors*, International Labour Organization, available at https://www.ilo.org/global/topics/safety-and-health-at-work/home/WCMS_822773/lang--en/index.htm, last seen on 14/10/2022

⁵ “unorganised sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

“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 mentioned in Schedule II to this Act (Definitions mentioned in the Unorganised Workers’ Social Security Act, 2008 ACT NO. 33 OF 2008

⁶ y Derek Hondo, Julia Haberl & Linda Arthur, *Redesigning Social Protection Programmes Beyond The COVID-19 Pandemic* Asia Pathways ADB Institute, available at <https://www.asiopathways.adbi.org/2022/11/redesigning-social-protection-programs-beyond-the-covid-19-pandemic/> last seen on 15/10/2022

particularly issues concerned with the registration of workers under various social security schemes and the approach taken in these pronouncements on the stand of the executive towards ensuring social security to workers.

2. SOME KEY ELEMENTS AND THE CONTEXT OF LABOUR LAW REFORMS IN INDIA

The central government enacted four labour codes to replace 29 existing labour laws with an intention to simplify and modernise labour regulation. The major challenge of labour reforms has been to trigger employment growth and protect workers' rights. Important issues debated in the labour codes relate to the coverage of small firms, threshold levels for seeking permission for retrenchment, lay-offs and closure of establishments, effective enforcement, trade union registration, promoting collective bargaining, ensuring adequate social security, occupational safety & health. Further, it has also been felt that with the passage of time, labour laws needed an updation, along with provisions to include the needs of emerging new forms of labour (e.g., platform work and gig work). The Codes leave many important areas, such as social security schemes' applicability and health and safety standards, to rule-making. The question is whether these areas should be determined by the legislature or be delegated to the executive.

2.1 The Context of Labour Law Reforms

The Second National Commission on Labour (2002) (NCL), which found the existing labour legislation complex, with archaic provisions and inconsistent definitions with a view to improve ease of compliance and ensure uniformity of definitions, recommended the consolidation of central labour laws into broader groups - (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions. 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 Parliament passed the Code on Wages 2019, Bills on the other three areas were referred to the Standing Committee on Labour. The Standing Committee submitted its reports on all three Bills and Parliament passed the three Codes in 2020.⁷

⁷ *Overview of Labour Law Reforms*, PRS Legislative research available at <https://prsindia.org/billtrack/overview-of-labour-law-reforms> last seen on 19/10/2022

2.2 Code on Social Security (SS Code) as Enacted by Parliament-Salient Features

The Social Security Code 2020 (SS Code), intends to provide for social security benefits for all workers, including in unorganized sectors as well as gig and platform workers. Some of the new provisions envisaged in the Codes include -the setting up of the Social Security Fund for formulating schemes for the welfare of the unorganised workers, gig workers and platform workers, extension of coverage under Employees' State Insurance Corporation (ESIC) to all districts in the country,⁸ ESIC coverage on a voluntary basis for establishments having less than ten employees. Benefits under ESIC are applicable through notification to an establishment which carries on hazardous or life-threatening occupation in which even a single person is employed. Extension of benefits has also been intended for unorganised workers, gig workers and platform workers and the members of their families through ESIC or Employees' Provident Fund Organization (EPFO). For persons engaged in Fixed- Term Employment (FTE), the proportionate benefit of service has been extended without the requirement of the minimum threshold service of 5 years for gratuity. This makes it possible for persons having a contract for one year under FTE to be eligible for gratuity. In accordance with the Payment of Gratuity Act, 1972, the SS Code 2020 also provides for payment of gratuity to workers on the rate based on wages last drawn. Furthermore, as in the case of the Payment of Gratuity Act, 1972, the SS Code 2020 also provides that the amount of gratuity payable to an employee shall not exceed the amount which the Central Government notifies. However, the SS Code has not come into effect so far. In order to maintain continuity, the SS Code 2020 envisages the administration of social security schemes under the Code by the concerned social security organisations.⁹

The Code attempts to simplify and rationalise the relevant provisions and thereby repeal the following nine central labour enactments relating to social security, namely:— (i) The Employees' Compensation Act, 1923; (ii) The Employees' State Insurance Act, 1948; (iii) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; (iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; (v) The Maternity Benefit Act, 1961; (vi) The Payment of Gratuity Act, 1972; (vii) The Cine Workers Welfare Fund Act, 1981; (viii) The Building

⁸ *New Labour Code: Unorganised Workers To Get Benefits Of Employees' State Insurance Scheme*, NEWS 18 available at <https://www.news18.com/news/business/new-labour-code-unorganised-workers-to-get-benefits-of-employees-state-insurance-scheme-5488975.html>, last seen on 10/11/2022.

⁹ *Implementation Of Labour Codes*, Parliament Library And Reference, Research, Documentation And Information Service (LARRDIS) available at https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/23092022_125055_102120526.pdf last seen on 18/10/2022.

and Other Construction Workers Welfare Cess Act, 1996; and (ix) The Unorganised Workers' Social Security Act, 2008¹⁰

2.3 Some Important Differences in the 2019 Bill and 2020 Code on Social Security

The 2019 Bill was based on social security for certain establishments, where thresholds, such as the size of the establishment and income ceilings, were important. The 2020 Bill stated that the central government might, through a notification, subject to threshold, apply the Code to any establishment. It also empowered the central government to set up social security funds for unorganised, gig, and platform workers. Whereas the 2020 Code states that the central and states will set up such a fund for unorganised workers.

Secondly, the 2019 Bill provided for the establishment of national and state-level boards for administering schemes for unorganised sector workers. But, in the 2020 Code in addition to unorganised workers, the National Social Security Board may also act as the Board for the purposes of welfare of gig workers/platform workers. The 2020 Bill also makes clarifications regarding the schemes for gig workers and platform workers who may be funded through a combination of contributions from the central government, state governments, and aggregators.

Certain definitional changes in 2020 Code include: (i) workers employed through contractors,¹¹ (ii) “inter-state migrant workers” to include self-employed workers from another state,¹² (iii) more categories of services or activities to be considered as platform workers¹³ (iv) audio-visual productions to include films, web-based serials, talk shows, reality shows and sports shows,¹⁴ and (v), exempting construction works from the ambit of “building or other construction work” if related to any factory or mine or any building or other construction work employing less than ten workers in the preceding twelve months or where such work is related to own residential purposes of an individual or group for upto 50 lakhs.¹⁵

¹⁰ The Code On Social Security, 2020 (As Introduced In Lok Sabha) Bill No. 121 of 2020.

¹¹ S. 1(19), The Code On Social Security, 2020.

¹² Ibid.

¹³ Ibid, S. 1 (60).

¹⁴ Ibid. S 1 (4).

¹⁵ Ibid. S 1 (6).

Under the 2019 Bill, gratuity was payable on the termination of employment if the employee has been in the organisation for at least five years. However, the 2020 Bill reduces the gratuity period from 5 years to 3 years for working journalists.¹⁶

2.4 Debate on Certain Issues in the SS Code

2.4.1 *Delegated Legislation*

One of the serious issues that has been debated has been the issue of delegated legislation, as many provisions of the Code have been left to the procedures being prescribed through notifications by the executive without sufficient legislative scrutiny. The Code only provides that the appropriate government will ‘frame suitable schemes’; the responsibility for framing a suitable scheme for life and disability cover, health and maternity benefits, old age protection and education lie with the Centre, and the schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance, and old age homes lie with the states.¹⁷

2.4.2 *Loop Holes in the Legal Framework of Defining Employer-Employee Relationships in Newly Emerging Segments of the Labour Market*

The term “outside the traditional employer-employee relationship” in section 2(35) of the social security code 2020 defines a Gig worker (a person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer-employee relationship, leaves a loophole pertaining to failure in defining the traditional employer-employee relationship. The Code also seems to leave uncovered agricultural workers, street vendors and domestic workers.¹⁸

¹⁶ The Code On Social Security, 2020.

¹⁷ Chigateri,S(2021) *Labour Law Reforms and Women's Work in India: Assessing the New Labour Codes from a Gender Lens*, 37, (institute of social studies Trust 2021) available at https://www.researchgate.net/publication/348729385_Labour_Law_Reforms_and_Women's_Work_in_India_Assessing_the_New_Labour_Codes_from_a_Gender_Lens/link/600d3299299bf14088b8f8ef/download, last seen on 14/10/2022.

¹⁸ Robert Anto, *Gig Economy: Prospects & Challenges under Social Security Code*, 4(3) International Journal of Law Management & Humanities 3683, 3871, (2021) available at <https://www.ijlmh.com/wp-content/uploads/Gig-Economy-Prospects-Challenges-under-Social-Security-Code.pdf>, last seen on 14/10/2022

2.4.3 Issues Concerning Universalisation of social security and Thresholds

The Statement of Object and Reasons (SOR) of the Code on Social Security (2020) states that it is an Act to amend and consolidate the laws relating to social security with the goal of extending social security to all employees and workers either in the organised or unorganised or any other sectors and for matters connected therewith or incidental thereto¹⁹.

Since 2015, the Government of India has embarked on consolidating a large number of Central legislations into four Codes, including a Code on Social Security. Three drafts of the Code were put in the public domain in June 2017, June 2018, and September 2019. Initially, the code was meant to amalgamate 15 Central legislations, but the most recent draft aims to amalgamate nine legislations, including the Unorganised Workers Social Security Act 2008 and the Building and Construction Workers Welfare Cess Act 1996. While the earlier drafts aimed at a universal social security framework, the Bill introduced in parliament in December 2019 did not include this objective. It also did not address issues of inter-state portability.²⁰

Critics argue that India needs to universalize social security, which the current Code does not state as a goal, and merely merging a number of acts does not achieve the objective of universalisation. Besides, India's labour market is changing rapidly, and the Code does not capture such changes. It may not just be sufficient to say that the portability of benefits will be resolved subsequently through the Rules formulated by the Central and State governments. The portability of registration and benefits had to be resolved in this Code itself. Besides, it has also been argued that a Social Security system cannot be dependent upon the size of the enterprise, defined by the number of workers, which, the Code does since it relies upon a system of thresholds defined by the number of workers employed in an establishment (e.g., 10 workers for ESIC, 20 for EPFO). The system of thresholds that existed in the labour laws which the Code replaces has been retained in the Code. Eventually, the system of thresholds may have to be abandoned altogether if social security is to be made a universal right of any worker, regardless of whether he is an organized or unorganized worker.²¹

¹⁹ The Code On Social Security, 2020 (NO. 36 OF 2020 Notified By Ministry Of Law And Justice (Legislative Department) New Delhi

²⁰ Srivastava Ravi, *Vulnerable Internal Migrants in India and Portability of Social Security and Entitlements* WP 02/2020, 27 (Centre for Employment Studies Working Paper Series Institute For Human Development 2020) available at http://www.ihdindia.org/working-papers/2020/IHD-CES_WP_02_2020.pdf last seen on 12/10/2022

²¹ Mehrotra S, *Building a Social Security Architecture for Informal Workers in India, Finally!* 16, (Centre for Sustainable Employment Azim Premji University 2020) available at

2.4.4 Registration and Portability –A Major Issue concerning social security of the unorganised sector

Registration and establishing legal status have been key issues for determining who derives the benefits of various social security schemes. For the migrant worker, the need to establish a claim to the entitlement has been a difficult issue over the years. One can only do so if a claimant is considered eligible under the scheme's norms for which a process of registration is necessary and the institutional mechanism through which the scheme is delivered can reach the migrant. In this context, the issuance of identity cards and registration has been an integral part of many schemes and programmes for unorganised sector workers. But the registration and identity cards did not ensure the portability of benefits as earlier initiatives had limited objectives and, where implemented, led to specific and/or limited outcomes.

The detailed recommendations of National Commission for Enterprises in the Unorganised Sector (hereafter NCEUS)²² on social security for informal workers recognised the lacunae involved with registration and portability and recommended a National Minimum Social Security Scheme which could be fully portable, which consisted of a National Minimum Social Security Package for all workers which included retirement benefit, a life cover, and a family health cover, with a common pattern of financing by the Centre and States. to ensure that this package would be portable across locations and sectors. Over and above these basic entitlements, additional benefits could accrue to workers depending upon location and sector, but these benefits were not automatically portable. Registration was to be a mandatory part of the Scheme for all unorganised workers. Each registered worker was to receive a smart identity card with a unique social security identifier.

Smart cards would also be issued to family members of the worker so that they could avail of family benefits in the absence of the worker. Under this scheme of social security workers could pay their contributions (if any) anywhere in the country, and they or their families could receive benefits anywhere on the basis of the single registration. An organisational and institutional structure was also proposed which was to ensure the portability of the scheme through a system of an integrated IT structure and network of financial institutions (post offices and banks), Workers' Facilitation Centers set up by trade unions, CSOs, or local bodies were to facilitate the registration of the worker and her/his family, as well as the disbursement of benefits to her. The

<https://publications.azimpromjifoundation.org/2372/1/Building%20a%20Social%20Security%20Architecture%20for%20Informal%20Workers%20in%20India%2C%20Finally.pdf> last seen on 17/10/2022

²² K. P. Kannan, *Social Security in the Lockdown: A Time to Revisit the NCEUS Recommendations*, 63 (Suppl 1), The Indian Journal of Labour Economics 5139,5140, (2020)

NCEUS recommendations were made for a single component of social protection which was protective social security, but they were carefully built on all premises which could ensure portability. The NCEUS proposals were accepted and implemented piecemeal and fragmentedly and did not factor in portability. Unique and portable ID cards have been introduced for organised sector social security schemes (UAN for the EPFO) recipients. However, the matter relating to the issue of a unique ID number for unorganised sector workers did not make much progress.²³ There is scope for the NCEUS scheme on portability for unorganised workers to be carried further for implementation.

3. JUDICIAL PRONOUNCEMENTS ON REGISTRATION OF UNORGANISED WORKERS.

Courts have been taking notice of the slow progress of registration of unorganised workers/migrant workers from time under different legislations making observations and passing orders to the central and state governments to speed up the process of registration.

In one such recent order, it has been stated by the Hon'ble Supreme Court, ".....that while disposing of Suo Motu Writ Petition (Civil) No. 6 of 2020 – In Re: Problems and Miseries of Migrant Labourers,²⁴ this Court issued the following directions: -

"(i) It is directed that the Central Government to develop the Portal in consultation with National Informatics Centre (NIC) for registration of the unorganized labourers/migrant workers. We also impress upon and direct that the Central Government, as well as the respective States and the Union Territories to complete the process of Portal for registration under National Data Base for Unorganised Workers (NDUW Project) as well as implement the same, which by all means may commence not later than 31.07.2021. We also impress upon and direct that the process of registration of the unorganized labourers/migrant workers is completed at the earliest, but not later than 31.12.2021. All the concerned States/Union Territories and the Licence Holders/Contractors and others to cooperate with the Central Government to complete the process of registration of migrant workers and unorganized labourers so that the benefits of the

²³ Partha Pratim Mitra, *Unorganised Workers In India: The COVID-19 Crisis Has Highlighted Their Utter Neglect*, South Asia Monitor (04/04/2020) available at <https://www.southasiamonitor.org/spotlight/unorganised-workers-india-covid-19-crisis-has-highlighted-their-utter-neglect> last seen on 16/10/2022

²⁴ Miscellaneous Application No. 94 Of 2022 In Suo Motu Writ Petition (Civil) No. 6 Of 2020

welfare schemes declared by the Central Government/State Governments/Union Territories be available to migrant workers and unorganized labourers for whose benefits the welfare schemes are declared. Pursuant to our earlier orders, an affidavit has been filed on behalf of Union of India dated 18.07.2022, affirmed by the Deputy Director General in the Ministry of Labour and Employment, Government of India. Various steps taken by the Union of India have been stated in the affidavit. It is stated in the affidavit/compliance report that in compliance with the directions issued by this Court, the Ministry of Labour and Employment has developed a “National Database of Unorganised Workers (NDUW) portal” and “eShram portal” for registration of unorganised workers including migrant workers spread over 400 occupations such as Building and other Construction workers, Agricultural workers, Self-Employed workers, Asha workers, Anganwadi workers, Fisherman, Dairy workers etc. It is stated that vide DO letter dated 13.08.2021 to all the States and Union Territories, the Ministry provided the comprehensive guidelines for mobilisation of the workers through District Level Implementation Committee and State Level Monitoring Committee, registration targets to be achieved by the States by 31.12.2021 along with the one-time financial assistance for setting up of required IT infrastructure, call centres etc. In order to mobilize the unorganised workers for registration on eShram portal, States/UTS have been provided with funds of Rs.19.07 crores and information, education and communication materials.

It is pointed out that the eShram portal formally commenced the registration on 26.08.2021 in all the States/UTs and the same was conveyed to all the States by Ministry's letter dated 31.08.2021. Various further steps have also been taken by the Union of India so that the maximum unorganised workers/migrants are registered with the eShram portal. Ms. Bhati, learned ASG has pointed out the State wise targets and registrations. On going through the state wise targets and registration, it appears that many States have failed to achieve the target. Many of the States have achieved less than fifty per cent target. For example, State of Maharashtra has achieved only 36.97% target, State of Tamil Nadu has achieved 34.84% target, State of Telangana has achieved only 34.90% target, State of Gujarat has achieved 48.40% target, State of Karnataka has achieved 36.19% target. In our earlier directions/orders, we have emphasised the need for registration of the migrants/unorganised workers in different fields and one of the objects is to see that all benevolent

schemes announced by the Union of India and/or the concerned States, the benefits of which should reach to such unorganised workers. We appreciate the work undertaken by the Union of India – Ministry of Labour and Employment. However, as observed hereinabove, still some States such as State of Maharashtra, State of Tamil Nadu, State of Telangana, State of Gujarat and State of Karnataka have to achieve the target. Therefore, we direct those States, who have not been able to achieve the target for registration of the unorganised workers, to do so and cooperate with the Union of India – Ministry of labour and Employment and to ensure to it that those unorganised labourers/ workers in different sectors are registered in the eShram portal. The said exercise shall be completed within a period of six weeks from today. The concerned States /Union Territories are directed to submit the report to the Union of India – Ministry of Labour and Employment on completion of six weeks so that the Union of India – Ministry of Labour and Employment can file a further Status Report on the aforesaid”²⁵

4. A WAY FORWARD –TAKING COGNIZANCE OF THE CODES

Extending the benefit of Payment of Gratuity Act 1972 to workers in Anganwadi Centres who had been denied the benefit of the Act, the Hon’ble Supreme Court, in a recent judgement, stated” The Code of Wages, 2019 is an enactment that received the assent of the President on 8th August 2019. However, only a few provisions have been brought into force. Clause (m) of Section 2 of the Code²⁶, defines establishment, which means ‘any place’ where any industry, trade, business, manufacture, or ‘occupation’ is carried out and it includes Government establishments. A similar definition of establishment under clause 29 of Section 2 of the Code on Social Security, 2020, which received the assent of the President on 28th September 2020.²⁷

The all-inclusive concept of establishment mentioned in the codes could be utilised to extend schemes of social security to the unorganised sector as it mentions the words ‘any place’ or ‘occupation’. The nexus between the employer and the employee

²⁵ Re Problems And Miseries Of Migrant labourers... v. Union Of India & Ors. (Judgment delivered on ... on 29 June, 2021)in Miscellaneous Application NO. 94 OF 2022 in SUO MOTU WRIT PETITION (CIVIL) NO.6 OF 2020, and Writ Petition (C) No.916 of 2020 available at <https://indiankanoon.org/doc/139315795/> last seen on 14/10/2022 also see Bruhad v. State SPECIAL CIVIL APPLICATION No. 14565 of 2008, order of Supreme Court dated 4-7-2011 available at <https://indiankanoon.org/doc/908825> last seem 14/10/2022

²⁶ S. 2 (m), Code on Social Security, 2020.

²⁷ Ibid. S. 2(29).

as a primary criterion to grant social security benefits need not always be established in determining the eligibility of the worker in the informal sector to receive benefits of social security schemes. Instead, the criterion for receiving benefits should be (i) the registration of the individual in the unorganised workers portal (E-shram portal) or under any registration system of the state governments for unorganised workers (ii) the occupation of the individual and (iii) the place of occupation so as to bring it within the ambit of the all-inclusive definition of establishment as defined in codes.

5. FINANCIAL MODELS ON SOCIAL SECURITY FOR THE UNORGANISED SECTOR- SUGGESTION FOR STREET VENDORS

Street vendors in India are roughly estimated to be about four crores.²⁸ The policy²⁹ notes that the need for social security is high for the informal sector. Social security and usually covers medical care, sickness, maternity benefits, employment injury, inability and survivors' benefits, old age pension etc. The social security laws granting these provisions are applicable only to workers in the formal sector.

These schemes are financed partly through workers' contributions and through contributions from their employers. If these schemes are applicable to street vendors, they would be run entirely through their own contributions as they are self-employed. It has been suggested that Welfare boards could be created for street vendors on the lines of those existing for construction workers or *beedi* workers. Vendors could deposit their contributions in banks. At the end of the month, the bank will transfer the amount to the welfare board. State Welfare Boards for building and construction workers collect the employers' contribution through a cess. The cess collection has ensured that the employers' contribution is collected regularly. A similar scheme could be framed for street vendors. The wholesale markets where street vendors buy their goods can be asked to contribute a part of their sale revenue as a cess for the vendors' welfare board.³⁰

Another option is that the Street Vendors' unions should be assisted by NGOs or other agencies to promote Self-Help Groups and networking and federating them to emerge as a financial institution, which will look into extending credit and also

²⁸ Shree D N, *Evicted, Neglected, Omitted: The Story Of Street Vendors*, Deccan Herald (27/07/2022) available at <https://www.deccanherald.com/specials/insight/evicted-neglected-omitted-the-story-of-street-vendors-1129409.html> 17-10-2022

²⁹ *National Policy For Urban Street Vendors Ministry of Urban Employment & Poverty Alleviation*, Ministry of Urban Employment and Poverty Alleviation, Government of India 13, available at https://prsinia.org/files/bills_acts/bills_parliament/2005/bill82_2006123082_National_Policy_for_Urban_Street_Vendors.pdf last seen on 16/10/2022

³⁰ Bhowmik, Sharit, *Social Security For Street Vendors*, India Seminar, available at https://www.indiaseminar.com/2006/568/568_sharit_k_bhowmik.html last seen on 18/10/2022

delivering other products such as insurance, old age pension etc. The products under the social security programme could *inter alia* also cover the following: - insurance for health facilities; - maternity benefits - old age pension - child care facilities.³¹

6. CONCLUSION

There are three major issues concerning the universalisation of social security in India. The first concerns the registration of beneficiaries of the unorganised sector. The second concerns the institutional framework, which revolves around whether a single institution for all unorganised beneficiaries or a sectoral approach to the pattern of welfare boards needs to be followed to run social security schemes, and the third issue concerns the mode of financing the social security schemes. There is a well-considered view that if the Provident Fund (EPFO) and Employees' State Insurance (ESIC) benefits are extended to the unorganised sector, all the major pillars of social security of the ILO could be extended to that sector. Many observers agree that the way forward to universal social protection requires a combination of contributory and non-contributory (tax-financed) social protection mechanisms. All these critical issues would need resolution before a clear path towards universalisation of social security is established. The path necessarily will have to be created by the policies and programmes of the central and state governments. The approach of the courts has been to facilitate and extend the benefits of social security wherever such benefits have been extended within the ambit of the statutes and the constitutional framework within which the statutes are legislated.

³¹ Robert Anto, *Gig Economy: Prospects & Challenges under Social Security Code*, 4(3) International Journal of Law Management & Humanities 3683, 3871, (2021) available at <https://www.ijlmh.com/wp-content/uploads/Gig-Economy-Prospects-Challenges-under-Social-Security-Code.pdf>, last seen on 14/10/2022

MAPPING THE SOCIAL SECURITY STANDARDS- THE ILO CONVENTION NO. 102 VIS-À-VIS THE CODE ON SOCIAL SECURITY, 2020

Dr. Anuja. S*

Abstract

Risks and contingencies are the certainties in human life, in general to the community at large and to the workforce in particular. The crucial livelihood options engaged in by the working force always brings with itself the associated need-based approach of Right to Social Security. The economic and social impact and implications of social security systems is far reaching, leading to progressive realisation of National development through social justice. Minimisation of economic inequities and inclusive policies in social security protection, activates the Welfare State accountability and is reflective of the progress towards realisation of Right to human dignity. The Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Decent Work Agenda sets the international standard anvil, at which the national development is tracked. The paper juxtaposes the Indian legislative landscape on social security as reflected in the Code on Social Security, 2020, with the Convention No.102, highlighting the differences and the inequities with a way forward calling for the dire action in tune with the international framework.

Keywords: ILO Convention, Social Security Code, Labour law, Workmen, Employee Compensation

1. SETTING THE TONE

The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.

President Franklin Roosevelt (Second Inaugural Address, January 20, 1937)

International law has had a splendid outlook on right to social security. Declaration of Philadelphia of 1944 reflects upon the idea of Labour is not a commodity

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to be exploited and takes cognisance of the fact that social security measures by providing a basic income to all ought to be extended to all in need of such protection and comprehensive medical care¹. The right to social security as a human right gets explicitly reflected through the international human rights instruments i.e., the Universal Declaration of Human Rights, 1948² and the International Covenant on Economic Social and Cultural Rights³ that had based its foundation on guarantee of life with dignity remains as the solid edifice upon which the legal frameworks across the world has been built up. The International Convention on the Elimination of All Forms of Racial Discrimination⁴ focusing on the egalitarian concept of augmentation of development, the Convention on the Elimination of All Forms of Discrimination against Women⁵ focussing on the gender perspectives reflected via gender lens of the issue, the UN Convention on the Rights of the Child, 1989⁶ focusing on right of the child to benefit from social security arrangements, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990)⁷ focusing on appropriate and effective modalities of social security arrangements, and the Convention on the Rights of Persons with Disabilities (2006)⁸ focusing on non-discrimination provisions emanating from the medical model of the issue sets in motion the need for social inclusiveness vis-à-vis rights articulation. The rights articulation in the field of social security enabled the citizens to become the right bearers and the need-based approach to the right based approach created a paradigm sea change transformation on the duty bearers worldwide. It is this overarching intersectional framework that is often put forward as a convincing argument to promote universal social protection catering to nine contingencies in life as identified by ILO.⁹

2. SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (NO. 102) – THE KEY TAKEAWAYS

The Convention No.102, a decisive step in the field addresses upon the nine contingencies in life i.e., medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit;

¹ Declaration concerning the aims and purposes of the International Labour Organization (ILO), Annex To The Constitution Of The ILO, section III (f) –Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement> last seen on 07/04/2022.

² Article 22, UDHR 1948.

³ Ibid, Article 9.

⁴ Ibid, Article 5 (e).

⁵ Ibid, Articles 11, para. 1 (e) and 14, para. 2 (c).

⁶ Ibid, Article 26.

⁷ Ibid, Articles 27 and 54.

⁸ Ibid, Article 28.

⁹ International Labour Standards On Social Security, International Labour Organisation, Available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>, last seen on 07/04/2022.

and survivors' benefit.¹⁰ The strategies to adopt the social security networks is left to the choice of the member states as ranging from universal schemes or social insurance schemes with earnings related or flat rate components or both or adoption of social assistance schemes.

The applicability of the Convention is maintained as flexible keeping in view the status of underdeveloped countries regarding the coverage requirements enabling them to cover only certain groups of employees in moderate sized and large work establishments. Member states are offered with the choice to implement a minimum three out of the nine branches of social security, with at least one of those three branches covering a long-term contingency or unemployment and with a view to extending coverage to other contingencies at a further stage in a phased manner.¹¹ Those member states whose economy and medical facilities are inadequately equipped or are insufficiently developed can opt for temporary exceptions i.e. in relation to the proportion of people covered under the social protection networks¹². For example, in the case of medical care schemes coverage should be either 50% of all employees in paid employment and their spouses and children or economically active population, which means employees, self-employed workers, farmers, and more, which represent 20% of all residents and their spouses and children or 50% of all residents.

The modalities of each and every benefit is outlined in an overarching framework of sustainability and adaptability perspectives.

1. Definition of each contingency envisaged i.e., the risk or life circumstance that must be covered.
 - For example, in a medical care scheme it could be any ill health condition, pregnancy, childbirth and their consequences¹³; Preventive and Curative. The Employees State Insurance Act 1948, the medical benefit in the national context adheres to this proto type.
 - The contingency envisaged under the unemployment benefit could be the suspension of earnings, as defined by national laws or regulations, due to the inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work¹⁴.
2. Persons protected i.e.; the beneficiary intended under the schemes.

¹⁰ Ibid.

¹¹ Article 2, Social Security (Minimum Standards) Convention, 1952 (No. 102).

¹² Ibid, Article 3.

¹³ Ibid, Article 8.

¹⁴ Ibid, Article 20.

- Dependents of a protected economically active person is as well included under the umbrella. In cases of Employment Injury benefits, protection of employees in dependent employment relationships with an employer and at least 50% of all employees, including their dependent spouse and children, should be covered in case they are victim of an employment injury¹⁵. Flexibility is accorded to national framework to protect self-employed persons against employment injuries
 - Under the Maternity benefits, the Convention exhorts the coverage of all women in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees or all women in prescribed classes of the economically active population, which classes constitute not less than 20 per cent of all residents¹⁶.
 - Survivor's benefit is kept conditional in case the widow being presumed incapable of self-support¹⁷.
3. Type and level of benefits i.e., the nature and quantum of benefits that accrues to the beneficiary.
- For e.g.: the types of curative care envisaged under Employment Injury benefit will accommodate general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting; dental care; nursing care at home, in hospital or other medical institutions; maintenance in hospitals, convalescent homes, sanatoria or other medical institutions; dental, pharmaceutical and other medical or surgical supplies; prosthetic appliances, kept in repair; eyeglasses; the care furnished by members of such other professions as may at any time be recognized as allied to the medical profession, under the supervision of a medical or dental practitioner¹⁸. These types of care services commensurate with the benefits envisaged under the ESIAct,1948
4. Entitlement conditions, including qualifying period i.e., eligibility qualifications for precise social protection programmes prescribed including the necessary period of contribution, if any prescribed. Generally, qualifying period is kept as a period that should not be longer than what is considered necessary by the authorities to preclude abuse. In comparative practice, a qualifying period of 6 months could be generally fixed.

¹⁵ Ibid, Article 33.

¹⁶ Ibid, Article 48.

¹⁷ Ibid, Article 60(1).

¹⁸ Ibid, Article 34(2).

- For example, Employment injury benefits ought to be awarded even if the accident or disease occurs the first day of employment.
 - Under the Invalidity benefits, a qualifying period of five years of contribution or employment is set under the Convention¹⁹.
5. Duration of benefit and waiting period i.e., the time duration wherein the benefit will accrue and the modalities of receiving the same.
- Duration modalities of medical care is envisaged as provided until recovery. There is a limit in duration to 26 weeks in each case of sickness which could be extended beyond 26 weeks in cases of diseases requiring prolonged care²⁰. No such limit is set for medical or maternity care. In the case of Unemployment Benefit, qualifying period as prescribed by national legislations or schemes could range from 6 to 12 months.
 - The Old age benefit (Pension benefits) could run until the death of the beneficiary (Recipient). Old age pension is conditional upon a minimum period of contribution or employment. The protected persons who have contributed or been employed for at least 15 years should be entitled to a reduced benefit. Old age benefit is susceptible to substantial changes in the general level of earnings and substantial changes in the cost of living. The benefit accrued is liable to be suspended in case, if the protected person is engaged in any gainful activity or, alternatively, the benefit will be reduced. Invalidity benefit also works in the similar manner susceptible to periodical payments.

Another important benchmark of the Convention No.102 is the Sustainable governance principles which inspires the mandates prescribed for the member states. The general responsibility of the State for catering to the due provision of guaranteed benefits coupled with the obligation of the proper administration of the institutions and services concerned goes hand in hand with the accountability enshrined under the Welfare State policy in the national context²¹. Financial deficits that may occur in relation to social security ought to be addressed in a long-term manner by envisaging a funding plan as appropriate to the respective member states²². A cautious sustainable

¹⁹ Ibid, Article 57(2).

²⁰ Ibid, Article 12.

²¹ Report of the Committee of Experts on the Application of Conventions and Recommendations,, 100th International Labour Conference, Switzerland, 2011, ILC.102/III(1A), 180, Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf, last seen on 07/04/2022.

²² Ibid.

financing mandate is prescribed to the member states to adhere to protect social security funds possible against mismanagement, cyclical fluctuations and market failures. Member states need to chart down the definition of the various roles and responsibilities of duty bearers in implementing the programmes at different levels of government

A participatory/representational model is envisaged involving the stakeholders and beneficiaries in the management of social security schemes which takes into account the workers need based approach to social protection. Social Protection Floors Recommendation, 2012 (No. 202)²³ prescribes a national framework to go about in the lines of the Convention and it takes its position in the three concepts of Poverty, vulnerability and social exclusion. Accordingly, national social security strategies are mandated to be formulated and implemented based on national consultations through effective social dialogue and participation²⁴ and for that participation of social partners and other stakeholders in the administration of social protection systems, especially where this is not entrusted to a public authority.²⁵

The qualitative and quantitative benefits to be ensured is yet another laudable feature of the Convention. Adequacy of benefits conferred through schemes by the member states is in tune with the standards of the 3A's i.e., the Accessibility, Acceptability and Adaptability as mandated by the General Comment No. 19 of the Committee on Economic Social and Cultural Rights.²⁶

Accessibility refers to the aspects of Coverage, Eligibility conditions, Affordability i.e., whether the eligibility conditions commensurate with the affordability of the beneficiaries, Participation and information and Physical access in the nuances of proceduralities. The benchmark of Equality and nondiscrimination as foundational and guiding principles in the Convention takes into account the lived experiences of the past discrimination, social norms and power dynamics.

Acceptability addresses the concept of lived experiences of inter-sectionality of discriminations i.e., irrespective of the prohibited markers of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Recommendation No.202 highlights the need to

²³ *The ILO Social Protection Floors Recommendation, 2012 (No. 202)*, International Labour Organisation, Available at https://www.ilo.org/seccsoc/areas-of-work/legal-advice/WCMS_205341/lang--en/index.htm#:~:text=Tools,-This%20content%20is&text=The%20Social%20Protection%20Floors%20Recommendation,accessible%20to%20all%20in%20need., last seen on 08/04/2022.

²⁴ *Ibid.*

²⁵ Article 72, Convention No.102 and Article 29, Convention No. 168.

²⁶ *General Comment No. 19 The Right To Social Security (Art. 9)* 2007– 39th session of the Committee On Economic, Social And Cultural Rights, Geneva, 5-23 November 2007, UN Document E/C.12/GC/19, (February 2008), Available at <https://www.refworld.org/docid/47b17b5b39c.html> Last seen on 29/04/2022.

streamline the principle of non-discrimination throughout the life cycle, taking account while being responsive to special needs who may experience structural discrimination, when implementing comprehensive social protection systems. It goes without saying that historically, non-discrimination ideology and schemes addressed the migrant workforce alone and this paradigm shift brings in the idea of assimilating and acknowledging the existence of the other diversified vulnerabilities and various other marginalized groups²⁷. A similar agenda gets reflected during the process of selection of the beneficiaries to the delivery system chosen i.e., giving priority to disadvantaged sector. This concept literally goes back to the idea of the differentiating between substantive and formal equality which justifies the strategy that different' treatment may be required to achieve equality in practice.

Adaptability to the socio-cultural background plays an immense role while assessing the effectiveness of the social security networks. Adaptability is a conducive environment that recognizes and accommodates the need based local context. The scheme or benefits should not thrive on the lived vulnerability of the beneficiaries. In the case of Unemployment Benefit, the offered jobs should be suitable and not disconnected from a person's professional experience, qualifications and personal or family circumstances.

A flexible strategy for financing in a collective mode is envisaged wherein the member states can come up with schemes involving contributions, or taxation or combination of both strategies as well. The right of appeal in case of refusal of the benefit or complaint as to the quality or quantity involved in the social security schemes is addressed as well from a grievance redressal perspective.

3. THE CODE ON SOCIAL SECURITY, 2020-THE INDIAN EXPERIENCES JUXTAPOSED

The most needed sea change transformation is about to happen with the notification of the Code on Social Security that subsumes and consolidates the most predominant nine legislations dealing with Social security under one umbrella as inspired from the loud and clear suggestions made across the Second National Commission on Labour Report 2002. The Code reflects a well- rounded approach taking into consideration the tripartite perspectives²⁸ i.e., Firstly, the Employers longstanding demand for the need for flexibility in labour regulations, the

²⁷ Inclusion and participation of women, persons with disabilities, indigenous peoples, ethnic minorities, older persons and other groups that experience structural discrimination

²⁸ *The Code on Social Security, 2020*, PRS Legislative Research, Available at <https://prsindia.org/billtrack/the-code-on-social-security-2020>, last seen on 09/4/2022.

standardization and rationalization of definitions and easy hire and exit procedures for the employees; secondly, the Workers demands towards the need based and the rights based approaches and thirdly the Government, the counterpart, oriented towards the Ease of doing business model with the noble ideal of higher employment rates and development of the economy.

The Code²⁹ is voluminous consisting of ninety-one definitions, one sixty-four sections, fourteen chapters and seven schedules and amalgamates nine legislations i.e. The Employees' Compensation Act, 1923 The Employees' State Insurance Act, 1948, The Employees Provident Fund and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972(the five prominent social security legislations relating to the organised sector), The Cine Workers Welfare Fund Act, 1981,The Building and Other Construction Workers Welfare Cess Act, 1996,The Unorganised Workers' Social Security Act, 2008 and The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

The applicability of the extant regime, labour legislations that dealt with social security were limited to the organised workforce alone. The Employees' State Insurance Act, 1948 (ESI Act) based on a contributory model 0.75% wages (employee share) coupled with 3.25% (employer share) covered factories and establishments with 10 or more employees.³⁰ It provided medical care to employees and their families, cash benefits during sickness and maternity and monthly pension after death or permanent disability. The Employees' Provident Funds Act, 1952 based on a contributory model (subject to a wage ceiling limit of-Rs.15,000/- and Matched deposits of 12/10% from both the employer and employee) applied to the specific scheduled factories and establishments employing 20 or more employees and ensured terminal benefits to provident fund, superannuation pension, and family pension in case of death during service. The Workmen Compensation Act, 1923 mandated payment of compensation by the employer to the workman or his family in cases of employment related injuries resulting in death or disability.³¹ The Maternity Benefit Act, 1961 mandated employer's liability to provide for 26 weeks wages during maternity situation as well as paid leave in certain other related contingencies like sickness arising out of pregnancy, illness, miscarriage etc.³² The Payment of Gratuity Act, 1972 made it the statutory liability of the employer to pay 15 days wages for each year of service to employees who have

²⁹ The Code on Social Security, 2020.

³⁰ Kanika Rao, *EPF and ESI*, Tax Guru, (26/03/2022) Available at <https://taxguru.in/corporate-law/epf-esi.html>, last seen on 07/04/2022.

³¹ S. 4, The Workmen Compensation Act, 1923.

³² S. 12, The Maternity Benefit Act, 1961.

worked for five years or more in establishments having a minimum of 10 workers.³³ The Building and other Construction Workers Act, 1996 associated with the Cess Act mandated pooling of resources from the builders amounting to not less than 2% of the total building cost out of which law extended social protection measures to the registered building and other construction workers in the form of pension, educational assistance, medical treatment etc.,³⁴ The whole processes were channelized through the State Welfare Boards constituted for the purpose. The Unorganised Workers Social Security Act, 2008 was the only centrally sponsored social security legislation dealing with the unorganized workers specifically and the same had extended the eleven existing standalone Government sponsored social protection schemes like Rashtriya Swasthya Bhima Yojana, Janani Suraksha Yojana etc., that were applicable to the Below Poverty Level population to the unorganized workers as well.

With the advent of the new Code that consolidates all these above extant regime, the concept of social security gets defined for the first time through this legislation to mean the measures of protection afforded to employees, Unorganised workers, Gig workers and Platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under the Code.³⁵ These contingencies covered under the Code reflects the essence of nine contingencies addressed under the Convention No.102.

The chapter three on EPF, and chapter four on ESI draws its moorings from a contributory model of Social Security which prescribes a wage ceiling limit regarding eligibility conditions. The employee definition may vary for different chapters under the Code based on the quantum of wages that an employee earns. Multiple thresholds for eligibility are prescribed in different schemes as structured under different chapters of the Code, depending on the number of workers employed in the establishment and the income being drawn. Employee is defined under the Code as any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied³⁶. The First schedule underscores the idea of applicability of the benefits based on each chapter to the corresponding beneficiaries, the employees who fit into the number clauses prescribed. The second schedule exclusively discusses on the details of

³³ S.4, The Payment of Gratuity Act, 1972.

³⁴ S.11, The Building and other Construction Workers Act, 1996.

³⁵ Section 2(78), Code on Social Security,2020.

³⁶ Ibid, S. 2(26).

employees covered under the chapter related to the Employees Compensation. Separate chapter is provided for the different social security institutions envisaged under the Code. Central Government is empowered to amend the First Schedule, by way of addition or deletion³⁷ and the appropriate Government can amend the Second Schedule list of listed employees potentially entitled to be beneficiaries under the Employees Compensation chapter.

Inclusion of new age employment sector and its employees hitherto remaining invisible in the existing labour laws of the country is a novel feature of the Code. The Code brings within its ambit the Gig workers³⁸ who falls outside the traditional employer employee relationship like the freelancers, consultants etc. The seventh schedule of the Code is a new introduction that lists out the Aggregators which represents the digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider³⁹. This brings in the Platform workers⁴⁰ under the ambit of the Code making them beneficiaries of the schemes formulated for them under the Code. This includes a bulk population of employees under the Aggregators who thrive on E-commerce transactions who are popularly known as Ola, Uber, Swiggy, Zomato, Flipkart, Amazon etc., These employees had remained highly invisible under the existing labour laws in India, adding on to more of informalisation of the workforce.

The Code stipulates that the Central Government is empowered to frame schemes on matters relating to a) life and disability cover; (b) accident insurance; (c) health and maternity benefits; (d) old age protection; (e) crèche; and (f) any other benefit⁴¹. The Aggregators are held accountable as per the Code to contribute around one to two percent, not exceeding five percent of their annual turnover for social security fund which caters to the social security schemes of platform workers and gig workers.⁴² This is a laudable legislative provision obligating the Aggregators to provide for the welfare of its employees. Aggregators are under the obligation to link their database with the unique registration number issued to facilitate registration of their gig and platform workers on the portal specified by the Central Government. Updating the details like, current address, current occupation, period of engagement with the concerned platform or aggregators', mobile number, is automatically ordained by the Code. In the absence of such updation, a Gig worker and Platform worker, may remain ineligible to avail benefit of the social security schemes notified under the Code.

³⁷Ibid, S. 152(1).

³⁸Ibid. S..2 (35).

³⁹Ibid, S. 2(2).

⁴⁰Ibid, S. 2(60).

⁴¹Ibid, S. 114.

⁴²Ibid, S. 114(4) read with Rule 51(3).

Unorganised Workers Social Security Act 2008, the extant regime in the field, had defined the concept of Unorganised sector and worker. The same definitions are carried forward here in the Code. The Code defines Unorganised sector⁴³ as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten. Unorganised worker definition⁴⁴ encapsulates the workforce consisting of home-based worker, self-employed worker and a wage worker employed in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III (EPF benefits) to VII (Employees Compensation benefits) of the Code. The Code, much like the extant regime, stipulates the formation of national and state-level Social Security Boards as Advisory Bodies comprising of various stakeholder representatives to recommend schemes for unorganised workers⁴⁵. Framing of suitable schemes and monitoring the same falls under its domain. Central Government is empowered to frame schemes on matters relating to life and disability cover, health and maternity benefits, old age protection, education and any other benefits from time to time⁴⁶. State Government is empowered under the Code to frame schemes on matters relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes.

Self-employed workers⁴⁷ are brought within the ambit of unorganized workers and defined as any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government, as the case may be, from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government. The Code envisages a system different from its extant legal regime, by empowering the Central Government to frame any other scheme other than Provident Fund, Pension Scheme and Employees Deposit Linked Insurance schemes for the purposes of providing social security benefits to self-employed workers or any other class of persons which automatically brings in unorganized workers within its ambit as beneficiaries⁴⁸. This extension of benefits catering to the self-employed group is a novel feature of the Code.

⁴³ Section. 2(85) of the Code.

⁴⁴ Ibid., Section.2(86).

⁴⁵ Section.6 read with Rule 9(2) of the Code

⁴⁶ Ibid., Section.109 of the Code.

⁴⁷ Ibid, Section 2(75).

⁴⁸Ibid, Section.15.

The Code reflects a rejuvenated definition for migrant workers by including those migrant workers who have been recruited through the contractors based on a work agreement coming from home state to the host state and those as well who have come on their own to the host state and obtained employment in an establishment of host State or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and drawing wages not exceeding eighteen thousand rupees per month or such higher amount as may be notified by the Central Government from time to time⁴⁹. The existing legislation related to Migrant workers in India⁵⁰ included only those migrant workers recruited from their home state through the contractors (intermediaries) and then ending up doing some employment at the host state. Moreover, the extant regime never offered the benefits of social security specifically to the migrant workers. The Code on Social Security tries to bridge the gaps through envisioning inclusivity of migrant workers into the social security networks.

Registration of beneficiaries and the strategically adaptable procedures to be adopted for full filling the goal of catering to informal sector comes up as welcome legislative provisions in the Code. The Code enables setting up of helpline and facilitation centres for the purpose of Registration of unorganised workers, gig workers and platform workers making them entitled to get benefits under the schemes⁵¹. The appropriate Government is empowered to set up a toll free call centre or helpline or such facilitation centres for purposes like to disseminate information on available social security schemes for the unorganised workers, gig workers and platform workers, to facilitate filing, processing and forwarding of application forms for registration of unorganised workers, gig workers and platform workers; to assist unorganised workers, gig workers and platform workers to obtain registration; and to facilitate the enrolment of the registered unorganised workers, gig workers and platform workers in the social security schemes.⁵²

Procedures applicable for registration of unorganized workers is the same that is being envisaged for the gig and platform workers as well.⁵³ Every unorganised worker, gig worker or platform worker are required to be satisfying two conditions i.e., (a) he has completed sixteen years of age or such age as may be prescribed by the Central Government; and (b) he has submitted a self-declaration electronically or in such

⁴⁹ Ibid, S. 41.

⁵⁰ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

⁵¹ S. 112, Code on Social Security.

⁵² Ibid.

⁵³ Ibid, Rule 50(1) and (2).

manner prescribed by the Central Government.⁵⁴ Specific application for registration purpose accompanied with documents self-registration by any such worker, including Aadhaar number is a must and after registration the eligible worker gets assigned with a distinguishable number to the application filed. Registration remains as a prerequisite to availing the benefits from the schemes envisaged. The schemes formulated may prescribe regarding the nature and extent of contributory model followed i.e., whether by Central Government alone or the state Government alone or both is envisaged.

The Code on Social Security is indeed a bold legislative framework, envisaged to bring in the ideas of inclusivity of the existing scattered work force under a single umbrella, bringing in discipline to the workspaces, ironing out creases within procedural compliances, creating employer accountability, envisioning a conducive environment with social security networks coupled with enhanced participatory role of workers from a developmental perspective.

4. REFLECTIONS AND SUGGESTIONS

The way towards implementation/realisation is a long drawn one inclusive of different modalities and strategies. The rights-based approach includes within its ambit the ideas of comprehensiveness of the coverage aspect of the disadvantaged groups of population coupled with well organised and systematic qualifying contribution periods and benefit periods major exigencies in life that has the potential of affecting negatively the income earning capacity of the beneficiaries involved. Indian labour force had strongly been tied to the stark inequity of 93% of unorganised workforce and a meagre population of 7% falling within the ambit of organised sector, which presents a distorted picture. Accessibility of social protection networks to the unorganised workforce who had remained underrepresented, the participatory approach involving the beneficiaries⁵⁵, affordability of schemes envisaged and its proportionate qualifying parameters consistently to meet its objectives assumes pertinence in the context of the Code. Extension of social security protection networks to larger number of workforces in India, creation of social security schemes for the unorganised, Gig and the Platform workers suited to their needs as an extension of the existing model of working under the ESI and EPF legislative mandates and the tripartite dialogue and participation in planning schemes that are envisaged can go a long way ahead in the realisation of the Decent Work Agenda.

A law is good as long as its implementation is effective. The Code on Social Security, 2020 if effectively implemented, has the transformative potential to include a larger chunk of the unorganised workforce within its ambit that had remained invisible

⁵⁴ Ibid, S. 113(1)(a).

⁵⁵ Supra 28.

till now. It could serve as a positive indicator for the Indian Republic to ratify the Convention No.102, with all its ambitious goals. Reflection of Social security as a human right under the UDHR calls for a concerted action from the three limbs of the Government addressing the social insurance and social assistance framework that assumes significance as a value-added investment to the workforce augmenting the ideals of sustainability coupled with consistently improved productivity and employability of workforce at large. Availability of benefits to cover necessary relevant risks in life that coincides with the nine core areas identified by ILO and Adequacy of the benefits conferred in terms of amount or duration / span of the benefit taking into account the rainy days concept, adds on to the value of the theme of SDG 2030 i.e., No one shall be left behind.

If a free society cannot help the many who are poor, it cannot save the few who are rich.

John. F. Kennedy [Inaugural Address, January 20 1961

ENHANCING EFFECTIVENESS OF SAFETY TRAINING AND EDUCATION THROUGH EXPERIENTIAL LEARNING

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Abstract

Practical learning process is as important as theoretical learning. Equipping oneself with soft gives one an upper hand over mere academic qualification. Training needs to be given effectively at for experimental learning. Experimental training modules are inevitable criterion at any workplace. Practical hands-on training in safety and innovation in technology is seen as an must have factor in all industries which enables the participants give an understanding about the risks associated in their line of work. In this paper the necessity of experimental training in safety and the initiatives by certain companies in latest innovations in safety and experimental training is analysed.

1. INTRODUCTION

Surveys conducted by several industrial bodies depicts that large population of graduates from various educational institutes in India are not unemployable, but they just aren't industry ready.¹ Several organizations, leading industrialists, and apex body for IT BPM industry NASCOM state that only 15% to 25% of technical graduates are employable.² This is a serious concern which require more focus than any other field. Recently the Infosys founder NR Narayana Murthy also raised his concern towards this, he said that “A reorientation of the Indian education system is needed which is more directed towards Socratic questioning other than just rote learning”. This involves

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¹ Divya Nair, *Why 80% Indian Engineers Are Unemployable?*, Rediff, (06/05/2019), Available at <https://www.rediff.com/getahead/report/why-80-indian-engineers-are-unemployable/20190506.htm>, last seen on 19/10/2022.

² P. R. Nair, *Increasing Employability Of Indian Engineering Graduates Through Experiential Learning Programs And Competitive Programming: Case Study*, 172, Procedia Computer Science, 831, 833, (2020), Available at <https://www.sciencedirect.com/science/article/pii/S1877050920314484#:~:text=There%20is%20an%20urgent%20need,university%20as%20a%20case%20study>, last seen on 20/10/2022.

solving real world problems around them in the classroom rather than passing the examinations by rote learning.³

On the contrary to the earlier recruitment approaches, industries are currently focusing on practical and soft skills, not just on academic qualification of fresh graduate engineers.⁴ This is due to the rapid growth in technology, dynamic world economy, increased influence of information technology, the ever-rising competition and globalization. This widening gap between industry standards and deficiency in skills of student's created huge turbulence in employment and retainability.

Owing to the gap between theory and practical knowledge, the graduates joining the industry require up to about two years gestation period for them to show their input in the company, in many situations they end up leaving the company without giving any input to organization or company.⁵ So, it's neither benefiting the organization nor to the newly graduated employees. Hence students need an opportunity to demonstrate their skills and impress their prospective employers to gain future full-time employment. Their chances of success will be enhanced by them by getting involved in activities that blend theoretical knowledge with real-life practical experiences.

2. EXPERIENTIAL LEARNING

Experiential learning is the process of knowledge generation from direct experience. Knowingly or unknowingly we all are doing experiential learning in our life since from our childhood. For example, no one has taught us how to walk or speak initially we learnt by practicing although we had our parents to guide us, but they have not given us any lectures like we usually get in our schools and colleges. In the process of experiential learning, experience is updated and transformed to knowledge.⁶ In essence, it involves developing new skills or knowledge through doing, rather than reading, watching, or listening. It is the most natural and effective way that we learn with much better rates of engagement, long-term retention, and transferability than other methods of learning.

³ Revamp of Indian learning needed, says Narayana Murthy, Economic Times, (15/11/2022), Available at <https://economictimes.indiatimes.com/tech/information-tech/infosys-founder-narayana-murthy-bats-for-revamp-of-indian-education-system/articleshow/95528265.cms>, last seen on 30/11/2022.

⁴ Malar Hirudayaraj, Rose Baker, Francie Baker & Mike Eastman, *Soft Skills for Entry-Level Engineers: What Employers Want*, 11(10) Education Sciences, 641, 644, (2021), Available at <https://www.mdpi.com/2227-7102/11/10/641>, last seen on 24/09/2022.

⁵ Supra 1.

⁶ Hannah Stuart, *Why Is Experiential Learning Important?*, Educating Adventures, Available at <https://www.easchooltours.com/blog/experiential-learning-learn-through-experience#:~:text=Kolb%20defined%20experiential%20learning%20as,grasping%20and%20transforming%20the%20experience.%22>, last seen on 14/10/2022.

2.1 Benefits of Experiential Learning:

- Facilitates immediate applying of knowledge.
- Increases effectiveness of learning & Participant engagement
- Encourages collaboration and exchange of ideas and perspectives.
- Can be course focused or in-class, community focused, or work focused
- Combines direct experience with focused reflection
- Increases critical thinking abilities
- Increases memory retention

2.2 Examples of Experiential Learning leading to transformation in safety culture.

Training and learning are crucial parts for implementing safety and to promote safety culture at any workplace. But to promote safety culture not only training matters but the quality of training also matters a lot. In general, practical demonstration is much more important than theory notes to develop cognitive skills to improve safety [4].⁷

Facilitating learning on Safety and Health through experiential learning methods is expected to be of immense help in creating long lasting and forceful impact in the mind of the participants. Keeping the concept of experiential learning in mind various institutions came up with ideas for developing facilities to provide practical exposure not just only the theoretical knowledge, so that participants learn things by doing. Some of such facilities are Traffic training parks in India,⁸ Safety Innovation School of GS E&C Korea, and L&T etc.⁹

Given the importance of road safety awareness and knowledge of traffic rules; Traffic Training Parks were adopted and renovated in several cities of India by Honda Motorcycle & Scooter India Pvt. Ltd. (HMSI) in collaboration with local communities such as Municipal Corporations, Traffic Police, Transport Departments etc.¹⁰

⁷ Andrew Stuart, *A Blended Learning Approach To Safety Training: Student Experiences Of Safe Work Practices And Safety Culture*. 62, Safety Science, 409, 411, (2014), Available at <https://www.sciencedirect.com/science/article/abs/pii/S0925753513002300>, last seen 28/11/2022.

⁸ *The Traffic Park*, Bal Bhavan, Available at <https://nationalbalbhavan.nic.in/attractions/traffic-park.html>, last seen on 18/10/2022.

⁹ *Safety Innovation School, L&T*, Indiainfo, Available at <https://www.indiainfo.net/place/safety-innovation-school-lt-6300497>, last seen on 28/10/2022.

¹⁰ *Traffic Training Park*, Honda, Available at <https://urlz.fr/mM9z>, last seen on 30/10/2022.

These traffic training parks are developed in a way to promote and educate participants on road safety in interactive ways, particularly to the children. These parks are equipped with several facilities to

Fig.1



Fig.2



make it possible to explain rules and make understanding process interesting they use techniques like display demonstrations, audio-visual centers, workshops, seminars, exhibitions, interactive road safety games for kids and street plays etc. Some of the parks have electronic consoles and entire set-up of a driving seat of a car along with seat belts to train the maneuver of traffic virtually; These parks are developed on a believe that comprehensive understanding of road safety rules and rationale learning can be improved through experiential learning.

Another example which can possibly be cited is Safety Innovation Schools established by GS E&C company of Korea.¹¹ They developed their first such school in 2006, which was equipped with lecture rooms and experiential learning facilities. In this school, training was given to trainees for better understanding of safety management systems and practice of the same. Safety and health education is provided through induction, competency intensive and specialized courses. There are facilities to provide orientation trainings as well as professional trainings in system safety, accident safety, construction safety, technological safety as well as health and hygiene. After developing this school, the company states that the accident rates were considerably reduced.¹²

In India, L&T has taken up the similar initiative to set up world class “Safety Innovation Schools (SIS)” at L&T Hazira & Kanchipuram with focus on various activities and other aspects that are generally attributed.¹³ Training procedures at Safety Innovation Schools (SIS), have been designed to facilitate experiential learning with the

¹¹ Jung Min Hee, *GS E&C Establishes Safety Innovation School Overseas for First Time in Industry*, Business Korea, (15/12/2016), Available at <http://www.businesskorea.co.kr/news/articleView.html?idxno=16763>, last seen on 30/10/2022.

¹² Ibid.

¹³ Supra 9.

usage of practical simulations in a meaningful manner to create the impact of practical experience and drive for EHS excellence and cultural transformation. This facility caters to a wide spectrum of participants, including Senior Managers, Construction Managers, Engineers, Supervisors as well as Supervisor/Safety marshals of subcontractors. Experiential training module has been designed for 3 days inclusive of theory as well as practical simulations, targeting front-line engineers and supervisors. Duration of such programs are determined on the need of the target participants.

These safety innovation schools, houses several facilities to impart experiential learning focusing various aspects of construction activities. Some of such facilities developed are Working at height, Confined Space, Fire Fighting, First Aid Treatment (CPR) and Virtual Reality Safety Experience to provide the practical and real time experience for the participants to better understand the risks involved, importance of safety systems (Permit to Work) and correct usage of Personal Protective Equipment (PPE).¹⁴

These modules provide a hands-on experience with various aspects of construction works, hazards associated with them and control measures to be taken to prevent accidents. From the feedback received from thousands of participants who were covered in hundreds of sessions, it was justified that these facilities helped them to understand the risk associated with the construction activities in a better manner and the content of the course had created a new outlook in their mind sets on implementation of learning at their respective workplaces with the rejuvenated perspective.

From the above-mentioned examples, it can be said that experiential learning can be of help to improve the learning capabilities and for better understanding of subject knowledge. Similar such efforts can be incorporated into curriculum of Universities/Institutions handling safety courses. This can be facilitated to the students via.,

- Setting up of Incubation Centers
- Industry Institute Partnership
- Project-Based Learning – Model Development or Prototype/Design Building
- Research Based Learning
- Interactive classroom sessions – Mock trials, interviews, drills etc.

3. CONCLUSION

Due to ever evolving technology, the industry's expectation from the students is also changing continuously. So, the conventional method of teaching students theoretically

¹⁴ Ibid.

is not fulfilling the needs of the time. The skills required succeeding in professional career need to be developed by providing the practical exposure. It was observed that hands-on exercises that display physical, measurable representations can form connections between theoretical predictions and the physical world in meaningful ways. Facilities providing experiential learning in safety extend the opportunities for holistic understanding of the work areas and the activities and enable them to opt for safer work practices which in turn resulting in better organizational occupational safety and health performance. Deployment of the concept of experiential learning in education system with focus on hands-on engagements at simulated industrial scenarios can enable them to be more effective and productive at work in shortest possible time.

OBLIGATORY RESPONSIBILITIES TOWARDS ZERO INJURY AND SUSTAINING IT IN THE WORK ENVIRONMENT BY THE RESPECTIVE STAKEHOLDERS CONCERNING THE CEMENT PLANTS OF THE INDIAN SUBCONTINENT.

*V. V. Sasi Kumar**

Abstract

The consumption of Cement plays a pivotal role, in National Infrastructure Building and thereby creates Avenues for the Economic Development of a Nation. The Indian cement industry is the largest Cement-producing country in the World, next only to China. Besides having the Statutory Obligations under the Indian domestic laws and Certain Indian Standards, ISO, ILO, WHO Standards are guiding the gaps of inadequacies, where ever is required to enhance the Factory Safety Performance for achieving the Zero Injury Target. Whenever any Crisis arises, the Indian Hon'ble Supreme Court is directing the industry to comply with Occupational Safety and Health Issues (OSH), by disposing of the PILS. In this chapter, an attempt has been made by analysing the decade Data of the domestic Cement Plants' past Injuries and after conducting exploratory and predictive analytics, certain insights were drawn, determining the areas which are prone to incidents, and the job execution behaviours during which the Incidents are happening, the category workers of the establishment to be underpinned with imparting of training, needed mandatory PPE Usage and for paving the Way for ZERO injury target by the establishments.

Keywords: Cement, Occupational Safety Hazards, Cost Analysis of the Occupational Injuries, Vision Zero Injury, Exploratory Data Injury Analytics, Predictive Injury Analytics etc.

1. INTRODUCTION

Indian Cement Industry is playing a pivotal role in building the National economy, even during the current distress period of the Pandemic. It is creating an opportunity for direct and indirect employment of over one million Jobs. Demand is expected to reach

* Deputy Chief Inspector of Factories, Govt Of Telangana State.

550 to 600 tons per year (MTPA) by 2025.¹ There are about 210 large Cement Plants and 350 mini-Cement Plants are there in the Indian sub-Continent, contributing production capacities of 98% from the Private Sector, and the rest of the Capacities are from the Public Sector Undertakings. Most of these plants are situated in Telangana, Andhra Pradesh, Tamil Nādu, Karnataka, and the Rajasthan States of the Country.²

The predominant Market Demand for catering to the Needs of the Nation's Infrastructure Development viz. Ordinary Portland Cement (OPC), Pozzolana Portland Cement (PPC) and Pozzolana Slag Cement (PSC) & White Cement, etc, are contributing Fiscal Revenues of about 58,407 billion RS (\$8,29 billion) during the ninth Fiscal Year of 2020.³ India's exports of cement, clinker and asbestos increased by 13% in the fiscal year 2016 - the fiscal year 2019 - in 2020 (until September 2019), reaching \$ 177.93 million Tonnes, to the Countries like Sri Lanka, South Africa, and Australia. At the same time, importing cement, clinker, and fibre cement has grown at an annual growth rate of 15.01% to reach \$ 57.61 million in the fiscal year 2019.⁴

The Production costs in the Cement involve, out of which a major junk is towards energy viz. Natural gas, Power, and freight account for approximately 55% to 60% of the industrial cost of service.⁵ With the cost of electrical power increasing faster than kiln fuel costs, the portion of electrical power costs to the total power costs will continue to rise, thereby switching over to Alternative Fuels like Liquid Pharma Waste, spent Carbon, Municipal Solid Waste, Mango fruit Kennels, Recycled Waste Oils, Reclaimed Tyres, etc.

Thereby the Cement Kiln had become an Incinerator to generate Thermal Energy for sustaining the Temperatures required for Cement Calcination. A cement plant's performance in terms of kilowatt hours per ton of cement produced is an important key performance indicator⁶ and thereby high energy consumption also drives a high rate of employment Injuries, unless it is efficiently Grounded. Most of these Industries augmented their Power Generation Capacities, by installing Captive Power

¹ Suresh. P. Iyengar, *As Demand Revives, Cement Companies Go On An Expansion Spree*, Business Line, (05/01/2023), Available at <https://www.thehindubusinessline.com/markets/commodities/as-demand-revives-cement-companies-go-on-an-expansion-spree/article66342157.ece>, last seen on 17/01/2023.

² Vineet Chouhan, Raj Bahadur Sharma, Shubham Goswami & Abdul Wahid Ahmed Hashed, *Measuring Challenges In Adoption Of Sustainable Environmental Technologies In Indian Cement Industry*, 7, Accounting, 339, 339, (2021) https://www.growingscience.com/ac/Vol7/ac_2020_181.pdf, last seen on 28/12/2022.

³ Ibid, 340.

⁴ Ibid.

⁵ Ibid.

⁶ Richard Sperberb, Robert Kniss & Tim Ruegg, *Energy Efficiency In California Cement Plants Accessing Utility Program Resources*, IEEE, Available at <https://ieeexplore.ieee.org/document/7742663>, last seen on 01/01/2023.

Plants using Coal and balancing Fossil Fuels consumption, by adopting green energy sources, including Solar and Wind Energy Power Generation.

Currently, the Industry is Practicing the best environmentally friendly practices like improving the Forest Coverage surrounding the Plant⁷ and at the abandoned Pit side of the Limestone Mine. In the last decade, millions of trees were planted to act as carbon sinks. Even for the Telangana State under the Government flagship Programme "Haritha Haram",⁸ seasonally adopted on a Campaign basis for massive Plantation, by taking the advantage of the Monsoon. The abandoned mines were turned into water tanks with rainwater harvesting and recreational areas 2020.⁹

2. OCCUPATIONAL HAZARDS POSED BY THE DOMESTIC CEMENT INDUSTRY:

Presently the Activities of the Cement Plant restricting to the Factory Employment is only to be Considered, limiting the Mines activities, as such it is out of jurisdiction for this study. The Cement Industry draws, High Energy Intensified Calcination Process, involving Material handling activities, usage of hazardous Alternative fuels, exposure to Heat, Noise, and Vibrations, working against Gravity during Maintenance activities, Confined Space jobs while attending Kiln & Cyclone Maintenance, Fire Safety while handling Pyrophoric Substances, and exposure to the dust containing the Traces of Silica, posing Health Hazards.¹⁰

The Waste Heat Recovery Thermal Plants and in which high thermal Energy Steam with Pressure is being handled causing additional Thermal burns Risks.¹¹ The disposal of fly Ash, Bag Filters and the Electro static Precipitators (ESPs) Maintenance is also a Confined Space Hazard to be Handled.¹² And as a part of sustaining the Zero Injury

⁷ Elina Karttunen, Evgeniya Tsytsyna, Katrina Lintukangas, Annastiina Rintala, Mariam Abdulkareem, Jouni Havukainen & Jutta Nuortila-Jokinen, *Toward Environmental Innovation In The Cement Industry: A Multiple-Case Study Of Incumbents And New Entrants*, 314 Journal of Cleaner Production, 1, 5, (2021), Available at <https://www.sciencedirect.com/science/article/pii/S0959652621021995>, last seen on 19/12/2022.

⁸ Koride Mahesh, *Telangana Ku Haritha Haram, Biggest Plantation Drive In Country*, The Times of India, (30/09/2021), Available at http://timesofindia.indiatimes.com/articleshow/86633298.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, last seen on 22/12/2022.

⁹ Supra 2.

¹⁰ Arshad H Rahmani, Ahmad Almatroudi, Ali Yousif Babiker, Amjad A. Khan & Mohammed A. Alsahly, *Effect Of Exposure To Cement Dust Among The Workers: An Evaluation Of Health Related Complications*, Open Access, Macedonian Journal of Medical Science, 1, 2, (2018), Available at https://www.researchgate.net/publication/325808207_Effect_of_Exposure_to_Cement_Dust_among_the_Workers_An_Evaluation_of_Health_Related_Complications, last seen on 20/12/2022.

¹¹ *Waste Heat Recovery*, TLV, Available at <https://www2.tlv.com/steam-info/steam-theory/energy-saving/waste-heat-recovery>, last seen on 04/01/2023.

¹² *Electrostatic Precipitators*, Industrial Quick Search, Available at

Goal, while on employment, a Strategic Data Analytics Approach is required for getting insights of these Injury Prone Conditions and Behaviours.

2.1 The Following Are the Certain Basic Hazards That Are Going to Be Dealt to Achieve Zero Injury Vision Target.

2.1.1 Electrical Hazards

The Electrical Hazards related to the H.T-Sub-Stations, Panel House, Drives Maintenance of the Captive Power Plants, Waste Heat Recovery, Implementation of Work Permits, LOTO Systems, the disposal of fly Ash, Bag Filters and ESPs Maintenance is also a Confined Space Hazard to be Handled.¹³

2.1.2 Transport Hazards

Lot of Raw Materials are being Transported from the Mines to the Dump Yard for Crushing. And also, the finished goods in the form of Bags, Bulk Cement Transport either by Trucks or by Railway Box Wagons pose additional Risks Road Accidents at the in-plant Roads and Collision & H.T Traction Lines electrocution incidents at the Sliding Yards.

2.1.3 Fire Hazards

Fire Risks are more prone at the Pulverised Coal Stock Yard, at the Coal Storage Bins and which are required to have continuous Stack Temperature Monitoring with Inert Gas Purging Arrangements, Hydrant Sprinklers installation at the PVC Bags Storage Godowns, Fire Hazards along the Pulverised Coal Carrying Belt Conveyors.¹⁴ Besides the above there are Electrical Flash Arc Hazards at the Power Generating Stations, Alternator Short Circuit Hazards are posing fire Risks to the Plant Property and the Safety at the Workplaces.

2.1.4 Alternative Fuel Hazards

These Alternative Fuels are supplied from different Process Industries having of different physical and chemical properties as well as in the reaction behaviour. The alternative fuels differ in their combustion characteristics basically from fossil fuels. Furthermore, there are also differences in the combustion behaviour within the different alternative fuels. Such properties can be, e.g., Calorific Values, the humidity, or the

<https://www.iqsdirectory.com/articles/air-pollution-control/electrostatic-precipitators.html>, last seen on 29/12/2022.

¹³ Naveen Aggarwal, *Electrical Safety Practices In Cement Industry For Sustainable Operation*, IEEE, Available at <https://ieeexplore.ieee.org/document/7974077>, last seen on 29/12/2022.

¹⁴ Slota Zbigniew, *Fire Hazards of Coal Storage Sites - Monitoring and Protection*, ADS, Available at <https://ui.adsabs.harvard.edu/abs/2022CEER...32d.242S/abstract>, last seen on 14/01/2023.

particle size, which have a significant influence on the flight characteristics and the combustion time of the fuel. Accordingly, the fluctuations of the fuel properties determine the entire combustion process, and by adding unburned fuel to the product also, the product quality is directly influenced. For this reason, a constant operation of multifuel burners with a high fraction of alternative fuel compared to the total fuel (>70%) is not possible so far. To further increase the fraction of alternative fuel at a constant operation, it is necessary to permanently monitor the fuel behaviour and control the burner or process parameters. There by an augmentation of the Plant Hazards in the form of Handling highly inflammable recovered Solvents with obnoxious smell, Toxic and Corrosive hazards, altering of the Pyro-Process Conditions and usage of PPE are required to be dealt for increasing the Plant Safety Performance.¹⁵

2.1.5 Maintenance Hazards

During the Capital Maintenance of the Kiln, Cyclones, VRMs, Ball Mills, Silos, Bins Schedule Shut down Procedures are being adopted by using the Work -Permit Systems. Usage of the P.P.E are to be ensured. While working at Heights, construction of the pucca Scaffolding arrangements duly wearing of the Safety Belts are to be stipulated.¹⁶

3. Global Perspective Of The Occupational Hazards

Occupational accidents and diseases have significant human, social and economic costs, which can be eliminated by ensuring that all workplaces are safe. The importance of Occupational Safety and Health was recognized in the 2030 Agenda for Sustainable Development, a universal call to action to end poverty, protect the planet and promote sustainable development everywhere, encapsulated in 17 Goals adopted by all UN member States in 2015.¹⁷

Sustainable Development Goal 8, focuses on decent work and economic growth. Target 8.8 refers to the protection of labour rights and the promotion of safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. Occupational health is also present in

¹⁵ Markus Vogelbacher, Image-Based Characterization of Alternative Fuel Combustion With Multifuel Burners, IEEE, Available at <https://ieeexplore.ieee.org/document/8013839>, last seen on 09/01/2023.

¹⁶ Personal Protective Equipment For Safety In Construction Sites, Constrofacilitator, Available at <https://constrofacilitator.com/personal-protective-equipment-for-safety-in-construction-sites/>, last seen on 09/01/2023.

¹⁷ International labour Organisation, *A Quick Guide On Sources And Uses Of Statistics On Occupational Safety And Health*. 1, (ILO, 2020), Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_759401.pdf, last seen on 09/01/2023.

Sustainable Development Goal 3, which is devoted to ensuring everyone's health and well-being.¹⁸

The States had made Great efforts in the last decades to promote Safety and Health at work in some parts of the World, including numerous awareness campaigns and enhanced workplace inspections. Efforts have also included global initiatives, such as the Vision Zero Fund, fostered by the G7, endorsed by the G20, funded by the European Commission, France, Germany, Norway, Sweden, the United Kingdom, and the United States among others, and implemented within the framework of the ILO Flagship Programme Safety + Health for All.¹⁹

The Vision Zero Fund brings together governments, employers and workers' organizations, companies, and other stakeholders in their joint pursuit of achieving the goal of eliminating severe and fatal occupational accidents, injuries, and diseases in global supply chains.²⁰ Unfortunately, however, too many workers are still exposed to undue risks in their workplaces, work accidents are still far too common, and too many work-related risk factors are left unchecked, leading to Occupational injuries and diseases that could have been prevented.²¹

3.1 Cost Analysis of the Occupational Injuries

The latest global estimates available indicate that more than 2.78 million workers around the world die per year as a result of Occupational accidents or diseases, and some 374 million non-fatal work-related injuries take place.²² The human cost of occupational safety and health deficits is vast and unacceptable. Estimates place the economic burden of poor Occupational Safety and Health practices at almost 4 percent of the global gross domestic product each year.²³

The loss to Worker costs can also be varied, including income loss due to injury or illness, cost of medical treatments (not compensated by the employer or the social insurance), and more indirect costs such as facing poorer economic prospects after an Occupational accident or disease.

¹⁸ SDG Target 8.8, Dart, Available at <https://dart.informeia.org/taxonomy/term/2737>, last seen on 09/01/2023.

¹⁹ Vision Zero Fund, International Labour Organisation, Available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/projectdocumentation/wcms_572474.pdf, last seen on 08/01.2023.

²⁰ Ibid.

²¹ Supra 17.

²² A Safe and Healthy Working Environment, United nations Global Impact, Available at <https://unglobalcompact.org/take-action/safety-andhealth>, last seen on 08/01/2023.

²³ Supra 19.

The costs to society can manifest through costs to public or private health insurance, for instance, investing in Occupational Safety and Health reduces all these costs, besides improving performance, productivity, and worker morale. Affirming that decent work is Safe work, the ILO aims to raise awareness of the human, social and economic returns of investment in Occupational Safety and Health, placing the Health and Safety of all workers on the international agenda to boost the adoption of effective measures at the National and enterprise levels.²⁴

Employer costs include direct costs such as those related to the compensation of workers who have suffered from an injury or disease and indirect costs such as decreased production or productivity.

The Data on Occupational Injuries and the insights provided by these Analytics are very useful Tools, to the respective Industry Stake Holders like Trade Unions, employers, employees, Factory Occupiers & Managers, Policy Makers, and to the States.

3.2 The Tokyo Declaration on Vision Zero for All

The 2nd Vision Zero Summit, was held on from 11 to 13 May 2022 in Tokyo, with a Welcoming Message “Acknowledging the progress achieved through International and National efforts to improve safety and health at work through digitalisation, Robotization, voluntary initiatives, and Standardization.²⁵

During the Summit it was recalled the earlier Summits Objectives, to call for the promotion of a global prevention culture (2008 Seoul Declaration and 2011 Istanbul Declaration on Safety and Health at Work) and the launch of the Vision Zero strategy during the World Congress on Safety and Health at Work (2017); and reaffirming that Safety, Health, and wellbeing at workplaces are the responsibility of the Society as a Whole.²⁶

3.2.1 The Vision Zero Summit-2022 called for Action on the following Objectives and thrust on the respective Stakeholders for Zero Injury

a). Calls upon Governments, International Organisations, Trade Unions and Employers’ Associations, Social Security Institutions, and Occupational Safety and Health Institutes to promote the principle of prevention in their Legislative frameworks, Occupational Safety and Health regulations, guides, and action plans, and to take the lead in

²⁴ Supra 17.

²⁵ Supra 19.

²⁶ Ibid.

promoting a preventative Safety, Health and Well-being culture at work and in Society, placing Vision Zero high on National Agendas;²⁷

b). Calls upon Companies to adhere to the 7 Golden Rules, to implement Vision Zero into their OSH management systems in line with the principles provided by the ILO Guidelines on OSH management systems, and risk assessment strategies, and to lead by an example when doing business;²⁸

c). Calls upon Environmental and Public Health Organisations to develop sustainable approaches to promote workers' Health & Safety as part of the environmental protection policies within organizations and businesses, to reduce the Occupational Safety, Health, and Environment (OSHE) impact of products or services.²⁹

d). Calls upon Schools, Universities, and Vocational Training Providers to promote a culture of prevention from School to Workplace by including Safety, Health, and Well-being in all curricula and everyday school and Campus life to safeguard the Health and Safety of students and young workers.³⁰

e). Call upon large, small, and midsize enterprises to consider Occupational Safety and Health, like the protection of the Environment, as an investment.³¹

f). Calls upon individuals, workers, employers, businesses, voluntary organizations, local authorities and regional and national Governments to commit themselves to the principles of Vision Zero as a way of doing business, and as a guiding principle in life. The Vision Zero Summit participants are committed to reporting about progress towards these objectives at subsequent Vision Zero Summits.³²

g). Calls upon individuals, workers, employers, businesses, voluntary organizations, local authorities and regional and national Governments to commit themselves to the principles of Vision Zero as a way of doing business, and as a guiding principle in life. The Vision Zero Summit participants are committed to reporting about progress towards these objectives at subsequent Vision Zero Summits.³³

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

4. The Applicable Indian Regulations and Standards to Achieve Zero Vision Injury Target

The Statutory Obligations under the Indian domestic Occupational Safety and Health (OSH) Laws are as viz. Indian Factories Act,1948 and Amended Act,1987 and the Telengana State Rules made thereunder, The Manufacture, Storage and Import of Hazardous Chemical Rules,1989 and Amended Rules 2020, The Chemical Accident Rules,1996 and Amended 2020 and Indian Explosive Act, 1984 and Rules made there under, Indian Petroleum Act,1934 & Rules made there under, Building & Other Construction Workers Act(BOCW-Act) 1996 & Rules made therein, The Boiler Act & Rules, 1923 made therein and The Indian Electricity Act,1910 & Rules made therein,

Besides the above Statutory Obligations, Certain Indian (BIS) Standards, ISO, ILO, and WHO Standards are guiding the gaps of inadequacies, where ever is required to enhance the Factory Safety Performance for achieving the Zero Injury Target. Whenever any Crisis arises, the Indian Hon'ble Supreme Court is directing the industry to comply with OSH issues, by disposing of the Public Interest Litigations (PILS).

4.1 Certain Hon'ble Apex Court Decisions on the Applicable Indian Statutes:

The Hon'ble Supreme Court of India in the Case of Hemant Madhusudan Nerurkar v. State of Jharkhand and Anr,³⁴ decided by Two Judge Bench, under the Factories Act,1948 and the Rules made there under as, for fixing the Obligatory Responsibilities under the Penal Provision Section 92 of the said Act.

The learned Council for the Appellate Petitioners (Accused) argued that in Criminal Law, the doctrine of vicarious liability is unknown, and if a director is to be punished for something of which he is not guilty, it would violate his fundamental right as enshrined in Article 21 of the Constitution. It was urged that on account of advancement in science and technology, most companies, appoint professionally qualified men to run the Factories and nominate such a person to be the 'Occupier' of the factory and make him responsible for the proper implementation of the provisions of the Act and it would, therefore, be harsh and unreasonable to hold any director of the company, who may be wholly innocent, liable for the contraventions committed under the Act, etc.

When he may be ignorant of what was going on in the Factory, having vested the control of the affairs of the Factory to such an officer or employee, by ignoring the liability of

³⁴ Hemant Madhusudan Nerurkar v. State of Jharkhand and Anr, Cr.M.P. No. 810 of 2013 decided on 04/05/2016 Available at <https://indiankanoon.org/doc/33078396/>, last seen on 09/01/2023.

that officer or employee and prayed that for quashing the proceedings initiated against them, was declined by the Apex Court stating the Reasons are as follows-

"The offenses under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defense legislation, which creates absolute or strict liability without proof of any mens rea. The offenses are strict statutory offenses for which the establishment of mens rea is not an essential ingredient.

The omission or commission of the statutory breach is itself the offense. A similar type of offense based on the principle of strict liability, which means liability without fault, or mens rea, exists in many statutes relating to economic crimes as well as in-laws concerning the industry, food adulteration, prevention of pollution, etc.

In India and abroad. 'Absolute offenses' are not Criminal offenses in any real sense but acts that are prohibited in the interest of the Welfare of the Public and the prohibition is backed by the sanction of penalty.

What is made punishable under the Factories Act, of 1948 is the 'blameworthy' conduct of the Occupier which resulted in the commission of the statutory offense and not his criminal intent to commit that offense. The rule of Strict Liability is attracted to the offenses committed under the Act and the Occupier is held vicariously liable along with the Manager and the actual offender, as the case may be. The penalty follows actus reus, mens rea being irrelevant."

In Original Application No. 286/2022,³⁵ the hon'ble National Green Tribunal, Principal Bench, New Delhi, had taken Suo-Motto, Cognizance of the News item published in The Indian Express dated 20th April 2022, titled "7 Charred to death in fire near Ludhiana dumpsite".³⁶

Most of the deceased belonged to the Ragpicker family who were living for the last ten years near the site with a huge Waste dump of 20 lakhs tons. The Tribunal noted that there was a *prima facie* failure of the State authorities in complying with the Solid Waste Management (SWM)Rules, 2016. Further, as per the Tribunal-appointed Monitoring Committee, the Municipal Corporation and other State Authorities failed to provide a clean environment and also failed to comply with the SWM Rules not only in

³⁵ Original Application No 286 of 2022, Available at <https://rb.gy/96e6b>, last seen on 28/12/2022.

³⁶ *7 Charred To Death At Dumpsite: NGT Asks Ludhiana MC To Deposit 100 Crore*, the Indian Express, (27/07/2022), Available at <https://indianexpress.com/article/cities/ludhiana/7-charred-to-death-at-dumpsite-8054194/>, last seen on 28/12/2022.

Ludhiana but even in other places. The Tribunal also directed Central Pollution Control Board (CPCB) to issue a statutory order for preventing such fires and handling them effectively if the same takes place. Under section 5 of the Environment (Protection) Act, 1986 to the Chairman, Central Pollution Control Board (CPCB) the following directions were issued for compliance, viz.;

- i. "State Authorities to conduct comprehensive Risk Assessment studies and accordingly prepare detailed On-site Emergency Plans for each dumpsite located in their jurisdiction addressing the following issues:*
 - a) The Onsite Emergency Plan to cover potential risks /emergencies due to fire, obnoxious/flammable emissions, odour, vector-borne diseases, rodents, bird nuisance, seasonal effects i.e., summer/winter/monsoon (rainy season), and all other potential risks at the dumpsites. possible case scenarios preferably using appropriate Risk Assessment software covering any or all of the potential emergency issues/scenarios cited above.*
 - b) The On-site Emergency Management plan to cover the likely affected geographical area including population, flora & fauna in and around the dumpsites.*
 - c) The On-Site Emergency Plan to contain detailed remedial measures both hardware and software-based for mitigating various emergencies, which should finally be available with respective control rooms and On-Site emergency Notice Boards.*
- ii. Also directed, the District Collector or District Emergency Authority designated by the State Government for integrating such (dumpsites) On-site Emergency Plans with the existing Off-Site District Disaster Management Plans in their respective Districts, prepared by the Local Authorities in compliance with Rules 14 of The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.*
- iii. The State / UT Authorities to prepare the On-Site & Off-Site (or update off-site) Emergency Management Plans preferably through an expert agency on the subject.*
- iv. And further gave directions for the following interim measures to be implemented on priority till the time On-site/Off-site Emergency Plans are prepared and implemented.*
 - a) Disposal of Waste: Fresh waste is not to be disposed of at the dumpsite where bioremediation is being undertaken. Organic waste from slaughterhouses, fish markets, etc., and industrial waste is not to be disposed of at the dump site. It is to be further ensured that industrial waste / E-waste/lithium battery is not to be dumped at the site.*

- b) *Waste that is being unloaded at the Site should be examined visually for potential fire sources, and when located, should be neutralized with cover material immediately.*
- c) *Emergency tipping area to be provided to set aside from the immediate working area where incoming loads of material known to be on fire or suspected of being so can be deposited, inspected, and dealt with. Adequate compacting of waste is to be done to minimize the formation of air or methane pockets which can lead to subsurface fire at the site.*
- d) *Monitoring at dumpsites: Methane Gas Detectors (on the downwind side) are to be installed at the site so that areas with high methane concentration can be identified and preventive actions are undertaken.*
- e) *Installation of CCTV cameras at the site and provision of fencing & frequent patrolling to be done for checking unauthorized entry at the dump site.*
- f) *Arrangements for Fire Extinguishing: Arrangements for adequate storage of sand/chemical fire extinguishing media such as foam or powder at the site to be made to douse fire in case a fire incident is reported.*
- g) *Usage of water for dousing fire to be avoided. Isolation and allowing rapid natural burnout or smothering with soil to be done for dousing dumpsite fires. Dedicated fire tenders (preferably chemical extinguishing media) and adequate fire safety measures are to be deputed, specifically during the summer season when dumpsites fire is more likely to take place.*
- h) *All mobile equipment or vehicles should be fitted with a fire extinguisher and spark arrester.*
- i) *Health &Safety of Workers: Fire protection measures and safety equipment are to be provided to all workers at the site and checked before entry to the dump site. Workers are to be trained for the detection of fire and necessary action to be taken in case of fire. Periodic training of workers is conducted in the Safe handling of Waste, PPEs, Health & Safety issues, etc.*
- j) *Mock Drills & Safety Audits: Periodic mock drills to be conducted to prevent fire accidents at dumpsites. Quarterly, Fire Safety and Hazardous Emissions Audits are to be conducted.*
- k) *Also gave further interim directions to the State PCBs are hereby directed to submit action taken report within 15 days for the Supra Stated Action Points above. The Action taken Report (ATRs) for Points to be provided within thirty days of receipt of the Orders."*

The compensation was assessed at Rs.57.5 lacs-Rs.10 lacs each for persons aged above 50 Yrs. and Rs.7.5 lac each for persons below 20 Yrs. as per the principle laid down in MCD v. Uphaar Tragedy Victims Assn. Delhi.³⁷

5. DATA ASSUMPTIONS

a). The Data taken is of only reported Data, there may be loss of Incidents Data which might not be Reported. b). A Data of decade ranging from 2013 to 2022 was taken for analysis and Fore-Cast/Prediction was carried out for the Years 2023 to 2026. c). Occupational Health Injury Data was not available for Analysis. d). The Data related to the Fatal, Non-Fatal, Serious Injuries, Dangerous Occurrences related to Fire Incidents are Taken for drawing the In-Sights contributing, to the Incident Occurrence.

5.1 Sample Incidents Data

The Drawn Data in Excel Format consists of 26- Rows and 27-Columns including Sl. No are as Shown below.

The Attributes of the Column Headers are (Table-1).

Sl. No	Attribute	Sl. No	Attribute (Feature Engineering)
1	Sl. No	19	(f) of Total Deaths (16 + 17)/10 yrs.
2	Causation (Cause for the Incident)	20	(f) of Total Injuries (18 + 19)/10 yrs.
3	Equipment Involved in the Incident	21	(f) of the Equipment Involved
4	Year of the Incident	22	(f) of the Total Incidents
5	Day (Month Day 1,2,3, etc)	23	Designation
6	Day of the Week (Mon, Tue etc)	24	Cause Found 1
7	Month of the Year (Jan, Feb etc.)	25	Cause Found 2
8	Date of the Incident	26	Provisio-1(Proviso under, F. Act,1948)
9	Shift of the Day (A, B, C, G)	27	Provisio-1(Proviso under, F. Act,1948)
10	Hrs of the Incident (1,12,18 hrs,22hrs etc)		

³⁷ MCD v. Uphaar Tragedy Victims Assn. Delhi, CIVIL APPEAL NOS 7114-15 OF 2003, Available at <https://indiankanoon.org/doc/1691320/#:~:text=The%20High%20Court%20held%20that,103%20persons%20who%20were%20injured.>, last seen on 09/01/2023.

11	Time (6AM,5PM,10PM)		
12	Age of the Injured (yrs.)		
13	Fatal-Men		
14	Serious-Men		
15	Total No of Incidents		
16	(f) of Deaths		
17	(f) of Serious Injuries		
18	(f) of Cause Repeating		

- a) For the Columns of the Table-1, from the S. Nos:16 to 22 Feature Engineering was done for calculating the frequencies of the Attributes by dividing the Value of the Attribute with 10 (yrs.), thereby the resulted value shows the Occurrence of the Incident per Year.
- b) By taking the resulted Values of the frequencies (including Fatal + Serious + Fire Incidents), the Column No-22, is taken for the Targeted value for Carrying out the Predictions, for the Frequency of the Occurrence of the Incidents for the feature Years.

5.2 The Drawn data in the form of Excel, initially carried out the following Exploratory Analysis and Derived the following insights: Chart-1 & 2.

Chart-1

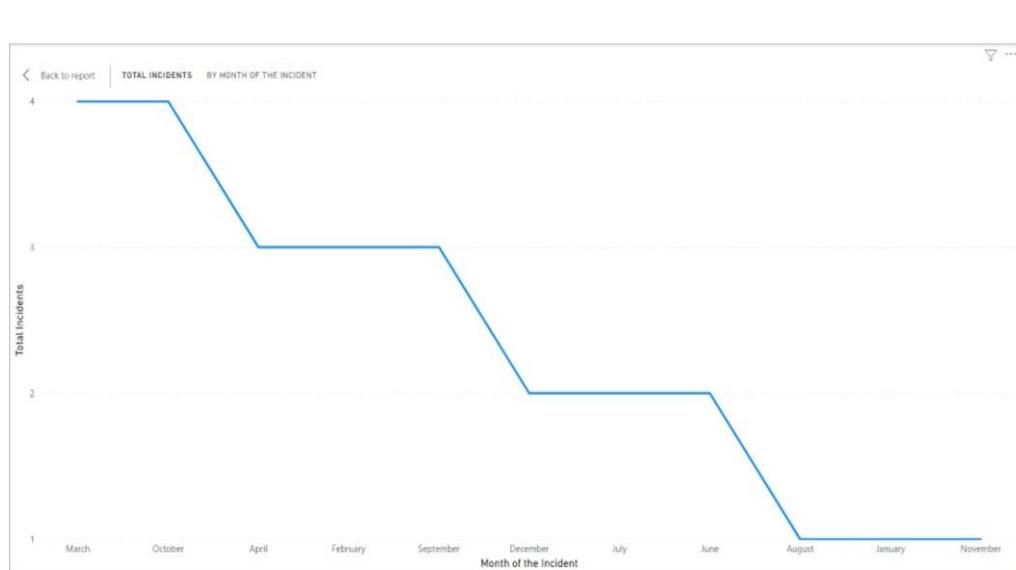
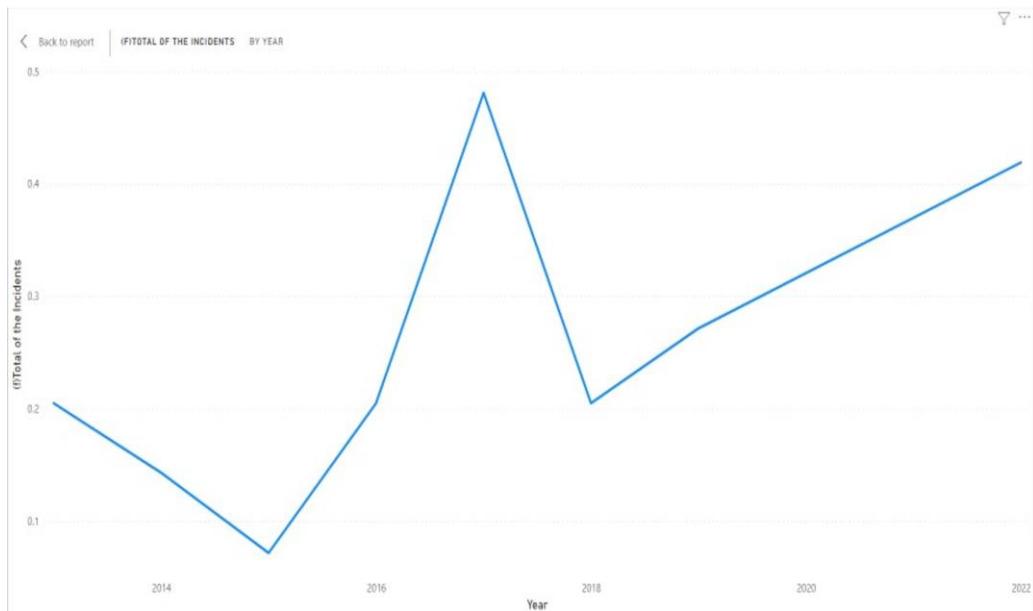


Chart-2

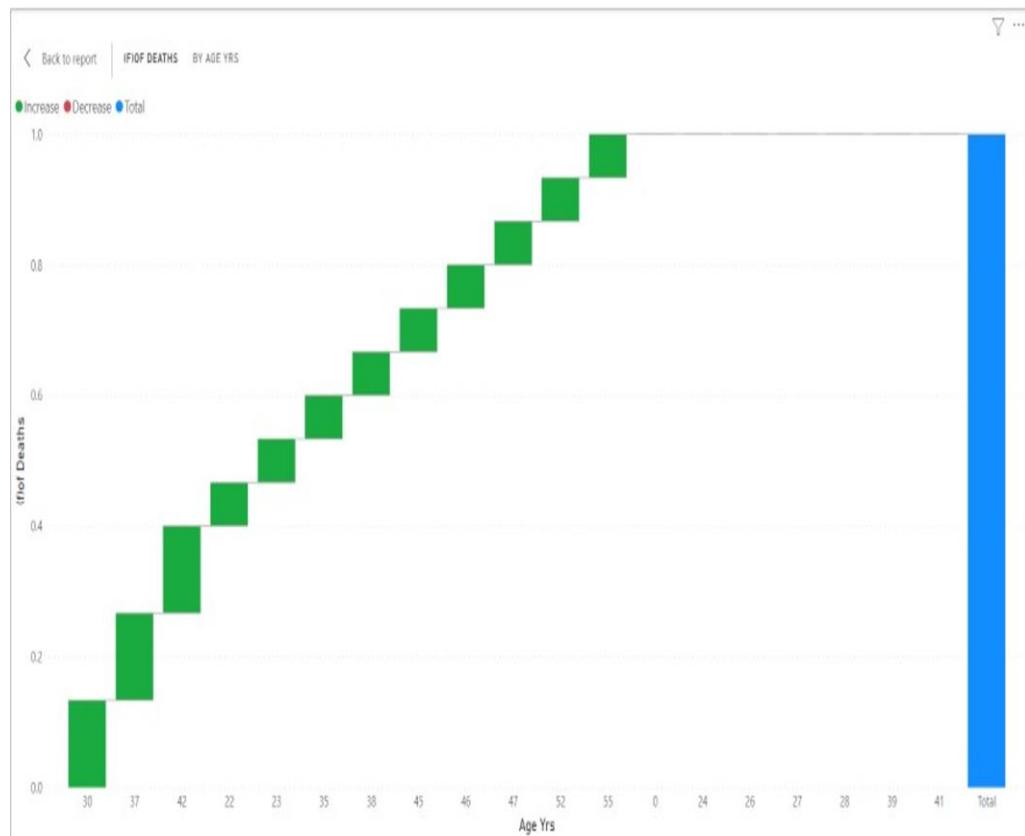


a). **Recommendations From Chart-1 &2:** the **Chart-I** was drawn with X-Axis as Months of the Year & Y-Axis as Total Incidents Occurring in a Year. **Chart-2** was drawn with X-Axis for the Years from 2013 to 2022 and Y-Axis as Frequencies of the Occurrence of the Total Incidents. And the insights drawn are as follows.

- From Chart-1**, the maximum Incidents (4 Nos) occur during March, & April of the Year and gradually show a stepping down Trend till the month of December of the Year. But the happening of the incidents is there in all the Months of the Year.
- From Chart-2**, The Chart is taking the V-Shape raise of the Incidents as the Period (Year) goes. It is taking the least frequency of Occurrence of Incidents during the Years 2015 & 2018 and the highest Peak of Incidents during the years 2017 & 2022.

Chart-3: Chart Drawn with Age vs Frequency of Fatalities of the Incidents.

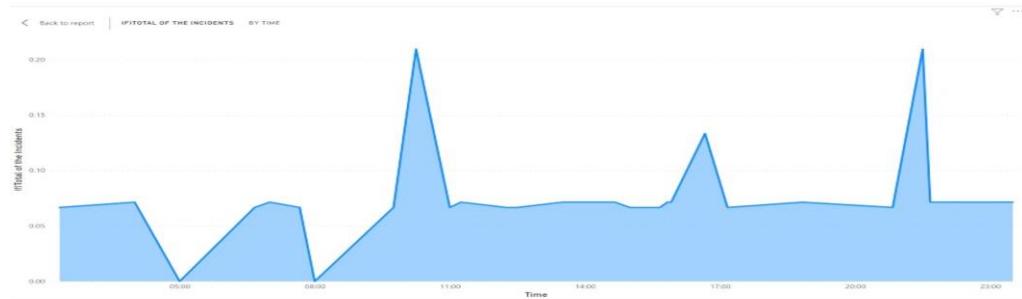
Chart-3



a). Recommendations From Chart-3: The Insights Drawn from the Chart-3 are, for the Age Groups 30 Yrs, 37 yrs. & 42 yrs., the Risk of Higher Fatalities are got involved when compared to Other Age Groups.

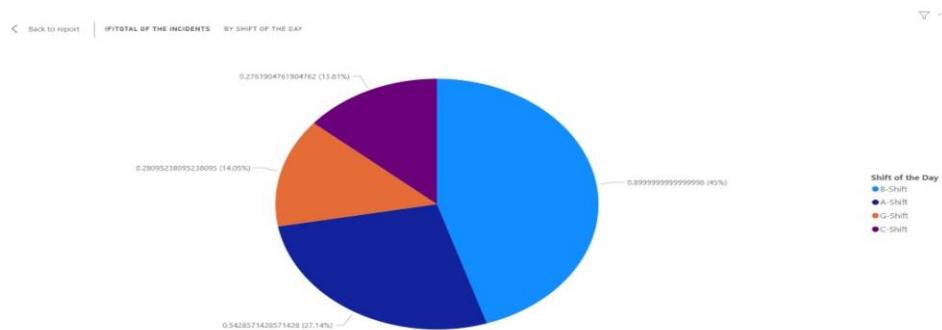
Chart:4: Chart Drawn with Time of the Working Hours of Day on X-Axis and with Y-Axis as the Frequency of the Total Incidents Occurrence.

Chart-4



- a) **Recommendations From the Chart-4:** The Insights Drawn from the Chart-4 are, more Incidents are Occurring at 10:15 AM & 21:30 hrs (with a +0.21 (f)) and lowest, Nil Incidents are Occurring at Morning 05:00 AM & 08:00 AM (+0.00), i.e., Starting of the Shift Hours. Cautious Supervision shall be extended during the G-Shift (09:00 AM to 06:00 PM), Starting and ending, and also during the B-Shift (2:00 PM to 10:00 PM) ending hours.
- b) **Chart.5:** Chart was Drawn with a Pie-Chart showing the Total (f) Frequencies of the Incidents in a day.

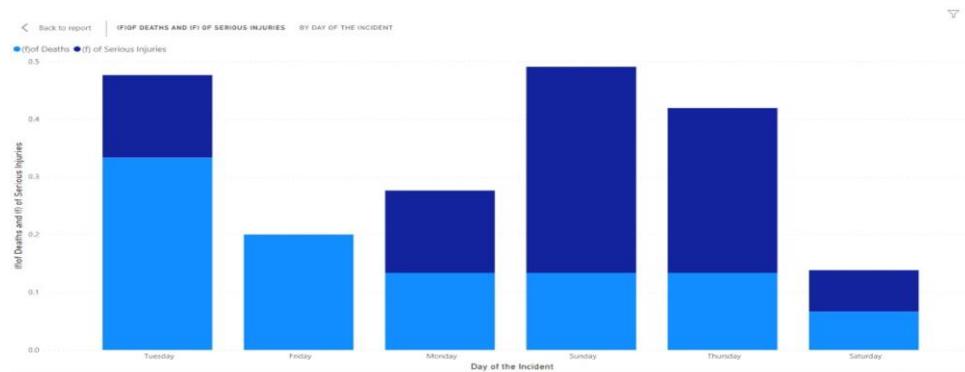
Chart-5



- a) **Recommendations From the Chart-5:** The Insights drawn are of 45% of the Incidents are Occurring in B-Shift (02:00 PM to 10:00 PM) and 27.14% of the Incidents are happening in A-Shift (06:00 AM to 2:00 PM).

Chart-6: Chart was Drawn between Day of the Week Vs Total (f) Fatal and Serious Injuries.

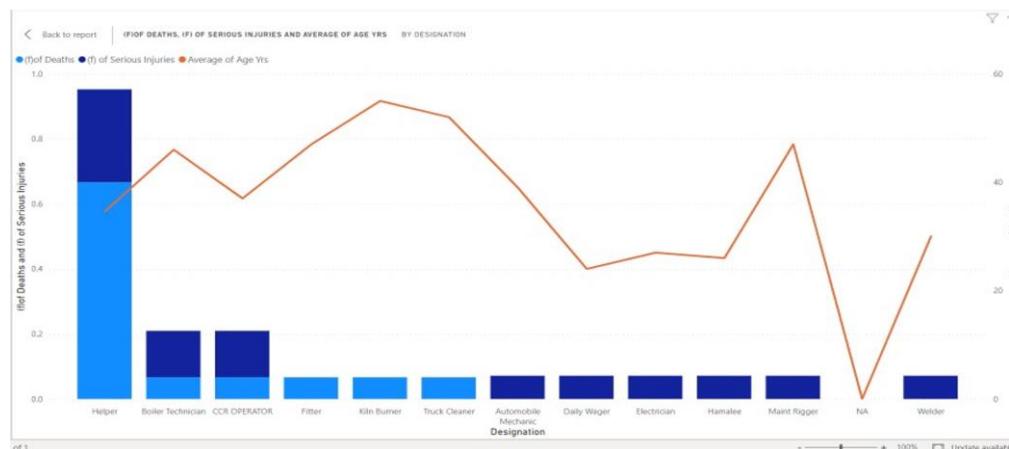
Chart-6



a). Recommendations From Chart-6: The Insights Drawn from Chart- 6, are Injuries happening on all the Days of the Week except Wednesday. And More Fatalities and Serious Injuries are susceptible on Tuesday, Sunday and Thursday in decreasing trend, respectively.

Chart-7: Chart was Drawn with X-Axis as Designation of the employee suffered with Incidents Viz. Helper (Contractor/Migrated Labour), Boiler Maintenance Technicians, Kiln Control Room Operators (CCR) and others as shown in the Chart and Y-Axis as (f) Total Fatalities and Serious Injuries, with the Average Age of the Victim as Secondary Y-Axis.

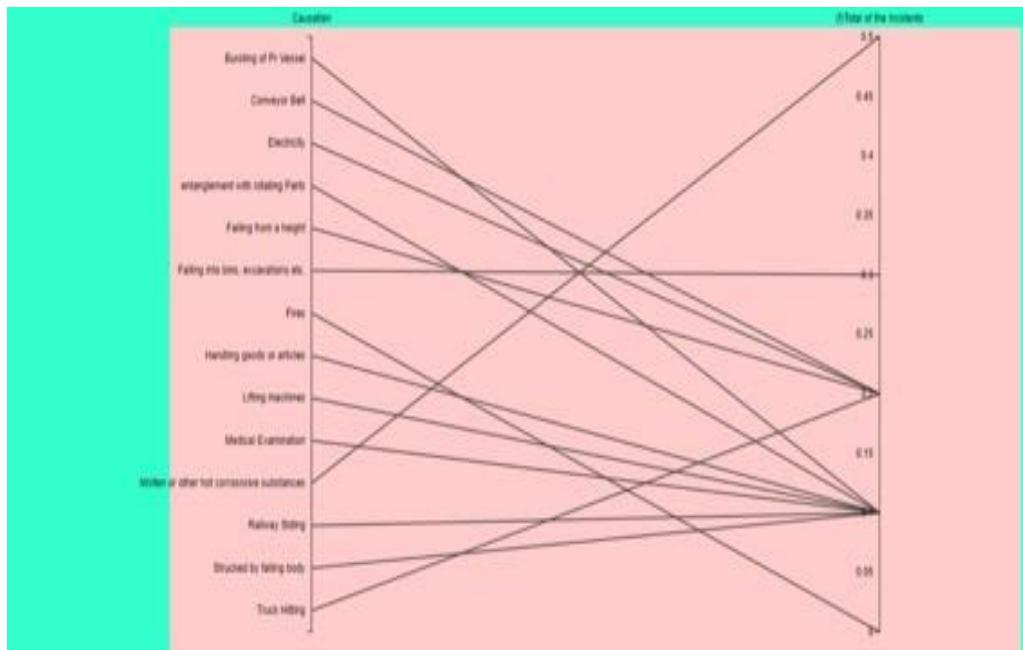
Chart-7



a). Recommendations From Chart-7: The Insights Drawn from Chart.7 as mostly the Migrated Helpers /Contractor Workers are highly susceptible to Incidents among all the Categories of employees. The next one is Boiler Technicians and Cement Kiln (CCR) Operators are exposed to High Energy Substances like Hot Cement Dust and Steam and thereby increasing the Severity of the Injury and also prone to Major Accidental Risks.

Chart-8, The Chart was Drawn between the Causation Vs Frequencies of the Incidents:

Chart-8

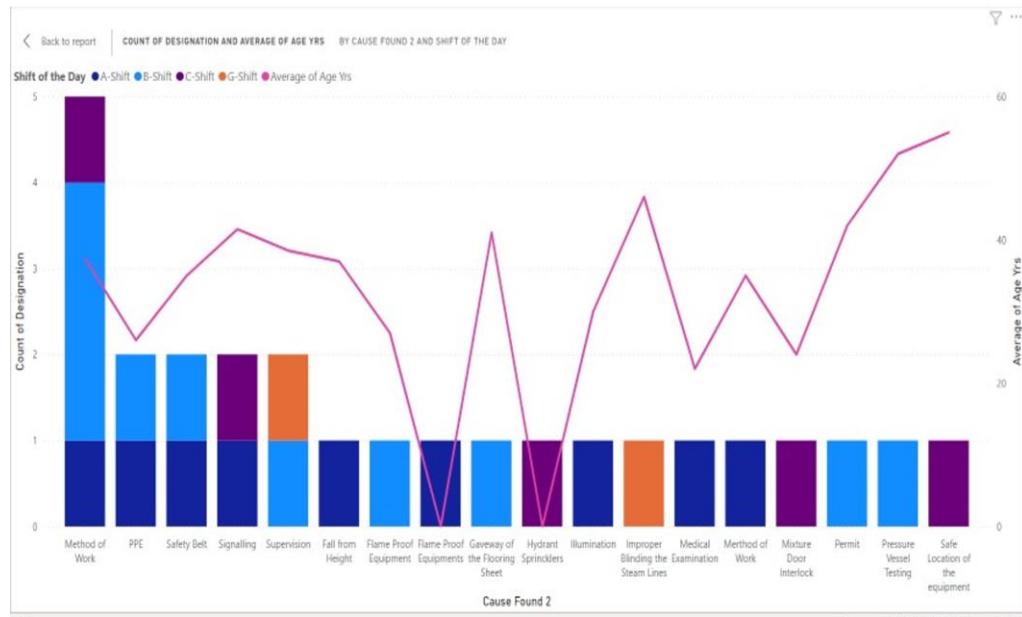


a). Recommendations From the Chart-8:

- The maximum frequencies (0.5) per Year are Causing due to the Splash of Hot Cement Dust and by the hot flames,
- The Next 0.3 incidents are occurring due to the fall from height and into the Silos/Bins of the Raw Materials, Cement Clinker Silos,
- The 0.2 incidents are occurring due to the hit by Trucks, Falling from Height/ Scaffoldings, Electrical Incidents, Conveyor Belt Accidents,
- The lowest 0.1 incidents are occurring due to the Pressure Vessels Bursting, Handling of Goods, EOT Cranes & Lifting Equipment, Railway Sliding Incidents, Short fall of medical examination and Ophthalmological Eye Tests.

Chart-9: Chart was Drawn between the Count of Category Employees Vs Contributed Cause for the Injury and with Secondary Y-Axis as Average Age of the employee.

Chart-9



Recommendations From the Chart-9: The insights Drawn from the Chart-9 are as follows. i). Most of the employees' Viz. Helpers, Supervisors, Operators, Engineers, and Managers are suffered due to not following the Standard Operating Procedures (SOPs)/Method of Work, Not ensuring to wear suitable (Personnel Protective Equipment) PPE, Not wearing Safety Belts while Working at Heights, Not deploying of continuous Supervision.

Chart. 10: Heat Map: Chart Showing the Relationship between the Age Vs Un-Safe Cause Repetition, exposed to Un-Safe Conditions of the Equipment and thereby the Total Frequencies of Occurrences of the Incidents. Incidents.

Chart-10



Recommendations From Chart-10: Heat Map: The insights drawn from the Chart.10 are:

- For the Age Group of 55 Yrs. 47 Yrs, 37 yrs., and 30 yrs. of employees it was identified that the Un-Safe Cause Repetition and simultaneous exposure to the Un-Safe Conditions of the Equipment are the contributing factors for increasing the Total Frequencies of Occurrences of the Incidents.
- For the Young Age Group of 22 yrs., there are fewer frequencies of the Occurrence of the Incidents. The Total frequencies of the incidents are more due to the Cause of Burn Injuries by the spillage of the Hot Cement Dust & Splash of hot Steam Condensate and also due to employee sustaining Asphyxiation Deaths due to falling into the Confined Space like Raw material Bins/Silos. Safety Precautions are to be followed to avoid these, High-Risk Incidents.

6.0 Predictive data analysis and deployment of AI & ML Models, to predict the frequency of the Occurrences of the Probable Incidents in a Year.

Chart-11

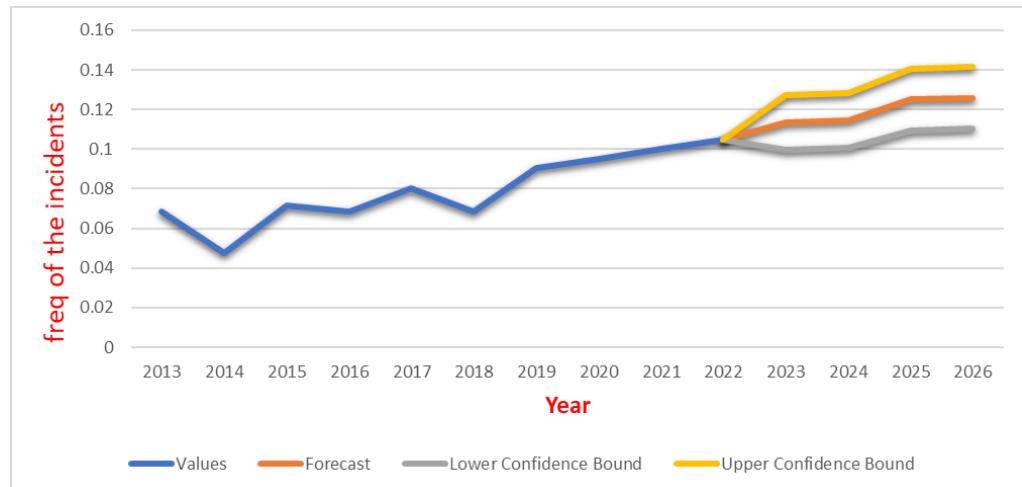


Chart. 12-Regression Model was Deployed using Excel Data Sheet of the Incidents.

Table:2. Predicted Frequencies of the Occurrences of the Incidents from 2022 to 2026 .				
2013	0.068254			
2014	0.047619			
2015	0.071429			
2016	0.068254			
2017	0.080159			
2018	0.068254			
2019	0.090476			
2020	0.095238			
2021	0.1			
2022	0.104762	0.1047619	0.10	0.10
2023		0.1135659	0.10	0.13
2024		0.1144926	0.10	0.13
2025		0.1250273	0.11	0.14
2026		0.125954	0.11	0.14

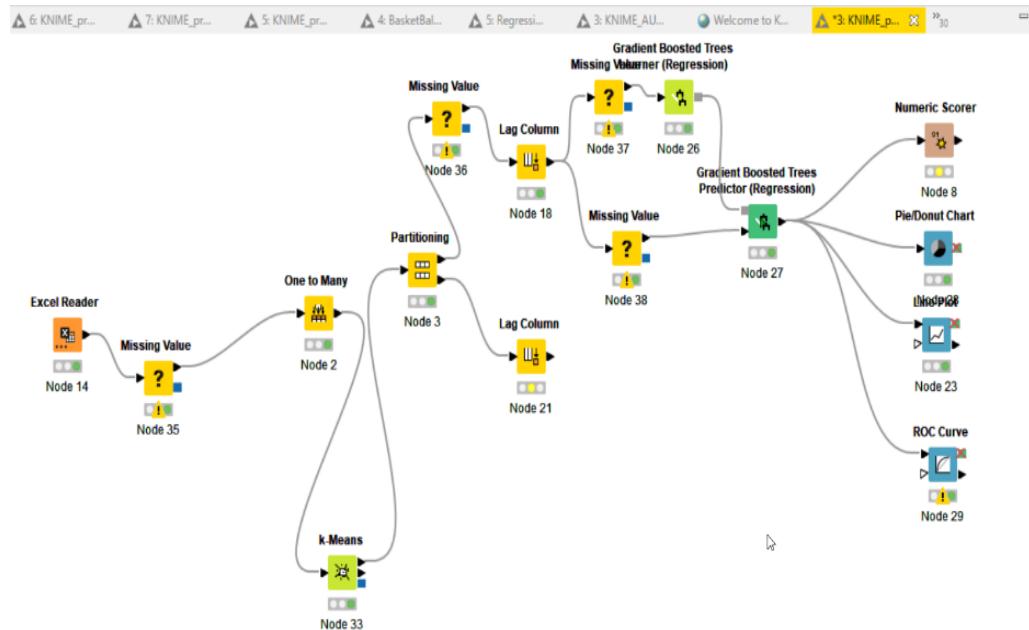
The Following Recommended Predictions /Insights are Drawn from Chart-12:

- The Chart was deployed using the following Coordinates: X-axis is the Period of the Years (2013 to 2026) and Y-Axis is the Frequency of the Occurrence of the Incidents (+0.0 to 0.16 per Year).
- The Chart shows there is a Trend Variation from 2013 to the current Year 2022 and starts Predicting /Fore-Casting the Occurrence of the Incidents from 2022 to 2026.

- iii. The frequency occurrence of the incidents per year is showing an increase in trend, the maximum trend that was observed during the year 2022 is 0.105 and there was a decrease in trend in the years 2014 & 2018.
- iv. The fewer frequencies of Incidents from 2014 to 2018 may be due to the slowing down of the Operations in Cement Plants, due to the Demand and Sales governed by Marketing Constraints.
- v. The final Prediction Trend of the Incidents with upper and lower Confidence bounds Ranging from (+0.104 to +0.126), till the Year 2026.
- vi. The Predicted/Forecast Trend of the Frequency of Occurrence of Incidents is catching a Positive Trend of increasing the Incidents for the Predicted Years from 2022 to 2026.
- vii. The Occupational Health incident Data was not considered while Predicting the Incidents Occurrence, which may be a Cause for not steep raise in the Trend of the Incidents.
- viii. The Trend in the Incidents frequencies is Co-Terminus with the Cement Manufacturing Activities.

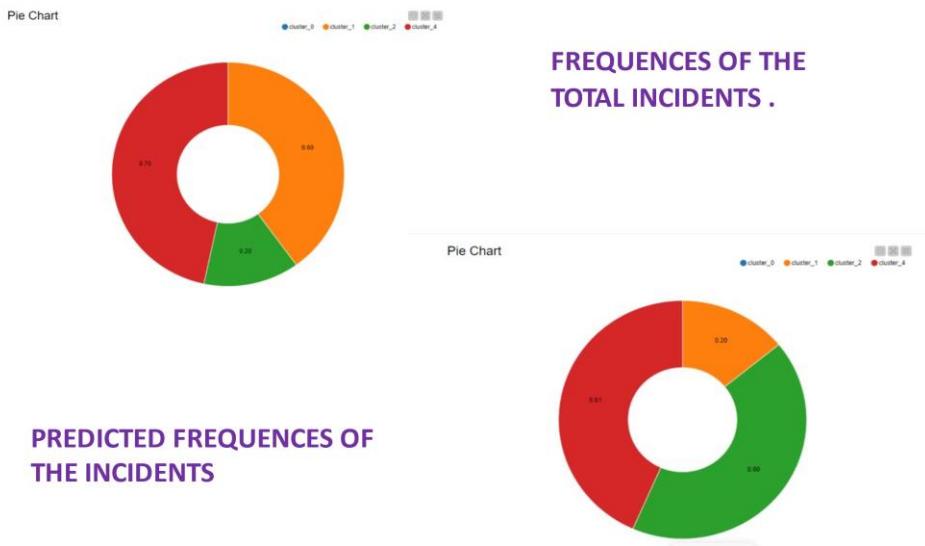
7.0. AI Prediction of the Occurrence of the Frequency of the Incidents, was done using the Gradient Boosted Tree (Regression) Model.

Chart:13. The Deployed KNIME Workflow for AI Model Predictions:



- i. Prediction of Occurrences of the Incident was done using the KNIME Analytical platform
- ii. A Pie Chart was deployed to compare the Predictions before and after the deployment of the AI model.

Chart.13



Recommendations From Chart-13: Orange Colour incidents Occurrence was predicted to be reduced, with an increase in the Green Colour Incidents and also a Marginal decrease in the Red Colour Incidents.

5. CONCLUSIONS

Inviting Decent work is safe and healthy work. Occupational accidents, injuries, and diseases are having significant human, social and economic costs. We must take action to prevent them, by ensuring that all workplaces are safe and healthy. From the Projected Cement Industry Incidents Data Trend, it was observed that the Frequency of the Incidents Occurrence per Year is more for Male Workers as compared to Women Workers. Migrant Male Workers are more suspectable for Injuries Compared to Women Migrant employees. Predominantly all these Migrant Workers are deployed through a Contractor who had duly Licensed Under the Contract Labour (Regulation and Abolition) Act of 1970. These Migrant workers are deployed from other neighbouring States and there is a Communication of Language barrier, for efficient deployment of the Training Needs. It can be overcome by deploying the Training Modules in their vernacular Languages.

Despite great efforts made in the last decade to promote safety and health at workplaces in some parts of the world, work accidents and occupational diseases are still happening. Achieving the goal of Zero Injury vision requires reliable data to monitor trends, identify occupational risks and inform the Policy Makers to design policies and strategies to prevent occupational accidents, injuries, and diseases. Unfortunately, the field of occupational safety and health statistics faces several major challenges, including those related to data availability, quality, timeliness, coverage, and comparability.

THE ‘SHIFT’ IN HEALTH OF THE NIGHT SHIFT WORKERS IN INDIA: A MEDICO- LEGAL ANALYSIS

*Khushi Ruchandani**

Abstract

Night shift work has become unavoidable due to the manufacturing and service sectors’ 24-hour operations to provide services to their customers in both developed and emerging nations. In the process, negative repercussions on health and productivity are emerging. As it connects human resources with production and service demands, the working time arrangement is a crucial aspect of work organisation. Work that requires shift work or irregular hours tosses off the human sleep-wake cycle, which has a negative impact on health and wellness at the social and psychophysical levels. This disruption of biological circadian rhythms and the sleep/wake cycle starts with several psychophysiological problems and disorders, likely including cancer, and it extends to the impairment of performance effectiveness as well as family and social life. This shift work has not yet been substantially included within the ambit of Occupational Safety and Health. The paper provides a summary of the issues that occupational health must currently address in relation to night shift work, as well as the key recommendations at the organisational and medical levels on how to safeguard employees’ health and wellbeing.

Keywords: Shift-work, Occupational Safety and health, Work, organisation, Gender neutral law.

1. INTRODUCTION

Night shift work has become increasingly common in India, as the country continues to experience rapid economic growth and industrialization. However, working at night can have significant negative health consequences, including sleep disturbances, cardiovascular disease, and decreased immune function.¹ The aim of this paper is to provide a medico-legal analysis of the impact of night shift work on the health of workers in India and to explore potential legal and policy solutions to mitigate

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¹ Hidaya Alliouche, *What Are the Health Effects of Working Night Shifts?*, News Medical Life Sciences, Available at <https://www.news-medical.net/health/What-Are-the-Health-Effects-of-Working-Night-Shifts.aspx#:~:text=The%20Effect%20of%20Shift%20Work%20on%20Metabolic%20Disorders&text=Several%20studies%20have%20reported%20a,triglycerides%20and%20total%20cholesterol%20levels.,> last seen on 13/01/2023.

the health risks of night shift work. This research paper is a comprehensive review of the available literature on the health impacts of night shift work in India.

The literature search covered the period from 2000 to 2023. The researcher in this paper primarily focuses on the need to practically implementing more health centred laws with regards to shift work and include it within ambit of occupational safety and health. This study thus outlines the probable solutions to give shift workers an optimal work-life balance in India. By analyzing different policies and laws of both India and abroad, the paper has outlined ways through which we can head towards a more health centric approach in our laws relating to night shift which at the same time would promote gender neutral law.

2. THE PREVALANCE OF NIGHT SHIFT WORK IN INDIA.

Night shift work is becoming increasingly prevalent in India due to a variety of factors, including globalization, technological advancements, and the need for round-the-clock production.² While night shift work has had a positive impact on the Indian economy, there are also negative implications for the health and wellbeing of workers.

According to a survey conducted by the National Sample Survey Office (NSSO) in 2017-18, approximately 14% of India's workforce is engaged in night shift work.³ The majority of night shift workers are employed in the service sector, followed by the manufacturing and construction sectors. The survey also found that women are more likely to work night shifts than men, with approximately 16% of women in the workforce engaged in night shift work compared to 12% of men.⁴

Night shift work has had a significant impact on the Indian economy. It has enabled businesses to extend their working hours and increase their production, leading to higher profits and increased economic growth.⁵ Additionally, night shift work has created new job opportunities for individuals who are unable to work during the day due to family responsibilities or other constraints. The Indian government has recognized the importance of the night shift work sector in the economy and has taken measures to facilitate its growth.

² Papiya Bhattacharya, *Night-Shift Woes*, The Hindu, Available at <https://www.thehindu.com/news/national/nightshift-woes/article3421347.ece>, last seen on 20.12.2022.

³ 14% of India's workforce is engaged in night shift work

⁴ *Ibid.*

⁵ Zhilei Shan, Yanping Li, Geng Zong, Yanjun GuoJun Li, JoAnn E Manson, Frank B Hu, Walter C Willett, Eva S Schernhammer, and Shilpa N Bhupathiraju, Rotating Night Shift Work And Adherence To Unhealthy Lifestyle In Predicting Risk Of Type 2 Diabetes: Results From Two Large US Cohorts Of Female Nurses, 363, BMJ, 1, 1, (2018), Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6247172/>, last seen on 23/12/2022.

However, the impact of night shift work on the economy is not without its drawbacks. Studies have shown that night shift work can lead to decreased productivity, increased absenteeism, and higher healthcare costs due to the negative health outcomes associated with night shift work.⁶ Moreover, the prevalence of low-paying jobs in the night shift work sector may contribute to income inequality and perpetuate the cycle of poverty.

The growth of night shift work in India can be attributed to several factors, including the globalization of the economy and the increased demand for 24-hour services. The adoption of new technologies that enable round-the-clock production has also contributed to the growth of the night shift work sector. Companies are increasingly investing in automation and digital technologies that enable them to operate continuously, reducing the need for human intervention.⁷

The desire to increase productivity and reduce labour costs has been a significant driver of the growth of the night shift work sector in India. Night shift workers are often paid less than their day-shift counterparts, and employers may not be required to provide benefits such as overtime pay and rest breaks.⁸ The need for flexible work arrangements that can accommodate workers' personal and family responsibilities is also a significant factor contributing to the growth of night shift work in India.

Thus, while night shift work has had a positive impact on the Indian economy, it has also had negative implications for the health and wellbeing of workers. There is a need for stronger regulation and enforcement of labour laws to protect the rights and health of night shift workers in India, which the researcher will discuss in the coming sections of the paper.

3. WORKING THE NIGHT SHIFT: THE HIDDEN HEALTH HAZARDS.

Working the night shift is a reality for millions of people around the world.⁹ While it may offer certain benefits such as higher pay and more flexibility, it also comes with a range of hidden health hazards that are often overlooked. From sleep disturbances and

⁶ Kecklund, G., & Axelsson, J. *Health Consequences Of Shift Work And Insufficient Sleep*, 355, BMJ, (2016), Available at <https://pubmed.ncbi.nlm.nih.gov/27803010/>, last seen on 22/12/2022.

⁷ *Digitalisation and Energy*, IEA, Available at <https://www.iea.org/reports/digitalisation-and-energy>, last seen on 19/12/2022.

⁸ Abhishek Sahu, *More Pay For 'Lobster Shift' Workers: Too Much Sacrifice, Still No Hope From Law*, (02/08/2022.), Available at <https://www.moneycontrol.com/news/business/more-pay-for-lobster-shift-workers-too-much-sacrifice-still-no-hope-from-law-8936961.html>, last seen on 24/12/2022.

⁹ Ashima Sharda Mahindra, *Do You Work In Night Or Erratic Shifts Know How It Takes A Toll On Your Health*, Times Now, (23/05/2023), Available at <https://www.timesnownews.com/health/do-you-work-in-night-or-erratic-shifts-know-how-it-takes-a-toll-on-your-health-article-100496721>, last seen on 30/05/2023.

gastrointestinal problems to mental health issues and cardiovascular disease, the health risks associated with working the night shift are becoming increasingly recognized by researchers and healthcare professionals alike.

In this section, the researcher will explore the hidden health hazards of working the night shift, including the factors that contribute to these health risks and the impact they can have on the overall well-being of employees.¹⁰ The researcher will also examine how some of these health hazards are particularly pronounced in women, who may face unique challenges and risks associated with working the night shift. The researcher will further elaborate on how legislative intervention can mitigate the impact of night shift on social institution. By shedding light on these hidden health hazards, the researcher hopes to raise awareness and encourage employers and employees alike to take steps to mitigate these risks and prioritize their health and well-being.

3.1. Effect on Reproductive Senescence and Menopause Age

Working the night shift can have a significant impact on the reproductive health of women.¹¹ While many studies have explored this topic, the findings have been mixed and there is still much to be learned about the specific mechanisms that underlie these effects. One of the most consistent findings in this area is the link between night shift work and menstrual irregularity.¹²

The menstrual cycle is regulated by a complex interplay between hormones, including oestrogen, progesterone, follicle-stimulating hormone (FSH), and luteinizing hormone (LH). These hormones are released in a cyclical pattern and are responsible for the development and release of eggs from the ovaries. Night shift work disrupts the circadian rhythm, the body's internal clock that regulates physiological processes, including the release of hormones. Women who work night shifts are thus more likely to experience irregular periods or changes in the length of their menstrual cycle, which can have implications for fertility and overall reproductive health.¹³

Studies have shown that night shift work can alter the secretion of hormones involved in menstrual cycle regulation. For instance, a study conducted on nurses found that those who worked rotating night shifts had lower levels of oestrogen and

¹⁰ Supra 2.

¹¹ *Work Schedule – Reproductive Health*, Centre for Disease Control and Prevention, Available at <https://www.cdc.gov/niosh/topics/repro/workschedule.html#:~:text=Working%20at%20night%2C%20during%20your,%2C%20miscarriages%2C%20and%20preterm%20birth.>, last seen on 07/01/2023.

¹² *Ibid.*

¹³ Christina C. Lawson, Elizabeth A. Whelan, Eileen N. Lividoti Hibert, Donna Spiegelman, Eva S. Schernhammer, and Janet W. & Rich-Edwards, *Rotating Shift Work And Menstrual Cycle Characteristics*, 22(3), Epidemiology, 305, 311, (2011).

progesterone than those who worked day shifts.¹⁴ Thus, this disruption of hormone levels can lead to menstrual irregularities, such as longer or shorter menstrual cycles, missed periods, and anovulation. Furthermore, studies have also shown that night shift work can impact fertility. Disrupted hormone levels can affect ovulation and decrease the chances of conception. A study of female healthcare workers found that women who worked night shifts had a 33% increased risk of infertility compared to those who worked only day shifts.¹⁵ In addition, night shift work can lead to a decreased quality of eggs and reduced ovarian reserve.¹⁶

Hence, it is submitted that night shift work can have significant effects on women's reproductive health. The disruption of circadian rhythms and hormonal levels can lead to menstrual irregularities, fertility issues, and adverse pregnancy outcomes. Women are particularly vulnerable to the negative effects of night shift work on reproductive health due to their unique physiological and psychological needs. It is essential to take measures to prevent or minimize the negative effects of night shift work on reproductive health and increase awareness among women about these potential risks.

3.2. Respiratory Illness

Night shift work has been associated with an increased risk of respiratory illness, such as asthma, chronic obstructive pulmonary disease (COPD), and respiratory infections.¹⁷ The underlying mechanisms for this association are complex and not yet fully understood, but several factors have been proposed to contribute to the increased risk of respiratory illness.

One proposed mechanism is the disruption of the circadian rhythm, which is the body's natural internal clock that regulates many physiological processes, including the immune system. Night shift work can disturb the normal sleep-wake cycle, which can lead to a desynchronization of the circadian rhythm. This desynchronization can affect

¹⁴ Amy Norton, *Rotating Shift Work May Affect Menstrual Cycle*, Reuters, (01/04/2011), Available at <https://www.reuters.com/article/us-shift-work-menstrual-cycle-idUSTRE7305C020110401>, last seen on 23/12/2022.

¹⁵ Jens Peter Bonde, Johnni Hansen, Henrik A Kolstad, Sigurd Mikkelsen, Jørgen H Olsen, David E Blask, Mikko Härmä, Helge Kjuus, Harry J de Koning, Jørn Olsen, Morten Møller, Eva S Schernhammer, Richard G Stevens and Thorbjørn Åkerstedt, *Work At Night And Breast Cancer - Report On Evidence-Based Options For Preventive Actions*, 38(4), Scandinavian Journal of Work, Environment & Health, 380, 383, (2012).

¹⁶ Reduced ovarian reserve is a condition where the number and quality of eggs in the ovaries are lower than average, which can lead to difficulty in conceiving.

¹⁷ Robert J Maidstone, James Turner, Celine Vetter, Hassan S Dashti, Richa Saxena, Frank A J L Scheer, Steven A Shea, Simon D Kyle, Deborah A Lawlor, Andrew S I Loudon, John F Blaikley, Martin K Rutter, David W Ray, Hannah Jane Durrington, *Night Shift Work Is Associated With An Increased Risk Of Asthma*, 76, Thorax, 53, 54, (2021), Available at <https://thorax.bmjjournals.org/content/thoraxjnl/76/1/53.full.pdf>, last seen on 25/12/2022.

the immune system, making individuals more susceptible to respiratory infections and exacerbating existing respiratory conditions.¹⁸ Another proposed mechanism is the effect of night shift work on the production of melatonin, a hormone that is involved in regulating sleep-wake cycles and has anti-inflammatory properties. Night shift work can disrupt the production of melatonin, which can impair the immune system's ability to fight respiratory infections and inflammation.¹⁹

Working night shifts for longer periods of time have found to increase mortality due to the development of lung cancer. Those who work on night shifts for around five years registered a higher mortality rate due to “all cause” and when the job and precisely the night shift extends up to 15 years, scientists in various studies have found that mortality rate amongst this individual increase due to development of lung cancer.²⁰ Lung cancer risk is also increased as shift workers are more inclined towards smoking rather than non-shift workers as studies show.²¹ The circadian system and sleep, which are both essential for anti-tumor activity, might be too accountable for the issue.

Shift employees' pulmonary function was studied in a cement plant in Raipur, India. One of the markers of pulmonary function, the peak expiratory flow rate (PEFR), was tracked in 202 day-workers and 208 shift workers. Results of the study showed that the shift employees' mean PEFR values (453.9) were consistently lower than those of the day workers (469.8). The present study's findings unequivocally showed that the pulmonary function of shift workers was diminished.²²

The evidence suggests that night shift work is a risk factor for asthma, and that individuals who work night shifts should take steps to mitigate this risk, such as improving sleep quality, avoiding exposure to air pollution, and maintaining good hygiene practices to reduce the risk of respiratory infections.²³

¹⁸ Orfeu M Buxton, Jeffrey M Ellenbogen, Wei Wang, Andy Carballeira, Shawn O'Connor, Dan Cooper, Ankit J Gordhandas, Scott M McKinney & Jo M Solet, *Sleep Disruption Due To Hospital Noises: A Prospective Evaluation*, 157(8), Ann Intern Med, 170, 175, (2012).

¹⁹ Brzezinski A. *Melatonin In Humans*, 336(3), N Engl J Med. 186, 193, (1997), Available at https://www.researchgate.net/publication/14219061_Melatonin_in_Humans/link/5bd53e9292851c6b27931ce0/download, last seen on 30/12/2022.

²⁰ Van Amelsvoort LG, Jansen NW, Kant I. *Smoking Among Shift Workers: More Than A Confounding Factor.*, 23(6), Chronobiol Int, 1105, 1108, (2006;23).

²¹ Ibid.

²² Manish Bhadke & Minhaj Ahemad A Rehman, *Consequences of Shift Work in Industry: A Critical Review*, 12(2), Journal of Ergonomics, 302,303, (2022), Available at <https://www.longdom.org/open-access-pdfs/consequences-of-shift-work-in-industry-a-critical-review.pdf>, last seen on 30/12/2022.

²³ Robert J Maidstone, James Turner, Celine Vetter, Hassan S Dashti, Richa Saxena, Frank A J L Scheer, Steven A Shea, Simon D Kyle, Deborah A Lawlor, Andrew S I Loudon, John F Blaikley, Martin K Rutter, David W Ray & Hannah Jane Durrington, *Night Shift Work Is Associated With An Increased Risk Of Asthma*, 76(1), Thorax, 53,55, (2021).

Our research shows that shift workers of technological industries who are prone to artificial light and who have night shifts have a higher risk of developing asthma, particularly moderate-severe asthma. This shows a causal chain linking circadian misalignment and asthma onset or progression. Moreover, due to decreased pulmonary function, the amount of oxygen which is supplied to brain also becomes limited and hence it decreases alertness. Asthma risk may be decreased by altering shift work schedules by means of policy intervention. For those working in the cement industry, for instance, it would be much more beneficial to concentrate on prevention measures like masks and oxygen access during working breaks, which should occur more frequently during a 7-8 hour shift and no longer work a day, only 5 days a week with two days to recover. Thus, it is necessary to include these problems in future policies regarding shift works.

3.3.Gastro-Intestinal Problems.

Night shift work can have significant effects on the gastrointestinal (GI) system, potentially leading to several GI problems.²⁴ In this section, the researcher will discuss the mechanisms through which night shift work can impact the GI system and the evidence supporting these effects.

The circadian rhythm is a fundamental biological process that regulates various physiological functions, including the GI system. The circadian rhythm regulates the secretion of digestive enzymes, gastric motility, and gut hormone secretion, which play crucial roles in digestion and nutrient absorption. Night shift work disrupts the circadian rhythm, leading to a desynchronization of the body's physiological processes. This desynchronization can lead to several GI problems, including indigestion, constipation, diarrhoea, and acid reflux.²⁵

One of the primary mechanisms through which night shift work can impact the GI system is through alterations in the secretion of digestive enzymes. Studies have shown that the circadian rhythm regulates the secretion of digestive enzymes, with peak secretion occurring during the day when food is typically consumed.²⁶ Night shift workers who consume food during their night shift may not have sufficient digestive enzymes available, leading to impaired digestion and absorption of nutrients. This

²⁴ Supra 2.

²⁵ Costa, G. *Shift Work And Health: Current Problems And Preventive Actions*. 10(4), Safety and Health at Work, 112, 120, (2019), Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3430894/>, last seen on 30/12/2022.

²⁶ McHill, A. W., & Wright, K. P. *Role Of Sleep And Circadian Disruption On Energy Expenditure And In Metabolic Predisposition To Human Obesity And Metabolic Disease*, 18(S1), Obesity Reviews, 15, 17. (2017).

impaired digestion can lead to symptoms such as bloating, abdominal pain, and diarrhoea.²⁷

Another mechanism through which night shift work can impact the GI system is through alterations in gut hormone secretion. Studies have shown that the circadian rhythm regulates the secretion of gut hormones, including ghrelin, leptin, and insulin. These hormones play crucial roles in appetite regulation and energy homeostasis. Night shift work can disrupt the secretion of these hormones, leading to altered appetite and energy balance. Night shift workers may be more likely to consume high-calorie, high-fat foods during their night shift, which can lead to weight gain and other metabolic problems.

Several studies have investigated the impact of night shift work on GI problems. A study found that shift workers, including those who work at night, were at an increased risk of developing GI symptoms compared to those who worked during the day.²⁸ The study found that the prevalence of GI symptoms was significantly higher in shift workers than in non-shift workers. The study also found that the risk of developing GI symptoms increased with the number of years of shift work.

In conclusion, the evidence suggests that working night shifts can have a negative impact on gastrointestinal health. Night shift work can disrupt circadian rhythms, leading to changes in the gut microbiome, decreased gut motility, and increased intestinal permeability, which may contribute to the development of gastrointestinal problems such as GERD, IBS, and inflammatory bowel disease. Furthermore, irregular eating patterns and an increased intake of high-fat, high-calorie foods may exacerbate these problems.

It is essential for night shift workers to be aware of the potential impact of their work on their gastrointestinal health and to take steps to mitigate these risks. Strategies that may be helpful include maintaining a regular sleep schedule, practicing good sleep hygiene, avoiding large meals before bedtime, consuming a healthy and balanced diet, and staying physically active. Further research is needed to better understand the mechanisms underlying the relationship between night shift work and gastrointestinal problems and to develop effective interventions to protect the health of night shift workers.

²⁷ Ibid.

²⁸ Chang WP & Peng YX, *Differences Between Fixed Day Shift Workers And Rotating Shift Workers In Gastrointestinal Problems: A Systematic Review And Meta-Analysis*. 59(2), Ind Health. 66, 68, (2021).

3.4. Effect on Performance and Mental Health

Working night shifts can have a significant impact on both performance and mental health. This impact can be attributed to a range of factors, including changes in circadian rhythms, disruptions to sleep and wake cycles, and social isolation. In this section, the researcher will examine the effects of night shift work on performance and mental health, drawing on a range of research studies and other sources.

Night shift work can lead to a range of performance impairments, including decreased reaction times, decreased accuracy, and decreased cognitive functioning.²⁹ The major factor that can impact performance in night shift workers is sleep disruption. Night shift workers often experience poor sleep quality and reduced total sleep time, which can lead to fatigue and impairments in attention, memory, and decision-making. These impairments can have serious consequences, particularly in high-risk industries such as healthcare and transportation. For example, a study found that nurses working night shifts made more errors in administering medication than those working day shifts.³⁰

In addition to impairments in performance, night shift work has also been linked to a range of mental health problems. These problems can include depression, anxiety, and stress. One of the main factors that contribute to mental health problems in night shift workers is social isolation. Night shift workers often have limited opportunities for social interaction, which can lead to feelings of loneliness and social disconnection. This isolation can be particularly challenging for those who work nights on a long-term basis.³¹

There are several mechanisms through which night shift work can impact mental health. One of the most significant is the disruption of circadian rhythms. Disruption of these rhythms can lead to changes in hormone levels, including increases in cortisol and decreases in serotonin, which can contribute to the development of depression and anxiety. Poor sleep quality and reduced total sleep time can also contribute to the

²⁹ Veruscka Leso, Luca Fontana, Angela Caturano, Ilaria Vetrani, Mauro Fedele, & Ivo Iavicoli, *Impact of Shift Work and Long Working Hours on Worker Cognitive Functions: Current Evidence and Future Research Needs*, 18(12), Int J Environ Res Public Health, (2021), Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8296479/>, last seen on 30/12/2022.

³⁰ Nabe-Nielsen, K., Garde, A. H., & Tüchsen, F. *Night Work And Cognitive Impairment Among Hospital Workers*, 34(3), Scandinavian Journal of Work, Environment & Health, 260, 266. (2008).

³¹ M Virtanen, J E Ferrie, A Singh-Manoux, M J Shipley, S A Stansfeld, M G Marmot, K Ahola, J Vahtera & M Kivimäki, *Long Working Hours And Symptoms Of Anxiety And Depression*. 41(12), Psychological Medicine, 2485, 2490, (2011).

development of mental health problems, as sleep plays an important role in regulating mood and emotional wellbeing.³²

There are several interventions that have been proposed to help mitigate the negative effects of night shift work on performance and mental health. It is important to note that while these interventions may be helpful in mitigating the negative effects of night shift work, they are not a panacea. Night shift work will always be associated with some degree of risk to both performance and mental health. However, by implementing interventions through policy measures and promoting a culture of awareness and support for night shift workers, it may be possible to reduce the severity of these risks and improve overall outcomes for this vulnerable population.

3.5. Effect On Social Institutions

Night shift work is common in various sectors such as healthcare, transportation, and manufacturing, where operations are required 24/7. However, working during the night shift can disrupt the natural sleep-wake cycle, leading to negative outcomes such as sleep deprivation, fatigue, and increased risk of accidents. These negative outcomes can also affect the worker's family life and relationships, especially if they have children.

One significant impact of night shift work on social institutions is the disruption of family routines and dynamics. Night shift workers may be unavailable during the day when their family members are awake, leading to a lack of quality time spent together. This can be particularly challenging for families with young children, who require constant care and attention. For instance, a study found that children of night shift workers were more likely to have disrupted sleep patterns and behavioral problems, which could be linked to a lack of parental involvement.³³

Another impact of night shift work on social institutions is the increased burden on healthcare systems. Night shift workers are at a higher risk of developing health problems such as cardiovascular disease, diabetes, and depression as discussed by researcher in the preceding sections.³⁴ As a result, they are more likely to require medical attention, which can put pressure on healthcare systems. Moreover, if a night shift worker becomes ill or injured, their absence can cause staffing shortages, leading to additional stress for their colleagues.

³² Ruggiero, J. S., Redeker, N. S., & Azuma, S. *Sleep, Fatigue, And Daytime Activity Levels In Women Working Fixed Shifts Compared With Women Working Nonstandard Shifts*. 31(4), Health Care for Women International, 341, 345, (2010).

³³ Berger, M. L., & Hobbs, B. B., Impact of shift work on the health and safety of nurses and patient 10(4), Clinical Journal of Oncology Medicine, 465, 467, (2006).

³⁴ Supra, 2.

Additionally, daughters are more likely to be impacted by their parents' night shift work than sons. This can be attributed to gendered expectations and roles within families. Traditionally, women are expected to take on caregiving responsibilities and household chores, while men are expected to be the primary breadwinners. Therefore, if a mother works the night shift, her daughter may be expected to take on more caregiving responsibilities, such as cooking, cleaning, and looking after younger siblings. This can lead to a higher level of stress and pressure on daughters, which can have negative impacts on their mental health and well-being.

Hence, the impact of night shift work extends beyond the individual worker and can have significant effects on social institutions such as families and healthcare systems. It is essential to recognize and address these impacts to support both night shift workers and their families.

Additionally, legislative intervention is needed to mitigate the negative impact of night shift work on social institutions, particularly regarding gendered expectations and roles within families. While there have been some efforts by employers and policymakers to address the challenges faced by night shift workers and their families, these efforts are often inadequate and voluntary. Therefore, legislative intervention is necessary to ensure that night shift workers and their families have access to the support they need to mitigate the negative impact of night shift work.

One area where legislative intervention can have a significant impact is in the provision of flexible work arrangements. Many night shift workers are not offered flexible work arrangements that could allow them to balance their work and family responsibilities.³⁵ This can make it difficult for them to provide adequate care for their children and to participate in their children's education and extracurricular activities. Legislative measures that require employers to offer flexible work arrangements, such as part-time or telecommuting options, could help mitigate some of these challenges. Legislative measures that provide subsidies for childcare, expand eligibility criteria for childcare assistance programs, or require employers to provide childcare options could help alleviate some of these challenges regarding child care during night shift.

Furthermore, legislative intervention is necessary to address gendered expectations and roles within families. Women are disproportionately affected by night shift work due to their caregiving responsibilities and gendered expectations within families. Legislative measures that address these gendered expectations and promote gender equality, such as paid parental leave, equal pay, and affordable healthcare, could

³⁵ *Managing Flexible Work Arrangements*, SHRM, Available at <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingflexibleworkarrangements.aspx>, last seen on 04/02/2023.

help mitigate some of these challenges and create more equitable outcomes for women and their families.

Hence, it is important to recognize the negative impact of night shift work and to mitigate the risks associated through ways of awareness and legislative intervention.

4. HEALTHY SHIFT: A HEALTH-CENTRIC APPROACH TO SHIFT WORK

In the following section, it is emphasizes upon the need for a shift from gender-centric to health-centric laws in the context of night shift work. The position of women in night shift work is a key area of concern, both in India and internationally, and this paper argues that a health-centric approach can ensure a safer and more equitable working environment.³⁶ To achieve this objective, the paper outlines two key strategies for making laws more health-centric. Firstly, by addressing gendered laws for the workplace, and secondly, by implementing specific policies to mitigate the negative health effects associated with night shift work, as highlighted in the previous sections. By emphasizing a health-centric approach, this paper aims to contribute to a more inclusive and sustainable approach to night shift work that prioritizes the well-being of all workers.

4.1 Global Policies and Practices: Women's Night Shift Realities in India and Beyond.

Shift work restrictions are meant to be protective. They are intended to shield employees from unjustified risks or strain and stop companies from exploiting their Labor force. Therefore, it is not surprising that a large portion of the laws governing shift employment apply to women and children as they have historically been the objective of preventive Labor laws. In many nations, women are subject to tighter Labor laws than men in all areas of the job, including daily work hours, maximum overtime, and rest intervals.

A number of countries, including Algeria, Argentina, Austria, Bolivia, Cape Verde, Costa Rica, Czechoslovakia, Ecuador, Egypt, Germany (manual labourers), Indonesia, Peru, Philippines, Saudi Arabia, Thailand, Turkey, and Venezuela, have recently re-imposed strict regulations on women working at night.³⁷ Women's night-time employment is officially prohibited in Algeria, Argentina, Bolivia, Indonesia,

³⁶ Deborah McLellan, William Moore, Eve Nagler & Glorian Sorensen, *Implementing an Integrated Approach Weaving Worker Health, Safety, and Well-being into the Fabric of Your Organization*, 121, (Harvard T.H. Chan School of Public Health Center for Work, Health, and Well-being, 2017), Available at https://centerforworkhealth.sph.harvard.edu/sites/default/files/10.12.17_Guidelines_Screen_post.pdf, last seen on 31/12/2022.

³⁷ Golden, L., & Wiens-Tuers, *The Impact Of Shift Work On The Lives Of Women Employees*, 129(6), Monthly Labor Review, 36, 40, (2016).

Austria, and many more countries. Some nations, including Denmark, Norway, and Sweden, forbid both male and female employees from working at night, but it is considerably simpler for men to get exceptions.

The prohibition on women working nights also has some exceptions. For instance, women who work in management are typically exempt from the prohibition. The ban on women working nights is lifted in Austria, Ghana, Nigeria, Greece, and other nations for specific seasonal jobs like harvesting. In several nations, such as Austria, Angola, Switzerland, Iraq, and others, women are allowed to work at night during times of emergency. One or more government officials are permitted to grant exclusions at their discretion in Zaire, Saudi Arabia, and other nations.³⁸

In India, the law does not permit women to work at night in most sectors, including factories, construction sites, and mines.³⁹ However, some states have passed amendments to allow women to work at night, subject to certain conditions. For instance, in 2018, Maharashtra amended the Factories Act of 1948 to allow women to work in night shifts, provided the employer takes adequate measures to ensure their safety and well-being. Similarly, in 2019, the Karnataka government passed a similar amendment to the Karnataka Shops and Commercial Establishments Act, 1961. The OSH (Occupational Safety and Health) Code of 2020 in India allows women to work at night with certain conditions and provisions in place.⁴⁰

It's important to note that while the OSH Code allows women to work at night, there may be additional state-specific regulations or policies that can impose further restrictions or requirements. Some states in India have specific regulations related to women working night shifts, such as obtaining permits or adhering to certain conditions prescribed by the respective state governments. For instance, in Telangana, the Shops and Establishments Act allows women to work night shifts, subject to obtaining a special permit from the Chief Inspector of Shops and Establishments. The permit is granted based on considerations such as the nature of work, workplace safety, and transportation arrangements. Furthermore, in Haryana, the Haryana Shops and Commercial Establishments Act permits women to work night shifts, but they must obtain prior approval from the District Magistrate or the Chief Inspector of Shops and Establishments.

³⁸ *Record Of Proceedings International Labour Conference*, 1989, International Labour Organisation, *Official Record*, 76th Session, ILO Document 002926, (1990), Available at <https://www.ilo.org/public/libdoc/ilo/P/09616/09616%281989-76%29.pdf>, last seen on 15/12/2022.

³⁹ Neetha, N, *Crisis in Female Employment: Analysis across Social Groups*, 49(47), Economic & Political Weekly, 50, 54. (2014).

⁴⁰ S. 43, Occupational Safety and Health Code, 2020.

As a result, it is submitted that, some nations have a lot of regulation and support services for shift workers, while others don't really have any. A few countries have comprehensive legal frameworks that address a variety of topics, such as recreational facilities, housing options, and worker retirement program. The majority of laws governing irregular work schedules, however, only address hours and pay. It thus does not cover night shift from the perspective of occupational safety and health.

4.2 Revamping Night Shift Laws: A Health-Centric Proposal

Rajagopalachari stated that the legislators need to be practical in their framing of laws and instead of laws which look good on paper, we need to look towards making laws which genuinely make a difference on the ground realities.⁴¹ Despite the growing body of evidence about the negative effects of night shift work, it is not yet fully incorporated within the ambit of occupational safety and health policies. This is partly because traditional occupational safety and health policies have been designed with daytime work in mind, and thus may not fully account for the unique risks and challenges associated with night shift work. However, it is important to recognize the unique risks associated with night shift work and to incorporate them into occupational safety and health policies. From a health-centred perspective, this means ensuring that policies and regulations are in place to mitigate the negative impacts of night shift work on employee health and wellbeing.

The maximum number of hours that can be worked and the agreed-upon remuneration for overtime labor are both regulated in India,⁴² while shift work is subject to more variable regulations. The regulation of shift work must ensure that those with health conditions like high blood pressure or diabetes are not permitted to work at night, except for a set period of time if the circumstances allow.

India should also adopt a similar approach as to what the EU, Japan, and South Korea have adopted. These countries require night shift staff members need undertake particular health checkups, and pregnant women are not permitted to perform night shifts.⁴³ Since, issues including insomnia, depression, gastrointestinal issues, obesity, etc., affect all workers in a similar way, hence female workers did not differ significantly from male workers in these areas.⁴⁴ Thus, the researcher proposes that the best way to

⁴¹ Statement by Shri. Rajagopalachari, *Statement Regarding Law Making*, Lok Sabha, (1949).

⁴² S. 51 & 59, The Factories Act, 1948.

⁴³ Gartner J, Rosa RR, Roach G, Kubo T & Takahashi M. *Working Time Society Consensus Statements: Regulatory Approaches To Reduce Risks Associated With Shift Work—A Global Comparison*. 57, Ind Health. 245, 247 (2019).

⁴⁴ *Shift-Work Causes Negative Impacts On Health, Affects Men And Women Differently*, Science Daily, (21/04/2021), Available at <https://www.sciencedaily.com/releases/2021/04/210421082937.htm>, last seen on 20/12/2022.

achieve equality is to extend the prohibition to men rather than to lift it. For men to be exempt from the ban on night employment, labor organizations have asked for it in Germany, France, and Finland. Some workers in Japan, the Netherlands, Switzerland, and the United Kingdom also call for a ban on men working nights.⁴⁵ A reasonable compromise can be established by replacing physically unfit and unwell men with healthy women and then rotating shifts because working a continuous night shift can also be damaging to women. As a result, it's critical to regularly rotate shifts and replace workers based on their health requirements rather than merely their gender to preserve balance. Thus, through this approach India can adopt a more gender neutral as well as a health centric law.

5. PROTECTING NIGHT SHIFT WORKERS: PROPOSING LEGISLATIVE SOLUTIONS FOR HEALTH HAZARDS.

With the advancement of world to a gender centric approach in every arena, the need of the hour to protect the health of the shift workers is a more health-oriented law. The researcher herein the health issues for which more health centric laws are needed for. In today's rapidly evolving world, there is a growing recognition of the importance of adopting a gender-centric approach in various domains. One crucial aspect that demands immediate attention is the protection of the health and well-being of shift workers. While existing laws and regulations address certain aspects of occupational health and safety, there is a pressing need to develop more health-oriented legislation that specifically caters to the unique health challenges faced by shift workers.

One key area that requires attention is sleep disruption and its impact on the health of shift workers. Irregular and insufficient sleep patterns can lead to a range of health problems, including cardiovascular diseases, metabolic disorders, and compromised immune function. A health-centric law should address the need for sufficient rest periods, enforceable limits on shift duration, and provisions for appropriate sleep environments and accommodations.

Mental health is another critical aspect that demands greater consideration. Shift workers often experience higher levels of stress, anxiety, and depression due to irregular work schedules, social isolation, and disruptions in their personal lives. A health-oriented law should prioritize mental health support services, including counseling,

⁴⁵ 'It's Killing Us All Slowly': How The Night Shift Is Taking A Toll On US Workers. Guardian News and Media. (18/11/2022), Available at <https://www.theguardian.com/us-news/2022/nov/18/us-workers-night-shift-takes-toll>, last seen on 03/01/2023.

access to resources for stress management, and strategies for maintaining work-life balance.

Furthermore, gastrointestinal problems are prevalent among shift workers, primarily due to irregular eating patterns, unhealthy food choices, and disrupted circadian rhythms. A health-centric law should focus on promoting access to nutritious food options during night shifts, providing designated break times for meals, and educating workers about the importance of maintaining a balanced diet.

Importantly, a gender-centric approach within the health-oriented legislation is crucial to ensuring equal protection for both male and female shift workers.⁴⁶ Women, in particular, face additional health concerns related to reproductive health, pregnancy, and lactation. Adequate provisions should be in place to address their specific needs, including accommodations for breastfeeding, maternity leave, and protection against discriminatory practices.

Additionally, it is not advisable to assign shift work to those who have a history of digestive diseases since shift work's intrinsic psycho-physiological issues, disruption of mealtimes, and difficulty obtaining hot, nourishing meals frequently can all have an adverse effect on digestive function.⁴⁷ People with diabetes and people who have thyrotoxicosis shouldn't be assigned to shift work without careful medical supervision because shift work makes it challenging for people to receive the regular dietary needs of diabetic patients and the appropriate therapeutic timing needed by people with either condition.⁴⁸ Similar to those with epilepsy, night shift work should not be assigned to them without a medical checkup and ongoing care since sleep loss increases the risk of seizures.

Care should be used when choosing new hires for night shift work who are older than 50 and younger than 25 (especially if they live alone). If an older worker is skilled and well suited to shift work, they should be permitted to do it on a voluntary basis. Even though a worker is 50 years old chronologically, they are physically much younger. The health staff at shift employees' employers should pay special attention to them. All prospective shift workers would undergo medical exams before beginning shift work, six months after beginning shift work, and then on a regular basis every two years after that, according to a suggested program. However, shift workers over 50 should get examinations more regularly.

⁴⁶ Gostin, L. O, *Health In All Policies: The Path To A Healthier Nation*, 312(7), JAMA, 691, 692. (2014).

⁴⁷ Wang, X., Armstrong, M. E., Cairns, B. J., Key, T. J., & Travis, R. C, 68(3), *Shift Work And Chronic Disease: The Epidemiological Evidence*, Occupational Medicine, 78, 82, (2018).

⁴⁸ *Ibid.*

To effectively implement a health-centric approach, legislative intervention should involve collaboration between government bodies, employers, trade unions, and relevant stakeholders. The proposed legislation should be comprehensive, addressing the specific health challenges faced by shift workers and incorporating evidence-based practices from international guidelines and research.

In conclusion, as the world moves towards a gender-centric approach in various spheres, it is imperative to extend this perspective to protect the health and well-being of shift workers. By formulating and implementing more health-oriented legislation, we can address the specific health risks and challenges faced by shift workers, promoting better occupational health outcomes, equal protection for all workers, and a healthier workforce overall.

6. HEALTH-CENTRIC NIGHT SHIFT PROPOSAL: ENHANCING THE OSH CODE OF 2020

The Occupational Safety and Health Code⁴⁹ is a comprehensive set of guidelines that aims to promote the health, safety, and welfare of workers in India. It covers a range of issues, including the prevention of accidents and diseases, the provision of medical facilities, and the promotion of healthy working conditions. Importantly, the Code is gender-neutral, which means that it applies equally to male and female workers. The OSH Code of 2020 in India already incorporates several provisions for ensuring the health and safety of workers. However, some amendments could be proposed to make it more health-centric, especially with regard to night shift workers. Here are a few possible suggestions:

1. Incorporate specific guidelines for night shift workers: The OSH Code could include separate guidelines and provisions for night shift workers, taking into account the unique health risks associated with this type of work.
2. Limit the number of consecutive night shifts: To minimize the negative impact on health, the OSH Code could limit the number of consecutive night shifts that an employee can work, with adequate rest periods in between since studies have shown that working more than three consecutive night shifts increases the risk of developing sleep disorders, cardiovascular diseases, and metabolic disorders.⁵⁰
3. Provide regular health check-ups: Employers could be required to provide regular health check-ups for night shift workers to identify and address any health issues early

⁴⁹ The Occupational Safety, Health And Working Conditions Code, 2020.

⁵⁰ Torquati L, Mielke GI, Brown WJ & Kolbe-Alexander T, *Shift Work And The Risk Of Cardiovascular Disease. A Systematic Review And Meta-Analysis Including Dose-Response Relationship*, 44(3), Scand J Work Environ Health, 229, 236, (2018).

on since Night shift workers are at higher risk for developing a range of health problems, and regular health check-ups can help detect and prevent health issues before they become more severe.

4. Ensure adequate lighting and ventilation: The OSH Code could specify minimum standards for lighting and ventilation in the workplace, especially for night shift workers who may be more susceptible to eye strain, fatigue, and other health issues since poor lighting and ventilation can cause eye strain, headaches, and respiratory problems, which can impact worker health and productivity.⁵¹

5. Promote healthy eating options: Employers could be encouraged to provide healthy eating options for night shift workers, including fresh fruits and vegetables, to help maintain their overall health and well-being since many night shift workers struggle with eating healthy food options due to limited availability and irregular eating schedules, which can lead to digestive issues and other health problems.

6. Encourage physical activity: The OSH Code could promote physical activity for night shift workers, such as providing access to gym facilities or organizing group exercise programs during breaks since sitting or standing for extended periods can cause physical discomfort and contribute to musculoskeletal disorders, while physical activity can promote better circulation and improve mental health.⁵²

7. Provide adequate transportation: Employers could be required to provide safe and reliable transportation for night shift workers to and from work, to minimize the risks associated with commuting during late hours.

8. Provide training and resources for night shift workers to help them manage their work-life balance and improve their overall well-being since night shift workers may struggle with managing their personal and professional lives due to irregular schedules and increased stress levels, and providing resources can help them cope with these challenges.

9. Conduct regular reviews of night shift work policies to ensure they are up to date and aligned with best practices and emerging research as night shift work is a dynamic field with constantly evolving knowledge, and regular policy reviews can help ensure that policies remain relevant and effective.

⁵¹ Costa G., & Sartori, *Ageing, Working Hours And Work Ability*, 50(11), Ergonomics, 1914, 1920, (2007).

⁵² Mammen G., & Faulkner. G, *Physical Activity And The Prevention Of Depression: A Systematic Review Of Prospective Studies*, 45(5), American Journal of Preventive Medicine, 649, 650, (2013).

Overall, the goal of these proposed amendments would be to prioritize the health and well-being of night shift workers, while also promoting gender neutrality and equal treatment under the law.

7. CONCLUSION

In conclusion, this research paper has shed light on the significant impact of night shift work on the health of workers in India. Through a comprehensive medico-legal analysis, the paper has highlighted the health risks associated with night shift work and emphasized the need for practical implementation of more health-centered laws within the realm of occupational safety and health. The findings of this study clearly demonstrate the pressing need to prioritize the health and well-being of night shift workers in India. The existing laws and policies often fall short in adequately addressing the unique challenges faced by these workers, including disrupted sleep patterns, increased risk of chronic diseases, mental health concerns, and gastrointestinal problems.

By examining both domestic and international policies and laws, this research paper has identified potential solutions to address the health risks associated with night shift work. The implementation of more health-centered laws, including provisions for sufficient rest periods, limits on shift duration, access to healthcare services, and promotion of work-life balance, can significantly improve the overall well-being of night shift workers. Furthermore, the paper highlights the importance of adopting a gender-neutral approach in formulating and implementing these health-centric laws. By recognizing and addressing the specific health concerns faced by both male and female night shift workers, the legal framework can ensure equal protection and support for all workers.

Moving towards a more health-centric approach in night shift work legislation requires collaborative efforts between policymakers, employers, trade unions, and relevant stakeholders. It is imperative to bridge the gap between the existing legal framework and the evolving health needs of night shift workers. Thus, this research paper serves as a significant contribution to the understanding of the medico-legal aspects of night shift work in India. It underscores the need to prioritize the health and well-being of night shift workers through practical implementation of more health-centered laws and policies. By adopting a gender-neutral and holistic approach, India can strive towards providing night shift workers with an optimal work-life balance and a safer, healthier working environment.

A CASE FOR DEVELOPING INDIA'S NATIONAL LABOUR MIGRATION POLICY; AN INTEGRATED APPROACH

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Abstract

India is having a large labour migration diaspora. The statistics show that the incoming remittances from abroad contribute heavily to the national GDP. Along with international migration, the nation is also witnessing huge internal migration within the nation itself. However, the plight of the migrant workers in different parts of the nation is covered in misery. The absence of a comprehensive and exhaustive legal framework could be stated as the reason for the hardships faced by the migrant labourers. This chapter enumerates the flaws in the existing labour laws and also provide certain recommendation for formulating a better legal framework suitable for the labourers.

Keyword: Migrant labourers, Diaspora, Labour reforms, Exploitation, Employment etc.

1. INDIA'S LABOUR MIGRATION SAGA

India has a strong community of diaspora figuring more than 18 million across the globe.¹ In 2021, India received around 87 billion dollars of remittances amounting to 3.1% of its GDP.² India enjoyed double distinction of as not only the biggest source of labour migration but also the world's no.1 recipient of the remittances.³

India's international labour migration profile is characterised by diversity in the skill set, employment status and income level wherein they range from high skills to

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¹ At 18 Million, India Has The World's Largest Diaspora Population, Times of India, (15/01/2021) Available at https://economictimes.indiatimes.com/nri/migrate/at-18-million-india-has-the-worlds-largest-diaspora-population/articleshow/80290768.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, last seen on 13/10/2022.

² India received \$87 billion in remittances in 2021: World Bank, Business Standard, (19/11/2021), Available at https://www.business-standard.com/article/economy-policy/india-received-87-billion-in-remittances-in-2021-world-bank-121111800329_1.html, last seen on 20/12/2022.

³ Ibid.

low skills jobs, from being top earners of all ethnic groups to earning merely over survival wages.⁴ Its geographical dispersal also ranges from as far as South East Asia to Europe and from North America to Gulf Countries.

The same laurels go for internal labour migration within national borders which contributes 10 % of India's GDP.⁵ According to Census 2011, there were 454 million internal migrants in India.⁶ Professor at Centre for Development Studies Kerala S. Irudaya Rajan estimates 'On basis of 2011 Census there are 140 million migrant labours in India.'⁷ In the same breath, he laments the absence of reliable data on labour migration numbers.

The toil and sweat of internal labour migrants are engine of Indian economic and growth machine. They constitute majority of contractual and casual workers ranging from each core activity of Indian industrial life from manufacturing, building and construction, services to farming. From laying metro lines to sewerage pipes to building hospitals to schools such physical and social infrastructure are at core of national economy, one finds migrant labour's hands that hold hammers and machine or exerting brute physical brawn power to build, to construct or to lay such infrastructure.

Their overwhelming presence in street vendors, beedi workers, building and other construction workers, and especially. 'Domestic Work' segment is not often documented but it is very crucial as it allows Indian upper and middle class a respite from 'domestic and household chores' so that they can channelize their productive energies and time unencumbered to augment their personal and national wealth.

In Gig Economy, the engagement of migrant workers as 'delivery partner' is rising phenomenon that would very soon be hallmark of Service economy of India.⁸ Many migrant workers are not preferring to get into 'low skilled menial works' and they

⁴ ILO, *How Immigrants Contribute to Developing Countries' Economies*, 55, (OECD/ILO, 2018), Available at <https://www.oecd-ilibrary.org/docserver/9789264288737-en.pdf?expires=1689963966&id=id&accname=guest&checksum=003987B3B3C8967CE77A680B7294C01C>, last seen on 13/12/2022.

⁵ *Internal migrants contribute 10 pc to GDP: UNESCO*, Times of India, (20/10/2013), Available at https://economictimes.indiatimes.com/news/economy/finance/internal-migrants-contribute-10-pc-to-gdp-unesco/articleshow/24426208.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps, last seen on 28/12/2022.

⁶ Priya Deshingkar, *Faceless and dispossessed: India's circular migrants in the times of COVID-19*, Down to Earth, (16/06/2020), Available at <https://www.downtoearth.org.in/blog/economy/faceless-and-dispossessed-india-s-circular-migrants-in-the-times-of-covid-19-71782>, last seen on 30/12/2022.

⁷ S. Irudaya Rajan, P. Sivakumar & Aditya Srinivasan, *The COVID-19 Pandemic and Internal Labour Migration in India: A 'Crisis of Mobility'*, 63, The Indian Journal of Labour Economics, 1021, 1022, (2021), Available at <https://link.springer.com/article/10.1007/s41027-020-00293-8>, last seen on 20/12/2022.

⁸ T K Rajalakshmi, *Gig Workers Vulnerable To Exploitation*, Frontline, (17/03/2022), Available at <https://frontline.thehindu.com/social-issues/gig-workers-vulnerable-to-exploitation/article65221492.ece>, last seen on 13/01/2023.

possess a mode of transportation prefer to work as ‘delivery person’ for app-based companies.

As street vendors, hawkers or petty cart pullers, migrant labours concentrated in informal sector, earning around starvation wages, keep general price level down as depressed wages are factor of cheap production and affordable rich lifestyle of urban bourgeoisie.

Migrant labours constitute largest chunks of voters who exercise their franchise regularly in elections. Their demand as voter in local governance are so crucial that contesting candidates will finance their to and fro journey and wages. Employer knowing importance of democracy in India would not grudge their unpaid absence.⁹

Migrant workers of all profile play crucial role in exchange of culture and ideas. Their role in nationalising regional cultures into national one is part of Indian national building project as India’s official policy *Ek Bharat Shrestha Bharat programme* (One India, Great India) emphasize.¹⁰ During my stint with JK Police Academy, it came to my knowledge that migrant labours from UP-Bihar introduced ‘Chana (Gram)’ as snacking habit of Kashmiri culture.

2. THE WOES AND WORRIES OF MIGRANT LABOURS: A SYSTEM OF EXPLOITATION, DISCRIMINATION AND DEPRIVATION OF RIGHTS

Migrant workers are at nucleus of Indian informal sector that are sinkhole of all human rights and labour rights. According to ILO Report (2020) states ‘Around 90 per cent of India’s workforce is engaged in the informal economy, which absorbs most of the migrant workers in the country.’ Even in organised sectors migrant workers are engaged in ‘informal employments.¹¹

During Covid and national lockdown, India woke up to the plight and tragic status of migrant workers. Social and economic life came to halt without any promise or sign when they would open again. World of Work overnight went virtual and all physical places of work factories, business, shops, restaurant and others all came under

⁹ Sanjay Kumar, Aaliyia Malik & Vibha Attri, *Securing The Migrant Vote*, The Hindu, (10/05/2023), last seen on 28/05/2023.

¹⁰ *Pravasi Bhartiya Echo The Voice Of A Powerful And Capable India: PM Modi*, Narendra Modi, (09/01/2023), Available at <https://www.narendramodi.in/text-of-prime-minister-narendra-modi-s-speech-at-17th-pravasi-bharatiya-divas-convention-in-indore-madhya-pradesh-566983>, last seen on 18/05/2023.

¹¹ Employment Policy Department, ILO, *Informal Employment Trends In The Indian Economy: Persistent Informality, But Growing Positive Development*, ILO Employment Working Paper number 254, 2019, Available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_734503.pdf, last seen on 28/01/2023.

suspension of work.¹² Especially MSMEs employing predominantly migrant labours, forbade workers to attend the work site any further. They had to return to their villages without being paid what was legal and fair by the employers who were also bound due to closure of enterprise and business.¹³

The tragedy was no less for international migrant workers, especially in Gulf Countries. Their contract of employment was terminated in face of looming Covid-19 apocalyptic infections and arbitrary unilateral actions of employer under *Kafala* system.¹⁴ Many workers lost employment and at risk of overstaying and getting banned from entry again were stranded without any mode for repatriation by air, land or sea.

Around one million internal migrant workers left for their homes in rural India from economic *megapolis* of India. Most of them travelled on foot for hundreds of miles journey. Many of them died by way of exhaustion, accident or in road rage. Given this tragedy the nation was echoing with the burning questions.¹⁵ How many of the migrant workers are there? Where they work? Where they come from? How many of them are left? How many are yet to leave? What about their work, wages and families?

India had no data that even HUPA Report (2017) acknowledged in no uncertain terms. There was no institution, no mechanism or agency that had statutory duty to collect process and conclude data/information regarding internal migrant workers except. The HUPA Report (2017) acknowledges that India does not have a single definition to identify migrants.¹⁶ Only two agencies Census and NSO data gathers data about internal migrants in the country uses different definition and methodology of ascertaining who is migrant. According to Census conducted by the Registrar General of India, an individual is classified as a migrant if he/she has changed his place of residence in the past from one village/town to another village/town¹⁷ whereas NSO defines migration on

¹² Maria Abi-Habib and Sameer Yasir, *India's Coronavirus Lockdown Leaves Vast Numbers Stranded and Hungry*, The New York Times, (29/03/2020), Available at <https://www.nytimes.com/2020/03/29/world/asia/coronavirus-india-migrants.html>, last seen on 28/12/2022.

¹³ *The Impact Of COVID-19 On India's Migrant Workers*, Sedex, Available at <https://www.sedex.com/blog/the-impact-of-covid-19-on-indias-migrant-workers/>, last seen on 28/12/2022.

¹⁴ *COVID-19 Makes Gulf Countries' Abuse Of Migrant Workers Impossible To Ignore*, Amnesty International, (30/04/2020), Available at <https://www.amnesty.org/en/latest/campaigns/2020/04/covid19-makes-gulf-countries-abuse-of-migrant-workers-impossible-to-ignore/>, last seen on 28/12/2022.

¹⁵ Supra 12.

¹⁶ Ministry of Housing & Urban Poverty Alleviation, Government of India, *Annual Report 2016-17*, Available at [https://mohua.gov.in/upload/uploadfiles/files/1Ministry_HUPA_Annual_Report_2016_17_English_small\\$2017Mar17170100.pdf](https://mohua.gov.in/upload/uploadfiles/files/1Ministry_HUPA_Annual_Report_2016_17_English_small$2017Mar17170100.pdf), last seen on 29/12/2022.

¹⁷ *Migration*, Census of India 2011, Available at https://censusindia.gov.in/nada/index.php/catalog/40447/download/44081/DROP_IN_ARTICLE-08.pdf, last seen on 29/12/2022.

the basis of last usual place of residence,¹⁸ which, unlike the Census, is defined as a place where one has stayed continuously for a period of six months or more.

3. EXISTING STATUTORY FRAMEWORK TO COVER INTERNAL WORKING MIGRANTS

Building and Construction Work is epicentre of employment of vulnerable migrant workers especially in brick kiln furnaces around the country. The Report (2017) as well as ILO Report¹⁹ gives due weightage to Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and the Building and Other Construction Workers Welfare Cess Act, 1996 as stand-alone measure and mechanism to not only provide numerical presence of such migrant workers but also providing entitlement-based welfare for registered workers with Construction Worker Welfare Boards.²⁰

Another Act that exists as on date is The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 that cast statutory obligation on the Contractor to register and provide details to the authorities about employing inter-state migrant workers.²¹ This Act also made provision about recruitment cost and compensation to such migrant workers. Under section 2(e) the Act defines *inter-state migrant worker* restrictively as "*inter-State migrant workman*" means any person who is recruited by or through a contractor in one State...'. Hence this Act has inherent bias to statutorily cover only those migrant workers who were employed by contractors and leaving out those who were economic migrant at their own. Besides, this Act merely mandated the contractor to provide aggregate number of migrant workers not dealing with individuation of data. The authorities were only constricted to administer registration, licensing and revocation of such license of those contractors who were employing ISMW. Beyond this mandate, the Act was frozen to offer any protective and facilitating cover to interstate migrant workers.

Regarding international migrants, India had around 8.5 million workers in Gulf Countries,²² mostly low skilled, were suddenly stranded and in dire need of Home State capacity to repatriate them. India launched its mission 'Vande Bharat' (Salute India) to

¹⁸ *Migration in India, 2020-2021*, Press Information Bureau, (14/06/2022), Available at <https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=1833854>, last seen on 29/12/2022.

¹⁹ Supra 11 & 16.

²⁰ S. 11, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

²¹ S. 12(1)(a), The Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Act, 1979.

²² Priyansha Singh and Mohammed Ameen Arimbra, *Indians in the Gulf: The Other Side of the Story*, Medium, (30/07/20190, Available at <https://medium.com/@indiamigration/indians-in-the-gulf-the-other-side-of-the-story-2870995eb748>, last seen on 01/01/2023.

repatriate these hapless migrant workers. India official statement is that it repatriated 1.5 million international migrants of Indian origin through it²³ and around 0.75 million from Gulf countries under its Vande Bharat Scheme.²⁴ Moved by such tragedy, Lawyers Without Frontiers filed a writ petition in Kerala High Court²⁵ to direct Government to compensate all those migrant workers who were terminated and had to forfeit their legal dues.

These workers' calamity triggered public discourse for what is our strategy, what are our safeguards and what are our standards to protect and promote interest of these migrant workers in event of such catastrophe.

Why in spite of having MOUs on 'labour migration' with each of Gulf countries, these workers were stranded without cue, chucked out of their employment without any support from Host States or Employers. Why India was bound to fly mission to bring these workers back Home, though India is major manpower supplier to these regions and enjoy historical-cultural ties? What was true effective outcome of these MOUs? What went wrong with Migrant Worker Governance System.

4. FOREIGN MIGRANTS IN INDIA; FELLOW HUMAN AND GHOST COUNTRYMEN

There is also official data that around 0.1 million migrants in India were sent back to their home in 120 countries.²⁶ Census 2011 enumerated India host 5 million of foreign migrant's workers in India.²⁷ Though itself a developing economy and major source of migrant workers, these numbers are no small for not to have a focus on them in our policy framework.

Neighbouring countries are source of these immigrant workers and mostly irregular migrant, they also crowd in low skilled and low paid jobs and face violence, abuse and

²³ *Over 15 Lakh Repatriated Under Vande Bharat Mission Amid COVID: Hardeep Singh Puri*, NDTV, (06/09/2020), Available at <https://www.ndtv.com/india-news/over-15-lakh-repatriated-under-vande-bharat-mission-amid-covid-hardeep-singh-puri-2291082>, last seen on 10/01/2023.

²⁴ *Vande Bharat Mission: Over 7 Lakh Workers Back From Gulf Nations, Says Govt*, Business Standard, (11/12/2021), Available at https://www.business-standard.com/article/current-affairs/vande-bharat-mission-over-7-lakh-workers-back-from-gulf-nations-says-govt-121121001298_1.html, last seen on 02/01/2023.

²⁵ Lawyers Beyond Borders (Lbb) India v. Union of India, WP(C). No.13444 OF 2020(S), Available at <https://indiankanoon.org/doc/59185938/>, last seen on 22/01/2022.

²⁶ Supra 13.

²⁷ Ruchi Singh, *Origin of World's Largest Migrant Population, India Seeks to Leverage Immigration*, Migration Policy Institute, (09/03/2022), Available at <https://www.migrationpolicy.org/article/india-migration-country-profile#:~:text=India%20has%20for%20centuries%20been,of%20its%201.4%20billion%20people.>, last seen on 13/01/2023.

exploitation at stretch. Their plight requires urgent and robust protection under policy framework.

5. A COMPREHENSIVE NATIONAL MIGRANT WORKERS POLICY;

Realising data deficit and absence of institutional frameworks for migrant workers NITI Aayog, Planning organ of Government of India, initiated Draft Policy on Migrant Workers.²⁸ Such draft policy is in long part inspired by a report of Ministry of Housing and Urban Poverty Alleviation (HUPA) (2017) and only differing on few dimensions. This Draft Policy raises more questions and concerns than it resolves.

6. LANDSCAPE OF LABOUR MIGRATION AND ITS GOVERNANCE IN INDIA

India's conceptual note in form of Draft Migration Policy is welcome in recognising Agency of migrant to choose informed migration and migration as inevitability of Development. It also intends to facilitate internal migration and rolling out universal social protection framework based on portability and digitisation to all migrant workers.²⁹ Need for evidences or credible data in regard to migration is underlined by the Draft.

But like previous report on Migration, most prominently Action Plan on Migration (2017) of MHUPA, Niti Aayog restrict scope and reach of Policy only to internal migrants of India. Ignoring tri dimensional landscape of labour migration in India projecting internal migration, emigration and immigration of workers, NITI Aayog misses complete picture of labour migration governance.

7. WHAT IS WRONG WITH CURRENT DRAFT

NITI Aayog Draft Policy merely sets outlines migration and development. It misses out international migration of people of Indian residence and immigration of foreign national. There are following concerns that require resolution;

Firstly, Present draft policy seems to be a knee jerk reaction to national euphoria that the nation must have National Labour Migration Policy addressing both internal as well as international Indian labour migration. NITI Aayog only made good of this public reaction and intelligentsia' criticism. Previously it was other Ministry that has

²⁸ Priya Deshingkar, *National Migrant Policy: A Good First Draft*, Down to Earth, (07/04/2021), Available at <https://www.downtoearth.org.in/news/governance/national-migrant-policy-a-good-first-draft-76352>, last seen on 14/01/2023.

²⁹ Ibid.

administrative mandate to deal with ‘urban poors’ prepared an action plan on migrant workers.

Though both reports recognise as Ministry of Labour and Employment (MoLE) as nodal Institution in governance of labour migration but surprisingly MoLE has not initiated the process of formulation of such policy nor it had significant role to play. It is MoLE that was given responsibility to form and operate ‘Migrant Distress Cell’ during national lockdown. It is MoLE that administers whatever semblance of laws is there to protect and promote whatever welfare or interest of migrants like Inter State Migrant Act 1978.

Another issue is ‘Protector General of Emigrants’ under Ministry of External Affairs naturally has no role to play in formulation of migration policy³⁰ as International migrant workers are kept out of ambit of this Draft Policy.

In India, rights and responsibility for protection and promotion of rights and interest of migrant workers during recruitment, selection, stay and stipulated exit from the destination country continues to be subject matter of diplomatic relations though India, incrementally, scaling up its commitment to International standards as laid out by ILOs from point of view of workers. MOUs with destination countries are charter of rights and manual for action. These MOUs especially with Gulf Countries are at least decades old and expectation and obligation is very mild in effect.

Time has come where ‘*worker is primarily a worker*’ neither soft power of State or Milch Cow for its economy. A national policy for migrant workers may be harnessed to re-design bilateral agreement on labour/manpower supply on more stricter and coercive terms.

Another problem with current Draft Policy on NITI Aayog is that it gives immigrants workers working in India complete omission. Indian approach and Public policy imagination does not give them due economic credence to recognise their role in its development.

As these immigrant mostly irregular workers are trapped in most inhumane, exploitative and abusive employment relations, they don’t only depress wages and jeopardise working conditions for all the workers but also reveal puncture in our stand towards commitment to our own low skilled workers in other destination countries.

³⁰ *Protector General of Emigrants*, Ministry of External Affairs Government of India, Available at <https://mea.gov.in/protector-general-emigrants.htm>, last seen on 30/01/2023.

Current Draft Policy omits Women Migrant as workers completely.³¹ Any policy that ignores Gender dimension of economic contribution or labour market analysis may be paralysed by being unrealistic.

Way Ahead

Draft Policy of NITI Aayog on Migrant Workers is very welcome and promising start but it must not skip stages of journey in policy development and start with statement of intent to proceed further.

A policy, to my humble understanding from all the theories I read, is declaration of will by a political authority, elaboration of plans, goals, actions, outcomes and effectuation of framework, mechanism, agency and institutions to attain what policy intends to. A preamble to any such policy to explain what this policy seeks to achieve. How an effective governance of migration or factoring migration with labour market in a way that it optimises the possibilities of national development can be attained. Sadly, NITI Aayog draft policy do not heed in this direction. Such national policy must include all categories of migrant worker, immigrant, emigrant and internal. Policy based on principle of ‘non-discrimination, equity and universal’ approach towards protection and promotion human and labour rights of workers shall not allow practice of ‘crowding in’ or ‘crowding out’ practice of employers to prefer that category of workers who are not covered. Such universal robust policy shall allow India to negotiate better with those countries of destination like Gulf countries to convert pious but prejudiced MOUs into internationally standardised and legal binding instruments.

It is very crucial which institution/agency is initiating the process of policy formulation for migrant workers. Previously it was different then Niti Aayog. In my opinion MOLE has mandate, structure, capacity and expertise to not only offer ‘key inputs’ but completely ‘initiate and implement’ any such policy.

Participation of Stakeholders in the formulation of National Policy for Migrant Workers for Draft (NITI Aayog) has left lot to be desired. NITI Aayog process of developing policy falls flat on the criterion of participation. There must be thorough national mind churning involving employers, unions, civil society, inter-ministerial representation and most importantly representative of State Governments and those local Government that experience considerable in-or out migration. It is very important that village elected bodies that experience high in or out migration must be involved.

³¹ Abhishek Sekharan, A Year Since the Lockdown, Women Migrant Workers Remain Unrecognised, The Wire, (01/04/2021), Available at <https://thewire.in/women/women-migrant-workers-india-lockdown>, last seen on 20/01/2023.

NITI Aayog as planning Unit neither urge Ministries/State Government to mainstream migration policy in their individual plan policies nor it lay out any framework and mechanism to ensure smooth diffusion of migration policy objectives, goals, actions into horizontal or vertical ministries/state governments. There is no coherence in as simple thing as definition of 'migrant workers.' NSO, Census and Inter State Migrant Workers Act defines migrant workers differently (involving three different Ministries as M/o Home Affairs, M/o Statistics and Project Implementation and MOLE). Coherence among various component of policy as well as among agencies/institutions/governments must be primary objective.

In my opinion, once effective coherence is ensured, cooperation and coordination are sure to come about. For example, if there is coherence of objective of MEA and MOLE is to ensure human and labour rights of all migrant workers whether internal or external, whether in Gulf or Africa, then surely cooperation shall result in their efforts and actions. An effective supervision, monitoring and controlling shall result also if a general consensus evolve through coherence and cooperation by shared goals and joint actions.

Decent Work and Right Based Approach. Government of India through its administrative machinery MOLE is committed to each work into Decent Work as conceptualised by ILO and mandate of SDG. Labour laws and policies are re-imagined in a way that how it enhances the factor of Decent work in any form of work. NITI Aayog openly admits advent of this concept and advocate right based approach towards governing migration in India. Decent Work must be central plank on which any national policy of migrant workers depends.

The OSH Code 2020³² has introduced some laudable change in the way the datas, entitlement and social protection to the internal migrant workers have to be provided to. Most laudable is infusion of clarity in definition of who is inter-state migrant worker.³³ The Code 2020 clearly spells that all category of workman employed by the employer or at their own in state that is not their home-state is ISMW. The Code not only enlarge the protective net but also provides rights to journey allowance to home state, toll free helpline number and systematic study of in- and out migration. But The Code is eerily silent about inter linkage with Census and NSO Data to establish accuracy about enumeration of internal labour migration. The Code on Wages also do not grant special status to migrant workers in settlement of their payment and benefits disputes as empirically it is established that migrant workers tends to return to their home state immediately after termination of their employment and ill afford to engage in dispute

³² The Occupational Safety, Health and Working Conditions Code, 2020.

³³ Ibid, S. 2(1)(zf).

prolonged settlement procedure. Such provisions would have certainly found guidance if a broad National Labour Migration Policy attend to the plight of inter-state migrant workers and lay out legal policy mechanism to percolate in various Labour Codes vis-à-vis protection and assurance of rights and benefits to interstate migrant workers.

Last but not least is Gender Dimension of Migration and Feminisation of Domestic Work and Care economy in India. Women migrant workers plays no less significant role in construction industry, hospitality, housekeeping, Women migration in domestic work and care economy is a rising trend even for traditional country like India.³⁴ For example, with Germany employing nurses from state of Kerala. They are nicknamed as ‘brown angels’ for their service and earn hefty remittances for India.³⁵

Even in India, there is considerable presence of Bangladeshi woman in domestic and household works.³⁶ Their invisible and irregular status makes them more vulnerable to violation of their human and labour rights and make them easy target for violence and abuse. Any Policy for migrant workers can afford this feminisation of migrant workers in domestic and household work at its own peril.

8. CONCLUSION

Given hard to manage restriction of word limit, I would conclude my essay with a submission that we should not have a policy for labour migration just for the heck of it. An effective policy would emerge from evaluation of contribution of migrant workers in our collective wealth and from realisation of exploitation, helplessness and powerlessness they undergo just to maintain their survivalist employment. Policy should emanate from clear necessity, from pertinent agency and pan out with participation of all stakeholders. Else exercise shall be futile.

³⁴ Anna Julia Fiedler, *Women and the Future of Care Work in Asia*, 5, (Friedrich Ebert Stiftung, 2020), Available at <https://library.fes.de/pdf-files/bueros/singapur/16156.pdf>, last seen on 20/01/2023.

³⁵ Ajay Kamalakaran, *How Malayali Nurses Came To The Aid Of German Health System*, Onmanorama, (27/12/2021) Available at <https://www.onmanorama.com/lifestyle/keralaspura/2021/12/27/malayali-nurses-germany-health-system.html>, last seen on 15/01/2023.

³⁶ Anas Ansar, *Bangladeshi Women Migrants Amidst The COVID-19 Pandemic: Revisiting Globalization, Dependency And Gendered Precarity In South–South Labour Migration*, Wiley Online Library, (09/04/2022), Available at <https://onlinelibrary.wiley.com/doi/10.1111/glob.12368>, last seen on 16/01/2023.

GENDER IN THE INFORMAL ECONOMY-FEMINIZATION OF LABOUR AND THE REGULATION OF DOMESTIC WORK

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Abstract

Feminization of labour, specifically in the informal economy, is a key phenomenon of labour markets in developing nations, including India. Women workers play a key role in the realisation of the neoliberal vision of development as conditions of capitalist patriarchy render them easily exploitable and disposable. This paper critically reflects on the feminization of labour in the informal economy with a focus on domestic workers. It examines the structural conditions that enable the exploitation of domestic workers through a feminist lens and explores attempts at both the international and domestic level (in India) to address such exploitation by bringing domestic workers within the realm of labour laws. While the International Labour Organization's Convention on Domestic Workers 2011 is a welcome attempt to regulate domestic work by granting them the status of workers and challenging the public-private dichotomy that renders work within the household carried out by women invisible, it runs into both design and implementation challenges. India's resistance as well as attempts at bringing domestic workers within the realm of labour laws is being critically examined.

Keywords: Feminization, Labour market, Discrimination, Harassment, Domestic Workers etc.

1. INTRODUCTION

Discourse concerning neoliberalism's role in constructing the 21st century labour market and labour regulation has come to the forefront as we witness economies go into crisis. While political and economic dimensions of labour markets are being scrutinised, an important dimension that is often overlooked in these conversations is that of gender. Gender is constitutive of the economy both discursively and materially.¹ This holds particularly true of the informal economy which is increasingly feminized. 'Feminization of the informal economy', simply translated, denotes the significant rise in the number of women in the informal labour force around the world², particularly in

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¹ Drucilla K Baker and Susan F. Feiner, *As the World Turns: Globalization, Consumption and Feminization of Work*, 22(2), *Rethinking Marxism*, 246, 246, (2010).

² Ceyhun Elgin & Adem Yavuz Elveren, *Informality, Inequality, and Feminization of Labor*, 2, (PERI, WorkingPaper No. 483, 2019), Available at <https://www.peri.umass.edu/component/k2/item/1170-informality-inequality-and-feminization-of-labor>, last seen on 20/11/2022.

the developing economies.³ The informal economy, by virtue of existing largely outside the scope of labour laws, renders workers in this space in a state of perpetual precarity because of the lack of rights and protections.⁴ Further, women in the informal economy, on account of their gender, are particularly vulnerable. In fact, the exploitation of women is key to the survival of the informal economy and a neoliberal politics.

In this paper, the author will reflect upon the phenomenon of feminization of labour in the informal economy with a specific focus on domestic work, and the regulatory challenges surrounding it, particularly in the context of India. The decision to focus on domestic work is influenced by two factors. First, being located in the private home as opposed to the traditional public market, domestic workers constitute one of the most vulnerable worker populations in the informal labour market. Such vulnerability is both enabled and retrenched by the intersection of gender, race, caste, class, and migration status of such workers. Second, domestic work is unique as it is one of the first sectors of the informal economy that the International Labour Organisation ('ILO') has attempted to regulate.⁵ Such attempt at formalization of domestic work makes it an interesting case study particularly from the perspective of how it opens doors for the entry of regulation into other sectors of the informal economy.

Part one of the paper briefly explores the phenomenon of informalisation of the economy and feminization of labour in the informal economy and highlight India's journey in this regard. Part two deploys a feminist lens to critically analyse the factors that enable the devaluation of domestic work and its exclusion from labour law frameworks. Such devaluation, it argues, can be attributed to the intersection of the gendered dimension of domestic work i.e., work carried out largely by women, and its location in the private home as opposed to the public market. Part three examines the ILO's Convention on Domestic Workers 2011 ('DW Convention') and argues that while it is a welcome attempt at regulation, the "exceptionalism" that characterizes domestic work poses challenges for its implementation. Finally, using India as a case study, the paper closes by reflecting on some of the ways in which the domestic workers movement can claim space in the labour market.

³ UN Women, Women In The Informal Economy, Available at <https://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy>, last seen on 22/11/2022.

⁴ National Commission for Enterprises in The Unorganised Sector, Government of India, *Report on Conditions of Work And Promotion Of Livelihoods In The Unorganised Sector*. Available at https://dcmsme.gov.in/condition_of_workers_sep_2007.pdf, last seen on 20/01/2023.

⁵ Stefanie Visel, *Who Cares? – The ILO Convention 'Decent Work for Domestic Workers*, 3, Transnational Social Review – A Social Work Journal, 229, 230 (2014).

2. FEMINIZATION OF LABOUR IN THE INFORMAL ECONOMY

The term “feminization of labour” has multiple connotations. One such connotation is the incorporation of skills and capabilities stereotypically associated with women as caretakers into the marketplace.⁶ Another, and far more dominant connotation is devaluation of work in sectors where women are overrepresented.⁷ In this seminal article *Global Feminization through Flexible Labour* (which was later revisited in *Global Feminization Through Flexible Labour: A Theme Revisited*) economist Guy Standing argues that structural adjustment in economies around the world (often achieved through the tool of deregulation and inadequate implementation) has been accompanied by changes in the economic roles of women in such economies.⁸ While the use of women as workers has increased, there has also been a weakening of their income and employment security, particularly so in low-income industrializing and industrialized nations.⁹ Further, while there has been a rise of women in the informal workforce, thereby pushing more women outside the domestic realm, such rise has ironically retrenched gender inequality. This is not particularly surprising. As States withdraw from welfare functions, and markets become increasingly informalized, it is inevitable that economically and socially vulnerable groups will be hit the hardest.¹⁰

This is because one of the major factors driving this phenomenon has to do with the fact that women, particularly in developing countries, on account of social and economic oppression have low “aspiration wages”.¹¹ Additionally, given the male centred politics of trade unions, women often find it difficult to organize at par with their male counterparts, thereby making them more vulnerable to exploitation as well as easily disposable.¹² Gendered barriers to mobilization, organizing and making collective demands of employers, renders it difficult for women to challenge power in labour markets thereby rendering them a precarious workforce. Finally, the lack of attention at a policy level on the impact of women’s increased participation in the labour force, in terms of implications for gender equality,¹³ ensures that they fall outside the net of measures that seek to address precarity in the informal economy. Underpaid,

⁶ Encarnación Gutiérrez-Rodríguez, *The Precarity of Feminisation: On Domestic Work, Heteronormativity and the Coloniality of Labour*, 27, Int J Polit Cult Soc, 191,192 (2014).

⁷ Ibid at 191.

⁸ Guy Standing, *Global Feminization through Flexible Labour*, 17, World Development, 1077, 1077 (1989).

⁹ Ibid.

¹⁰ Ibid at 1078.

¹¹ Ibid at 1080.

¹² Supra 5, at 233.

¹³ *Empowering Women in the Informal Economy*, International Labour Organisation, Available at https://www.ilo.org/global/topics/future-of-work/publications/issue-briefs/WCMS_618166/lang--en/index.htm, last seen on 20/01/2023.

overworked, invisibilised, and easily replaced - women constitute the bulk of the labour force in the globalized informalized marketplace.¹⁴

3. FEMINIZATION OF LABOUR IN INDIA

In India, which ushered into the age of Liberalization, Privatization and Globalization ('LPG') in 1991, feminization of labour was a result of the New Economic Policy and Structural Adjustment Program measures adopted since.¹⁵ The informal economy, which accounts for about 80 percent of non-agricultural employment,¹⁶ constitutes the backbone of the Indian economy.¹⁷ While the LPG age has witnessed a substantial rise in the number of working women, such rise is disproportionately reflected in the agricultural and informal sector.¹⁸ About 94 percent of the total working women in India are engaged in the informal sector, of which only about 20 percent are located in urban centers.¹⁹ Further, a lowly 7.5 percent of female workers are members of registered trade unions.²⁰ Besides gender, identities such as caste, migration status, race, and ethnicity often intersect and lead to experiences of compounded discrimination for domestic workers. In India, some of the most identifiable categories of women informal workers includes construction workers, garmentworkers, vendors, salespersons, and domestic workers.²¹ In fact, along with Brazil, India is one of the two largest employers of domestic workers in the world.²² Despite this, and as will be discussed in this paper, domestic workers in India continue to be one of the most vulnerable categories of informal workers.

While attempts at mobilization have been made, the neoliberal, capitalist, and patriarchal conceptions of development in India, has led to deeply inadequate State response to grassroots demands. This holds true not just for domestic workers, but for the informal sector at large. However, in case of domestic workers, given the location of their work within the isolated private sphere of the household, organizing and

¹⁴ Archana Prasad, *De-feminization and (Dis)empowerment of Women Workers in Garment Factories*, 3, Indian Journal of Women and Social Change, 12, 15 (2018).

¹⁵ Ibid.

¹⁶ Informal Economy In South Asia, International Labour Organisation, Available at <https://>, last seen on 20/01/2023.

¹⁷ Adit Roy Ghatak, *Misleading Dichotomy*, D+C DEVELOPMENT AND COOPERATION (14/09/2017), Available at <https://www.dandc.eu/en/article/indias-informal-sector-backbone-economy>.last seen on 20/01/2023.

¹⁸ Govind Kelkar, *Informalisation of Women's Work in India*, Heinrich Böll Stiftung (26/11/2019) Available at <https://in.boell.org/en/2012/05/25/informalisation-womens-work-india>, last seen on 20/01/2023.

¹⁹ Dr. Geetika, Dr. Tripti Singh and Anvita Gupta, *Women Working in Informal Sector in India: A saga of Lopsided Utilization of Human Capital*, 4, IPEDR, 534, 535 (2011).

²⁰ Ibid.

²¹ Ibid.

²² Sabrina Marchetti, *The Global Governance of Paid Domestic Work: Comparing the Impact of ILO Convention No. 189 in Ecuador and India*, 44, Critical Sociology, 1191, 1196 (2018).

unionizing is particularly challenging.²³ This is furthered by the fact that domestic workers often work flexible hours, and sometimes live with the families they work for.²⁴ Finally, the systematic and persisting oppression on the basis of multiplicity of identities, implies that a simple recognition of rights of domestic workers is not sufficient for their liberation from oppressive market practices. Instead, freedom and justice require political responses to deeply entrenched structural problems, and a radical restructuring of labour markets.

4. DOMESTIC WORK UNDER CONDITIONS OF CAPITALIST PATRIARCHY

Women's labour takes many forms in the informal feminized economy. While women are disproportionately concentrated in certain sectors such as garment making and sex work, and face specific associated vulnerabilities, one particularly vulnerable space for women is domestic work. This is on account of the fact that they work in private households (often multiple), often without any clear terms of employment and are largely unregistered and fall outside the scope of labour legislation.²⁵ The invisibilisation of domestic work in legal policy, witnessed in both international and domestic discourse, is enabled by the framework of 'capitalist patriarchy' through which such work is formulated. First conceptualized by socialist feminists, capitalist patriarchy argues that capitalism and patriarchy are not disjunct independent systems of power but are instead "simultaneous, mutually reinforcing systems of oppression that stand in a dialectic relationship with each other".²⁶

Capitalism plays a critical role in the social construction of the categories of productive and reproductive work (which includes domestic work), and devalues the latter for its failure to contribute to surplus value. Reproductive work or labour is generally understood as including work such as running the household (which includes purchasing household goods, cooking food, laundering clothes, etc.) as well as caretaking activities such as bringing up children, providing care and emotional support to adults, and maintaining kin and community ties.²⁷ The devaluation of reproductive work is made possible primarily because of the politics of sexual division of labour under conditions of patriarchy. Marxist feminists locate such gendered construction of

²³ Supra 5, at 233.

²⁴ Ibid.

²⁵ Who Are Domestic Workers, International Labour Organisation, Available at <https://www.ilo.org/global/topics/domestic-workers/who/lang--en/index.htm>, last seen on 24/11/2021.

²⁶ Mechthild Hart, Capitalist Patriarchy, *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*, 1 (Nancy A. Naples ed., 2016).

²⁷ Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labour*, *18 Signs*, 1,1 (1992).

labour as central to women's oppression.²⁸ They argue that reproductive work is disproportionately undertaken by women, and the representation of gender as the sole basis of assignment of reproductive labour leads to the conclusion that such division of labour is a universal female experience.²⁹ This argument is confirmed by data, wherein a 2018 report by UN women shows that despite the increased presence of women in the public sector, on an average women do 2.6 times more domestic and unpaid work than men.³⁰ This number varies from country to country, with women in countries like India spending 577% more time than men on unpaid domestic work.³¹

Disregard for domestic work is also reflected in how nation's measure production via indicators such as Gross Domestic Product ('GDP') which more often than not refuse to acknowledge the value of domestic work.³² For instance, while domestic unpaid work accounts for 3.1% of the GDP in India, this contribution is not recognised or is incorrectly measures thus leading to a "systemic transfer of hidden subsidies to the economy".³³ Thus, the assertion that domestic work does not aid the capitalist economy is far from the truth. Further, even when paid for, such work is often undervalued. Instead, the sexual division of labour is key for the maintenance of capitalist structures. As feminist political theorist Iris Marion Young argues in her seminal essay *Five Faces of Oppression*, the oppression of women is not simply a product of inequality of status, power and wealth on account of exclusion from privileged activities.³⁴ It must be realised that the freedom, power, status and self-realization of men is made possible precisely because of women's work for them.³⁵

The transfer of the fruits of material labour to men characterizes gender exploitation within structures such as traditional heteronormative families.³⁶ Gendered expectations make it possible for men to benefit from such labour and engage in "productive work" while women's labour goes unremunerated and unnoticed. The

²⁸ Ibid at 2.

²⁹ Ibid at 2.

³⁰ UN Women, *Turning Promises Into Action: Gender Equality In The 2030 Agenda For Sustainable Development*, 2 (2018), Available at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdg-report-summary-gender-equality-in-the- 2030-agenda-for-sustainable-development-2018-en.pdf?la=en&vs=949&la=en&vs=949>, last seen on 20/01/2023.

³¹ Tish Sanghera, *How Domestic Responsibilities Are Keeping India's Women Away From Workforce, Increasing Inequality*, Scroll.in (26/03/2019), Available at <https://scroll.in/article/917767/how-domestic-responsibilities-are-keeping-indias-women-away-from-workforce-increasing-inequality>, last seen on 20/01/2023.

³² Diane Coyle, *The Way We Measure Economies Is Inherently Sexist*, World Economic Forum (13/04/2016) Available at <https://www.weforum.org/agenda/2016/04/why-economic-policy-overlooks-women/>, last seen on 19/01/2023.

³³ Supra 31.

³⁴ Iris Marion Young, *Five Faces of Oppression*, 19, The Philosophical Forum, 270, 278 (1988).

³⁵ Ibid.

³⁶ Ibid.

presumption that domestic work is unskilled labour is enabled by the fact that it is traditionally women's work, and the skills taught by women to women are perceived to be innate.³⁷ Further, the location of women's reproductive work outside the capitalist construct of the marketplace also contributes to its devaluation in the economy. This is particularly apparent in the case of reproductive tasks such cooking, wherein individuals who undertake cooking professionally within traditional market structures are viewed as skilled labour, while women who undertake cooking within the household for pay are viewed as performing women's unskilled tasks.

5. GENDERED VULNERABILITY OF DOMESTIC WORKERS

Globally, women continue to perform a vast majority of unpaid household and care work.³⁸ Even when women are employed, they tend to be involved in a disproportionately larger share of domestic work which in turn limits their capacity to increase their hours in "productive work" outside the household.³⁹ Further, statistics from 2018 demonstrate that women's labour force participation has declined from 51.4% in 1990 to 48.5%.⁴⁰ Despite this, it remains that there has been a visible rise in the number of women who are employed in the formal sector. While, as demonstrated, this does not necessarily translate into the undoing of sexual division of labour in the household, it has led to the phenomenon of the outsourcing of domestic work. In a vast majority of cases, given the gendered characterization of such work, domestic workers tend to be women. Of the 67 million domestic workers worldwide, about 80 percent are women.⁴¹ Thus, the gendered division of labour continues to be replicated as domestic workers essentially replace or complement other women's gender-based roles.⁴² By supporting careers of more privileged women without disturbing the gender arrangements within heteronormative families, domestic work also allows for the prioritization of professional ambitions of partners who identify with masculinity.⁴³ Instead of altering gendered relations, domestic workers play a critical role in feeding capitalist patriarchal economic and social structures.

³⁷ Adelle Blackett, *The Decent Work For Domestic Workers Convention And Recommendation*, 2011, Current Developments, 778, 780, (2012).

³⁸ International Labour Organisation, *Women At Work: Trends 2016*, 15 (2016) Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf, last seen 10/01/2023.

³⁹ *Ibid.*

⁴⁰ *Labour Force Participation Rate, Female (% Of Female Population Ages 15+)*, The World Bank, Available at <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>, last seen on 20/01/2023.

⁴¹ *Supra 25.*

⁴² Glenda Labadie-Jackson, *Reflections on domestic work and the feminization of migration*, 31, Campbell Law Review 67, 70 (2008).

⁴³ *Supra 6*, at 195.

Women involved in domestic work also tend to be particularly vulnerable on account of their social identity and economic location. In addition to facing vulnerability on account of their gender identity and their location in the informal economy, domestic workers also face discrimination along lines of race, migrant status and caste.⁴⁴ In the developed world which includes countries such as the United States of America and the European Union, a large chunk of domestic workers are racial minorities or immigrant women.⁴⁵ In this context, it is pertinent to note that domestic work constitutes one of the major forces driving international labour migration of women.⁴⁶ Further, in developing countries like India, a large proportion of domestic workers are women either from rural India or are women who are disadvantaged on account of their caste identity.⁴⁷ Thus, gendered power relations are replaced by other forms of power relations (race, caste, class, etc.) between ‘professional’ women in traditional households and domestic workers that work for them.

The social and cultural associations of domestic work play a critical role in how paid domestic work is viewed and regulated. Despite being paid work, domestic work continues to be viewed as an extension of women’s work in the household. The workplace being the private sphere of the home (as opposed to spaces like factories) further creates challenges for effective regulation. The public-private dichotomy that has been historically used to justify the State’s refusal to address violence against women within the home, continues to persist in its refusal to regulate domestic work. Domestic workers thus occupy a unique place in the informal economy. By the virtue of carrying out reproductive labour while being located in the private sphere of the home, domestic workers find themselves at the bottom of the productivity and prestige hierarchy in the capitalist patriarchy economy.

6. THE REGULATION OF DOMESTIC WORK:

6.1 Work Like Any Other, Work Like No Other

The ILO’s 2011 Convention Concerning Decent Work for Domestic Workers (‘DW Convention’) is the first international instrument providing for the regulation of domestic work. While the ILO has stated that all existing international standards, unless explicitly stating otherwise, apply to domestic workers, given the unique nature and associated vulnerabilities of domestic work, there was a necessity for a specific framework for such work.⁴⁸ Such vulnerabilities arise from the pluralist law of “home-

⁴⁴ Supra 25.

⁴⁵ Supra 42, at 72.

⁴⁶ Supra 42, at 75.

⁴⁷ Parvathi Raghuram, *Caste and Gender in the Organisation of Paid Domestic Work in India*, 15, Work, Employment & Society, 607, 607 (2001).

⁴⁸ International Labour Organisation, C189 & R120 at a glance, 1,6

workplace” which is often at odds with labour laws⁴⁹, given domestic workers are located in the home.⁵⁰ Further, recognising that domestic work is deeply gendered and a substantial percentage of domestic workers are migrant workers, the Committee on Elimination of Discrimination against Women issued General Comment No. 26⁵¹ on women migrant workers in 2008, and the Committee on the Protection of Rights of all Migrant Workers and Their Families issued General Comment No. 1⁵² on migrant domestic workers in 2011, respectively. In addition to these frameworks, international conventions on trafficking, forced labour, child labour, and rights of women are particularly important given the intersecting issues that characterize the precarity of domestic work, and vulnerabilities of domestic workers.

The DW Convention is unique as it marks the ILO’s first attempt to set standards for workers in the informal economy.⁵³ It sets minimum standards pertaining to issues such as working hours, minimum wages, overtime pay, leave, freedom of association, workplace conditions, amongst others. The DW Convention explicitly recognises the economic value of the caretaking activities carried out within the household⁵⁴ and challenges the patriarchal capitalist framework that has historically undervalued such work. The ILO’s 2010 Report (‘2010 Report’) on Decent Work for Domestic Workers, which formed the basis for the first discussions at the ILO on standard setting for domestic work, provides valuable insight into the specific challenges associated with regulating such work. The 2010 Report adopts a feminist lens when analyzing domestic work and calls out the hypocrisy and gendered nature of different regulatory approaches and values associated with the exact same work depending on whether such work is located in the household or the traditional marketplace. For instance, it notes –

⁴⁹ (2011), Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf, last seen on 20/01/2023.

⁵⁰ Supra 37 at 784.

⁵¹ Supra 48.

⁵² *General Recommendation No. 26 On Women Migrant Workers*, (05/12/2008), Committee On Elimination Of Discrimination Against Women, *Official Record*, CEDAW/C/2009/WP.1/R, (05/12/2008), Available at <https://www.refworld.org/docid/4a54bc33d.html>, last seen on 20/01/2023.

⁵³ *General Comment No. 1 On Migrant Domestic Workers*, (23/02/2011), Committee On Protection Of Rights Of Migrant Workers And Members Of Their Families, General Comment No 1 On Migrant Domestic Workers, *Official Record*, CMW/C/GC/1 , (23/02/2011), Available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-migrant-domestic-workers#:~:text=The%20Committee%20considers%20that%20migrant,facie%20violation%20of%20the%20Convention>, last seen on 20/01/2023.

⁵⁴ Supra 5.

⁵⁵ Adelle Blackett, *Current Developments: The Decent Work for Domestic Workers Convention and Recommendation*, 106 (4), The American Journal of International Law, 778, 780, (2012).

“Yet the same domestic services are treated differently when regulated outside the home and when performed within the household. There is no fundamental distinction between work in the home and work beyond it, and no simple definition of public-private, home – workplace and employer-employee. Caring for children and the disabled or elderly persons in the home or in a public institution is all part of the same regulatory spectrum, wherein a range of migration and other policies shape both the supply of and the demand for care services.”⁵⁵

It also identifies the lack of clarity with respect to the status of domestic work under labour legislation leading to its exclusion from regulation.⁵⁶ As a consequence, as opposed to the State, domestic work is largely regulated by strong non-state norms within the employer’s household.⁵⁷ Such norms vary from household to household, and across cultural contexts.⁵⁸ This renders domestic workers as one of the most marginalized categories of workers, and makes it challenging to realize decent work standards for them.⁵⁹ The 2010 Report stipulates that mere tinkering with existing labour laws will not address the specificities of domestic work, and such a framework must capture the range of stakeholders including employers, placement agencies, care recipients involved in this ecosystem and also account specifically for the migratory nature of such work.⁶⁰ It goes on to propose a unique framework for the conceptualisation of domestic work, by recognising that it is ‘Work like any other, Work like no other’.

Locating domestic work in historical context, wherein it has been viewed through the lens of paternalism as opposed to employment, a trend that continues till date, the 2010 Report argues that a shift in such framing is necessary for adoption of a rights based approach towards domestic work.⁶¹ This is particularly the case in countries such as India where domestic workers are often treated as an extension of the family (though not accorded equal dignity) and demands for rights on their part are equated with ungratefulness/unbecoming behaviour. Viewing domestic workers through the lens of paternalism as opposed to employment is enabled in large part by the gendered nature of domestic work. The ‘taking women’s labour for granted’ frame extends to women who carry out reproductive tasks for pay. Substituting fair pay with pay in kind which

⁵⁵ Decent Work for Domestic Workers, International Labour Conference Report, Geneva Switzerland, (2018), WCMSP5, 74, Available at https://www.ilo.org/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_104700.pdf, last seen on 20/01/2023.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid at 12.

often includes old clothes, meals and paternalistic yet superficial caretaking is unique to women's domestic work. In their paper, *Bargaining over Wages: Part-time Domestic Workers in Kolkata*, authors Nilanjana Sengupta and Samita Sen label such practice as "pragmatic intimacy" wherein assumed personal relationships play a critical role in how power relationships are constituted between the employer and domestic workers in relation to negotiations concerning wages and allied issues.⁶² In stark contrast, work predominantly carried out by men such as gardening or driving, even though located in the household and catering to private families, does not elicit such an attitude. Further, benefits of unionization have allowed male workers in India to increase their bargaining power vis-a-vis employers even when such work is located in the private realm of the household.

The 2010 Report recognises the paternalistic lens through which employer-domestic worker relationship is characterized, and in addition to extension of rights, nudges for an acknowledgement of such cultural norms while framing regulations. The 'Work like any other, Work like no other' framework urges that effective laws must be cognizant of the personal character of domestic work and the context in which it takes place, while reaffirming its compatibility with the employment relationship.⁶³

7. THE INTERNATIONAL LABOUR ORGANISATION AND DOMESTIC WORK:

- From Paternalism to A Rights Based Approach**

The shifting of the frame from paternalism to human rights had important implications for how ILO delegates went about the process for setting decent work standards for domestic work.⁶⁴ While keeping in mind the traditional contours of domestic work, they contrasted it with workplace norms that are applicable to comparable categories of workers and work relationships, and thereafter determined how such standards could be adopted in the case of domestic work to arrive at a "decent work" standard.⁶⁵ Certain provisions of the DW Convention are worth noting in this context. These provisions play a crucial role in disrupting traditional conceptions of domestic work, while specifically contouring domestic worker's rights in light of their unique situation. However, the difficulties associated with categorization of domestic workers (live-in vs. live-out and full-time vs. part-time), complexities involved in wage fixation, the variations with respect to terms of work,

⁶² Nilanjana Sengupta & Samita Sen, *Bargaining over Wages: Part-time Domestic Workers in Kolkata*, 48, EPW, 55,58 (2013).

⁶³ Supra 55, at 13.

⁶⁴ Supra 37, at 784.

⁶⁵ Ibid.

hours of work and wages, and the location of domestic work in the home makes the drafting, implementation, and enforcement of a framework on domestic worker's rights considerably challenging.⁶⁶

Article 6 of the DW Convention requires Member States to ensure that domestic workers are informed of their terms and conditions of work, where possible, through written contracts.⁶⁷ Through this, it seeks to address one of the most pressing issues affecting domestic workers i.e., broad, and undefined expectations from employers, and closely linked to this, exploitation. Domestic tasks such as "caretaking" and "cleaning" are deeply laborious and can include a narrow as well as a broad range of activities. Further, depending on the range of activities that are to be performed, remuneration expectations will vary. In sharp contrast, other activities in the informal sector, such as the garment industry, tend to link pay to units of production. Addressing information asymmetry with respect to terms and conditions of work is thus key to ensuring both fair hours and fair compensation for domestic workers. However, giving that reproductive labour has visible and invisible dimensions (emotional labour involved in caretaking), and the proportion of labour invested is largely contingent on the subject of care (for example, caretaking for an elderly person will be more intensive and longer when they are ill) and expectations of the care-receiver, demarcating domestic work into measurable units and adequately compensating such work becomes challenging. This critique can of course be broadly extended to the gendered dimensions of work, wherein 'neutral markets' structured along patriarchal dimensions serve men better than women. In case of domestic work, given its gendered core, such impacts are felt even more acutely.

Similarly, Article 9 recognises the right of domestic workers to negotiate living arrangement with their employers i.e., they choose whether they want to reside in the household of the employer.⁶⁸ Further, they are not bound to remain in the household during periods of leave and rest.⁶⁹ Through this, Article 9 disrupts the binary of work-home by establishing that the home is a workplace, and domestic workers like other workers, have the autonomy to "leave" work once it is complete, and cannot be compelled to reside within the household of the employer. In case that they do reside in the household, they are not dispensable at the beck and call of the employer and have the right to leave the household during times of leave/rest. However, as discussed below, the inherently flexible and fragmented nature of domestic work makes it challenging to operationalise such a provision. The

⁶⁶ Neetha N. & Rajni Palriwala, *The Absence of State Law: Domestic Workers in India*, (23), CJWL, 98, 113 (2011).

⁶⁷ Domestic Workers Convention, Article 6.

⁶⁸ Ibid. Article 9(1).

⁶⁹ Ibid. Article 9(2).

boundaries between ‘work’ and ‘not-work’ are almost non-existent in this case, particularly for workers living in the employer’s household.⁷⁰ Domestic workers are expected to make themselves available and ready to work, as an unavoidable adjunct to the job.⁷¹ Despite this, the principled recognition of the home as a workplace is a necessary first step towards challenging gendered and capitalist public- private dichotomy. Another notable provision is Article 11 which requires States to establish a minimum wage in case of domestic workers, and where such minimum wage exists, to ensure that it is without discrimination on the basis of sex.⁷² Through this it achieves two objectives. First, it rejects the ‘compensation by kind’ model which is disproportionately present in domestic work, particularly in developing nations like India. Second, recognising that gender-based devaluation of work is particularly precarious in case of domestic work, the DW Convention explicitly prohibits sex-based discrimination in pay. Again, definitional challenges associated with domestic work requires addressing prior to setting the minimum wage for such work.

While the DW Convention standards are welcome, and even necessary, conceptualizing broad principles into concrete, operational and enforceable statutory provisions is challenging given the ~~int~~ flexibility and fluidity that characterizes domestic work. This is acutely felt when it comes to regulating working time, particularly given domestic workers are globally subject to excessive working hours, and unpredictable schedules.⁷³ Closely related to this is the fact that domestic workers often work for multiple employers in a given day, particularly in developing nations. The challenge thus lies in ensuring compatible flexibilities i.e., the employer’s need that the domestic worker be present in urgent circumstances, and the worker’s capability to address such ~~dmnd~~while balancing other responsibilities.⁷⁴

Regulating working time is also linked to issues discussed above such as terms of work, autonomy to not live in the employer’s household, and minimum wages. The DW Convention attempts to address this via Article 10 which stipulates that member states must take measures to ensure that the “normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave of domestic workers” are not less favorable than those provided to other workers.⁷⁵ As illustrated, the challenge lies in determining “normal hours of work” and finding comparable standards for such assessment. Further, the Article provides that on-call or stand-by periods will be treated as hours of work but leaves its determination to

⁷⁰ Deirdre McCann & Jill Murray, *Prompting Formalisation Through Labour Market Regulation: A ‘FramedFlexibility’ Model for Domestic Work*, 43, Industrial Law Journal, 319, 325 (2014).

⁷¹ Ibid.

⁷² Domestic Workers Convention, Article 11.

⁷³ Supra 70, at 333.

⁷⁴ Supra 70, at 332.

⁷⁵ Domestic Workers Convention, Article 10.

national standards.⁷⁶ By deferring such determination to member states, the DW Convention implicitly permits domestic legislations to discount on-call hours from working time.⁷⁷ As a consequence, domestic workers are subject to less favorable treatment as compared to the other categories of workers who are covered by the Hours of Work Conventions.⁷⁸ This is an illustration of how the ‘Work like Any Other, Work like No Other’ frame while theoretically desirable, runs into challenges.

Another critical challenge lies with monitoring and enforcement. The location of the workplace being the private home, makes traditional labour enforcement mechanisms unfeasible. For instance, randomized inspections in public workplaces like factories by labour inspectors cannot be extended to households employing domestic workers, as such inspections will raise legitimate concerns about privacy. Privacy concerns are also related to complaint mechanisms, wherein the verification of complaints may require access to households where such workers work. While, in cases of allegations of labour trafficking and forced labour, given the criminal dimensions of such activities, proportional search, seizure and rescue powers may be deemed legitimate, it will be difficult to extend similar intrusive powers in case of claims arising from violation of minimum standards under domestic worker laws. Further, immigrant domestic workers, who constitute a large proportion of such workers, may find it difficult to access complaint mechanisms on account of language and cultural barriers.⁷⁹ This is a particularly pertinent issue in developing countries where lack of education and awareness operates as a major barrier in accessing remedies.

Finally, the DW Convention given its labour focus fails to adequately address issues such as gender inequality, unequal distribution of care work between the genders, and issues specific to immigrants, particularly undocumented migrants.⁸⁰ States thus need to accompany the implementation of this Convention with substantive efforts to address the aforementioned challenges, and work towards developing complementary structures for institutional and financial support, education, and unionization. Given that till date, the DW Convention has been ratified by only 35 countries also demonstrates the global lack of commitment to developing decent work standards for one of the most vulnerable categories of workers in the informal economy.

⁷⁶ Ibid, Article 10(3).

⁷⁷ Deidre McCann, *New Frontiers Of Regulation: Domestic Work, Working Conditions And The Holistic Assessment Of Non-Standard Work Norms*, 34, Comparative Labour Law and Policy Journey, 167,184 (2012).

⁷⁸ Ibid.

⁷⁹ Supra 70, at 326.

⁸⁰ Supra 5, at 240.

8. REGULATION OF DOMESTIC WORK IN INDIA:

• A Critical Reflection

The attempt to regulate domestic work in India started as early as a decade after the country's independence with the Domestic Workers (Conditions of Service) Bill ('1959 Bill') being introduced in the form of a private bill in the Upper House of the Parliament in 1959.⁸¹

The push to introduce this Bill was a product of grassroot mobilization by domestic workers collectives which gathered in protest in the capital city of New Delhi demanding the recognition of their rights.⁸² However, the 1959 Bill was eventually withdrawn, and was followed by similar failed attempts at legislating domestic workers rights.⁸³ The Government of India's conscious attempt to avoid the recognition of the rights of domestic workers is reflected by its refusal to take into account the recommendations of its own Committee on the Status of Women in India which in 1974 pushed for the regulation of conditions of domestic workers, and subsequently in 1988 when it disregarded similar recommendations from the National Commission on Self-Employed Women and Women in the Informal Sector.⁸⁴ The latest attempt at regulation is National Policy on Domestic Workers which is in the process of being drafted by the Ministry of Labour and Employment.⁸⁵ The choice of a non-enforceable policy as opposed to an enforceable statutory framework speaks of the State's lack of commitment to recognise the rights of domestic workers.

As of date, the number of domestic workers in India ranges anywhere between the official estimate of 4.2 million to unofficial estimates of around 50 million.⁸⁶ The domestic worker market is largely concentrated in urban India,⁸⁷ which has witnessed a 120 percent rise in the number of domestic workers since liberalization.⁸⁸ Despite the growing numbers, the State's refusal to regulate such work reflects both its neoliberal

⁸¹ Nicola Cunningham Armacost, *Domestic Workers in India: A Case for Legislative Action*, 36, Journal of Indian Law Institute, 53, 57 (1994).

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Neetha N. & Rajni Palriwala, *The Absence of State Law: Domestic Workers in India*, (23) CJWL, 98, 98 (2011).

⁸⁵, National Policy For Domestic Workers Press Information Bureau, Government Of India, Ministry Of Labour And Employment, (07/01/2019), Available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1558848>, last seen 22/01/2023.

⁸⁶ Alison Saldana, *The World Of India's Domestic Workers*, (01/10/2017), Available at <https://www.theweek.in/webworld/features/society/the-world-of-indias-domestic-violence.html>, last seen on 22/01/2023.

⁸⁷ Chandramouli Kodandarama, *Women's Domestic Work in India: An Analysis*, 8(1) (IJITEE), at 1, 2, (2018). Available at <https://www.ijitee.org/wp-content/uploads/papers/v8i1/A2526118118.pdf>, last seen on 22/01/2023.

⁸⁸ Supra 66.

agenda, as well as deeply gendered and casteist dimensions of policy priorities. The devaluation of domestic work is rendered possible not only because of its location within the private household, but also because of the assumed persona of domestic workers.⁸⁹ In addition to stratification on the basis of gender, domestic workers in India are largely drawn from social sections that have been and continue to be devalued in India.⁹⁰ The caste, ethnicity, race and migration status (specifically migrant workers from rural India and underdeveloped States of India) intersect to create a category of workers who occupy the lowest rung in the hierarchy of power - socially and in the marketplace.

Despite the absence of a national regulatory framework, attempts have been made at a national level to bring domestic workers within the purview of various labour laws. However, these attempts are largely ad hoc, fragmented, and tokenistic. One of the few laws that covers domestic workers is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('2013 Act'). The 2013 Act defines a domestic worker⁹¹ and includes a dwelling place or household within the definition of workplace.⁹² In addition to requiring formal workplaces to establish an Internal Complaints Committee,⁹³ it provides for the establishment of a Local Complaints Committee ('LCC') in every district of the country.⁹⁴ The primary objective of the LCC is to ensure that women who work in the informal sector can seek redressal under the law in case of sexual harassment. However, despite nine years having elapsed since the passage of the 2013 Act, LCCs have not been set up in every district.⁹⁵ Further, there continues to be an acute lack of awareness about their existence or role amongst women in the informal sector.⁹⁶ Even when there is awareness, the stigma associated with sexual harassment and the fear of loss of livelihood, particularly in the informal economy where regulations do not exist, deters women from reporting such violence. Thus, despite being covered by the 2013 Act, domestic workers continue to face structural barriers in accessing redressal under it.

Another relevant legislation is the Unorganised Workers' Social Security Act, 2008 ('2008 Act'). The 2008 Act defines a home-based worker⁹⁷ broadly to include

⁸⁹ Supra 84, at 100.

⁹⁰ Ibid.

⁹¹ S. 2(e),The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁹² S. 2(o)(vi), Ibid.

⁹³ S. 4, Ibid.

⁹⁴ S. 6, Ibid.

⁹⁵ *Where Are Local Complaint Committees, Ask Activists*, The Hindu (Dec/9/2019), Available at <https://www.thehindu.com/news/cities/Hyderabad/where-are-local-complaints-committees-ask-activists/article25866389.ece>, last seen on 23/01/2023.

⁹⁶ Ibid.

⁹⁷ S. 2(b), The Unorganised Worker's Social Security Act, 2008.

domestic workers and brings them within the purview of the unorganised sector.⁹⁸ Like the 2013 Act, the 2008 Act, by explicitly acknowledging that the household is a workplace challenges the public-private dichotomy that has been the normative basis for labour laws. However, the 2008 Act is largely a paper tiger and besides providing for the registration of unorganised workers⁹⁹, it does very little to address their social security needs. For starters, it adopts a welfare based as opposed to a rights-based approach to social security. It does so by providing for a discretionary duty on States to enact social security welfare schemes and provides statutory backing to existing welfare schemes.¹⁰⁰ One of the few welfare schemes that covers domestic workers is the *Rashtriya Swasthya Bima Yojana* ('RSBY'). However, coverage under the RSBY is made contingent on domestic workers obtaining verification of their status by at least two of the four recognised authorized agents under the scheme which includes: the police, employer's resident welfare associations, the employer, and worker unions.¹⁰¹ First, workers in no other sector are required to undergo such a rigorous and bureaucratic process for registration.¹⁰² The rationale behind introducing such a verification process specifically for domestic workers is unclear. Second, the requirement for verification by entities other than an employer in itself poses a huge barrier to accessing benefits under the scheme. Given their socio-economic status, domestic workers often lack the mobility to approach authoritative and inaccessible entities such as the police or male dominated trade unions. Thus, the lack of insight in the design of the RSBY in itself demonstrates the State's misinformed and nonchalant approach towards empowering domestic workers. Coming back to other aspects of the 2008 Act, bodies like the National Social Security Board,¹⁰³ the State Social Security Boards,¹⁰⁴ and Workers Facilitation Centers¹⁰⁵ which are set up under it lack adequate institutional powers for effective monitoring or enforcement and have instead been vested with administrative functions largely limited to advising the Government and registering workers.¹⁰⁶ The 2008 Act thus does very little to address the social security needs of informal workers, and is a largely tokenistic piece of legislation. Finally, the Maternity Benefit Act, 1961 (which was recently amended via the Maternity Benefit Amendment Bill, 2017) which provides for paid maternity leave, applies only to women who work in factories, mines, plantations, shops, and

⁹⁸ S. 2(m), *Ibid.*

⁹⁹ S. 10, *Ibid.*

¹⁰⁰ S. 3, Schedule. I, *Ibid.*

¹⁰¹ N Neetha, *Paid Domestic Work: Making Sense of the Jigsaw Puzzle*, 48 EPW, 35,37, (2013).

¹⁰² *Ibid.*

¹⁰³ S. 5, The Unorganised Worker's Social Security Act, 2008.

¹⁰⁴ S. 6, *Ibid.*

¹⁰⁵ S. 9, *Ibid.*

¹⁰⁶ S. 5, 6 & 9, *Ibid.*

other establishments.¹⁰⁷ The 2017 amendment thus misses out the opportunity to, like the 2008 Act and 2013 Act, recognise the home as a workplace and extend maternity benefit to domestic workers. Thus, national laws fail to adequately protect rights of domestic workers, either through omission or through weak provisions and poor implementation.

In addition to (poor and inadequate) efforts at the national level, various States in India have brought domestic workers within the purview of minimum wage laws. While the national minimum wage law does not provide for minimum wages for domestic workers, States such as Kerala,¹⁰⁸ Andhra Pradesh, Bihar, Rajasthan and Karnataka have issued notifications under their minimum wage laws to cover domestic workers.¹⁰⁹ The State of Kerala provides an excellent example in this regard as it distinctly lists out the minimum pay for different domestic services such as cleaning, cooking, caretaking, laundry, grocery shopping, etc.¹¹⁰ Such clear demarcation allows for domestic workers to effectively bargain with their employers and bring clear claims of non-payment before authorities. Karnataka on the other hand follows a clubbed approach wherein it clubs several (yet unrelated) domestic services into different categories (for example, Category 2 includes washing clothes, washing utensils, housekeeping and cleaning and looking after children) and prescribes a minimum wage for each of such categories.¹¹¹ Such an approach makes it easy for employers to arbitrarily determine how much a domestic worker should be paid as they are free to assign a value to each of the services within a category and accordingly deduct pay if not all the services in a category are provided. Besides attempts by a handful of States, other States in India do not bring domestic workers within the coverage of minimum wage laws.

Further, poor enforcement and inadequate grievance redressal mechanisms continues to limit the application of minimum wage laws. Additionally, as demonstrated by Kamala Sankaran, in her piece *Domestic Work, Unpaid Work and Wage Rates*, wherein she analyses minimum wage coverage for domestic workers, the wages of domestic workers for activities such as cooking and caretaking are often lower than wages payable to cooks or nurses in establishments other than households.¹¹² This goes to show that minimum wage norms for domestic workers

¹⁰⁷ S. 2(1). The Maternity Benefit Act, 1961.

¹⁰⁸ Government Of Kerala, Kerala Gazette G.O. (P) No. 202/2016/LBR. (2016).

¹⁰⁹ Rohan Ravindra Gudibande & Arun Jacob, *Minimum Wage Laws for Domestic Workers: Impact Evaluation of the Indian Experience* 1, CFD, Working Paper No. 5, 2015, Available at <https://ideas.repec.org/p/gii/cfdwpa/cfdwp05-2015.html>, last seen on 23/01/2023.

¹¹⁰ Ibid.

¹¹¹ Government Of Karnataka, Karnataka Gazette, Notification No. Kae 1 Lmw 2015, Dated 16/09/2016.

¹¹² Kamala Sankaran, *Domestic Work, Unpaid Work and Wage Rates*, 48 EPW, 85, 89 (2013).

are reflective of the undervaluation of work performed by women within the household.¹¹³ All of these factors render fair compensation a distant reality for domestic workers. The newly passed labour codes, which replace 29 of India's labour laws, namely: the Industrial Relations Code, 2020, the Wages Code, 2019, the Occupational Safety, Health, and Working Conditions Code, 2020 and the Social Security Code, 2020 are a failed opportunity to bring domestic workers within the purview of labour laws by recognizing them as workers and extending adequate rights and protections to them.

The marginalization of domestic workers by the government, both central and state, has been supplemented by the judiciary. The Supreme Court of India while determining what constituted an "industry" for the purpose of the Industrial Disputes Act, 1947 ('1947 Act'), in its landmark decision Bangalore Water Supply and Sewage Board v. Rajappa¹¹⁴ stated that domestic workers fall outside the purview of industry. The rationale behind this ruling was that industries were characterized by plurality of work-persons or "organized labour" as opposed to isolated workers.¹¹⁵ As a consequence of this decision, even when domestic workers behave like organized labour i.e., mobilize, organize and protest, lobby for legislative change, provide support to union members etc. they cannot seek the security offered to workers (including the right to strike under certain conditions) under the 1947 Act.¹¹⁶

Similarly, the High Court of Madras in Rangaswami and Anr. v. Registrar of Trade Unions and Anr.¹¹⁷ refused to set aside the order of the Madras Registrar of Trade Unions wherein it had declined to register a group of domestic workers, amongst other workers. The Court justified this on the ground that the services rendered by domestic workers was purely personal in nature and did not constitute an employment in trade or business.¹¹⁸ Consequently, domestic workers could not seek registration under the trade union law. At present, this issue is being litigated by the Delhi Domestic Workers Union in the High Court of Delhi.¹¹⁹ The petition was filed by the Delhi Domestic Workers Union after their application for registration as a trade union was declined by the South Delhi Deputy Registrar of Trade Unions on grounds mirroring the reasoning of the above discussed judgements i.e., domestic workers do not constitute industry and are not employed in a trade or business.¹²⁰ It is yet to be

¹¹³ Ibid.

¹¹⁴ Bangalore Water Supply and Sewage Board v. Rajappa, 1978 AIR 548.

¹¹⁵ Ibid.

¹¹⁶ Nicola Cunningham Armacost, *Domestic Workers in India: A Case for Legislative Action*, 36, Journal of Indian Law Institute, 53, 58 (1994).

¹¹⁷ Rangaswami And Anr. v. Registrar Of Trade Unions And Anr., AIR 1962 Mad 231.

¹¹⁸ Ibid.

¹¹⁹ Upendra Baxi, A Simple, Stark Claim, INDIA LEGAL, (11/12/ 2019) <https://www.indialegallive.com/viewpoint/a-simple-stark-claim-65344>, last seen on 24/01/2023.

¹²⁰ Ibid.

seen if the High Court of Delhi will rule progressively on this issue, and open doors for successful strategic litigation for the rights of domestic workers in the future.

Despite the glaring lack of effort on part of the State as well as the judiciary towards the recognition of rights of domestic workers, the domestic workers movement in India has been growing.¹²¹ Trade Unions such as the Self Employed Women's Association ('SEWA') which represents poor self-employed women workers,¹²² and the National Domestic Workers Federation ('NDWF') which comprises around 11 domestic workers trade unions across India,¹²³ are playing a critical role in not only mobilizing domestic workers but also organizing for the purpose of making demands of the State as well as Courts across the country. In addition to trade unions such as SEWA and NDWF, alternative style of organizational politics has also emerged over the years, even though these are largely region specific and scattered. Further, alliance ship by women's rights movements and trade unions with a feminist politics has enabled the movement to bright to light demands around issues such as social security and sexual harassment.¹²⁴ Making domestic work visible through sustained efforts across movements has been intrinsic to enabling the entry of domestic workers into organized spaces such as trade unions.¹²⁵ A tangible example of success is reflected in establishment of Domestic Worker's Welfare Boards by several States across the country such as Kerala, Tamil Nadu, Maharashtra and Jharkhand in response to demands made by the domestic workers movements in these States.¹²⁶ While these Welfare Boards suffer from several shortcomings, they constitute an important step in the journey towards the formalization and regularization of domestic work.¹²⁷ In an age characterized by neoliberal driven State apathy, workers movements and grassroot mobilization are perhaps the only effective means via which power can be held accountable. The same holds true for domestic workers, who played a key role internationally in making the DW Convention a reality as well as domestically in countries such as India where they are organizing at unprecedented levels and developing networks across allied movements. Only time will tell if and when such organizing will lead to the progressive undoing of the patriarchal and capitalist norms that are entrenched in State politics and labour regulation.

¹²¹ Rina Agarwal and Shiny Saha, *The Employment Relationship And Movement Strategies Among Domestic Workers In India*, 44, Critical Sociology, 1207, 1212, (2018), Available at <https://journals.sagepub.com/doi/10.1177/0896920518765925>, last seen on 20/01/2023.

¹²² Rekha Datta, *From Development to Empowerment: The Self-Employed Women's Association in India*, 16(3), International Journal of Politics, Culture, and Society, 351,351, (2003).

¹²³ Supra 121.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

9. CONCLUSION

Domestic workers occupy a unique position in the age of neoliberalism. This is primarily on account of two factors: first, the gendered nature of domestic work carried out largely by vulnerable women in the informal sector, and second the public-private dichotomy wherein the household is not viewed as a workplace thereby underserving of regulation by labour laws. As argued by feminists, the law largely treats the male as the universal category informing legal design and implementation. Deeply entrenched male norms are treated as neutral and universally applicable, leading to the erasure of gender, caste, class, ethnicity, race, and disability status in law making. This applies to labour laws as well wherein core concepts such as the “worker”, the “workplace” and “work” are extensions of male values fed by capitalist conceptions governing work under conditions of neoliberalism.

While the DW Convention is an important step towards the recognition of women’s work in the household as “work like any other”, as demonstrated it runs into several design and implementation challenges. This is precisely because it seeks to follow an “add and stir” approach wherein labour norms applicable to traditional workplaces are extended to the unstructured and complicated terrain of domestic work which as recognised is “work like no other”. However, the DW Convention holds potential, and it is critical for countries like India to ratify it and make a political commitment to regulating a highly precarious sector of the workforce. India’s lack of political commitment to regulating domestic work has been witnessed in its consistent refusal to adopt a specific legislation for domestic workers, despite vehement demands from the domestic workers and women’s movement. In addition, laws that account for gender discrimination such as those applying to sexual harassment, maternity benefit, minimum wages and social security fail domestic workers as they do not extend to the informal sector or are poorly implemented. As demonstrated, the judiciary in India too has been complicit in the disregard for women workers carrying out domestic work.

The need of the hour is a specific legislation that adopts a rights-based approach towards regulation of domestic work. Such a legislation must reflect the progressive vision of the DW Convention while at the same time it must be tailor made to account for the social, cultural, and economic dimensions of domestic work in India. This law must be preceded by rigorous pre-legislative consultation, informed by a feminist lens, and designed in partnership with the domestic workers movement. It must address critical issues such as recognition of the household as a workplace, fair pay, working hours, paid leave, social security, maternity benefit and protections, anti-discrimination, an effective monitoring system, and appropriate penalties in case of violations.

The feminized informal economy is a product of the patriarchal dimensions of capitalism that allows for exploitation and disposability of vulnerable women workers. The recognition of rights of domestic workers, and women workers in the informal economy requires a radical reassessment of how we understand power in the labour market. In addition to a principled recognition of rights, it requires a reconceptualization of the spaces in which such rights are being exercised including the marketplace. Further, labour rights, particularly of women workers cannot be realised in silos. Supplemental measures that challenge patriarchal norms including sexual division of labour, the public-private dichotomy of workplace-home, and devaluation of caretaking are key to a labour rights framework that does justice to the needs of one of the most precarious workforces in our country.

FIXED-TERM EMPLOYMENT CONTRACT UNDER LABOUR CODES - OVERVIEW

*Dr Balwinder Kaur**

Abstract

The government had passed new labour codes hurriedly on the recommendation of the second National Labour Commission. These Codes have ensured that employers have far greater control over labour than before. The existing Codes have been in favour of labour market flexibility and not in favour of strict labour legislation since it believes that labour laws somehow restrict the growth of employment and investment. Apart from this, it is believed that employers who have to comply with stringent labour laws, not in favour of employing more people resultant firm suffers and is unable to adjust to the fluctuations of the market. In a globalised economic environment employers look for a flexible labour policy where they have the freedom to hire work for a fixed term and they are in a position to discontinue their services when needed. This paper seeks to comprehensively study the issues in the debate on fixed-term-employment in India. The first part of the paper discusses the recommendations of the Second National Labour Commission. The second part outlines the arguments for and against fixed-term employment in India and describes the fixed-term employment in other countries finally some suggestions for fixed-term employment are offered.

Keywords: Labour laws, Globalisation, Labour market, Employment, Worker etc.

1. INTRODUCTION

Various documents and reports have endorsed changes in labour laws and implementation of 'Second generation labour reforms' especially the Planning Commission's report of the Task Force on Employment Opportunity (2001)¹ and Second Commission on Labour (2002)². In the year 2017-18 Annual Survey was conducted by Industries. According to a survey, around 36.4 per cent of workers in the

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¹ Jairam Ramesh, *Employment Task Force's Report Demands Urgent Attention And Action*, Report of Task force on Employment Opportunities 2001 available at <https://www.indiatoday.in/magazine/guest-column/story/20010910-employment-task-force-report-demands-urgent-attention-and-action-774152-2001-09-09>, last seen on 06/09/2022.

²Ministry of labour and Employment, Government of India, *Report Of The Second National Commission On Labour*, available at https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf, last seen on 09/06/22.

production are contractual workers. Contract workers are often engaged in the same task as regular workers are doing but they don't get sufficient wages, are entitled to limit social protection and work in poor surroundings. To discourage contract workers' employment in industries the government announced the opportunity for fixed-term engagement in the IR Code. The formal or organised sector workers are protected by various labour laws and enjoy greater entitlements than unorganised sector workers. The formal sector workers' wages, safety, health bonus provident fund gratuity and maternity leave for women are protected by various labour laws. The Industrial Disputes Act provides that to terminate or retrench even a single worker from an industry the employer has to take the permission from the state.³ This provision of IDA is the root cause of the dispute for many years as it deprives employers of 'hire and fire' which affects growth.⁴ Section 25 N of the IDA (herein referred to as the Industrial Disputes Act) provides that no workman who is employed in any industry cannot retrench or lay off or close down an establishment without prior permission from the appropriate government. The employer has to give three months' notice in writing or three months' wages for the period of the notice in place of wages. The appropriate government has to grant the permission after 60 days if no communication is received by then. The recent labour reforms give greater flexibility in hiring workers on contract for short-term assignments. The concept of Fixed-term employment is an old concept. It was there in the Industrial Disputes Act as an exception in the provision relating to 'Retrenchment'. However, it was not formally recognised as 'fixed-term employment'.⁵

2. RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR (NCL).

The merging of central labour laws was suggested by the 2nd National Commission on Labour. It has been noticed that labour laws compliance has resulted in an increased number of contract labour. These workers are not entitled to basic protections and wages. In the year 2004-05 the contract workers in factories were 26% but in the year 2017-18, it has increased to 36%.⁶ Resultant directly employed workers drastically came down from 74% to 64% over the period.⁷ This flexibility in hiring labourers came because of the vulnerability of denial of basic protection and the non-regularization of contact labour.⁸ The NCL acknowledge and recognized the vulnerabilities of contract

³ S. VB of Industrial Disputes Act,1947.

⁴ S. 25N Ibid.

⁵ S. 2(oo)(bb) Ibid.

⁶ Ministry of Statistics and Programme Implementation, Government of India, *Annual Survey of Industries (2004-05)*, Available at <https://www.ilo.org/surveyLib/index.php/catalog/166>, last seen on 09/06/2022.

⁷ Ministry of Statistics and Programme Implementation., Government of India, *Annual Survey of Industries (2017-18)*, Vol-1, Available at <http://microdata.gov.in/nada43/index.php/catalog/145>, last seen on 09.06.2022.

⁸ Steel Authority of India Limited v. National Union Water Front Worker's, AIR 2001 SC 3527.

workers. As these contract workers were not having any job security and social security, they were underpaid and not allowed to bargain. The National Commission wanted to protect the rights of the workers and it came up with the suggestions that (i) the remuneration shall be the same for contract workers and regular workers for similar work. (ii) the principal employer shall be responsible for extending social protection and other reimbursements to contractual workers. (iii) The employer shall not allow rental workers as temporary against regular posts for more than two years. It was on the recommendation of the Second Labour Commission that 'Fixed-term employment' was introduced by the present government by modifying the rules of the Industrial Employment (Standing Orders) Act,⁹ in March 2018. Fixed-term employment means the workers who are engaged for a secure duration based on a contract engaged between the worker and the employer. According to the Industrial relations Code "Fixed Term Employment" means:

Provided that—

“(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature

(b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and

(c) he shall be eligible for gratuity if he renders service under the contract for one year;¹⁰

Fixed Term Employment has been comprised in the first schedule of the IR Code 2020. Fixed-term employment added a different and a new class of workers to the current category: temporary, permanent, probationers, temporary, casual and apprentices.¹¹ The fixed-term employment will be covered under the "temporary" category of workers. The two Codes define 'fixed-term employment' respectively. The basic difference between the two definitions is: In the Code on Social Security the definition practices the expression 'employee' instead of 'worker' used in the definition of the Industrial Relations Code.¹² Moreover, the Code of Social Security does not mention the last

⁹ Employment (Standing Orders) Act, 1946.

¹⁰ S. 2(o), The Industrial Relations Code, 2020.

¹¹ Schedule 1 & S. 2, The Industrial Employment (Standing Orders) Central Rules, 1946.

¹² "Fixed Term Employment" means:

Provided that—

“(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature

clause (c) which is incorporated in the Industrial Relations Code.¹³ In the IR Code, the definition of worker is given. The provision also offers that a fixed-term worker shall be entitled to gratuity if he renders continuous service for a year under the contract.¹⁴

3. LEGAL RIGHTS AND PROTECTION OF FIXED-TERM EMPLOYMENT

In India, the concept of the fixed-term workman was announced by the Vajpayee government, but later on, the UPA government finished it. It was in 2018 the Union government brought variations to the Model Standing Orders to incorporate fixed-term employment. Resultant the following states such as Chhattisgarh, Rajasthan, Haryana and Maharashtra approved the variations in their employment standing orders.¹⁵ Gujarat has had fixed-term workmen since 2001. The labour ministry while introducing fixed-term employment admitted that it (FTE) will be on a par with permanent work. Section 53(1)(d) of the Code on social security brought sea changes as it provides an exception to the eligibility for gratuity (In the case of fixed-term employment there is no requirement of continuous service of five years).¹⁶ In the case of fixed-term employment, the employee/worker is entitled to gratuity on termination of the contract period. The third proviso to Section-53(2) specifies fixed-term employee get their gratuity on a pro-rata basis. In 2018, the Union government brought changes to the Model Standing Orders to incorporate fixed-term employment.¹⁷ Resultant the following states such as Rajasthan, Chhattisgarh, Maharashtra, and Haryana adopted the

(b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and

(c) he shall be eligible for gratuity if he renders service under the contract for a period of one year; ”

¹³ (34) "fixed term employment means the engagement of an employee on the basis of a written contract of employment for a fixed period: Provided that—

(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and

(b) he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment;”

¹⁵ Sharat.S.Srivastava ‘*Fixed-Term Workmen: Trade Unions Fear For Collective Bargaining Power*’ The Hindu 07/06/2020, Available at <https://www.thehindu.com/news/national/karnataka/fixed-term-workmen-trade-unions-fear-for-collective-bargaining-power/article32006450.ece>, last seen on 09.06.2022.

¹⁶ S. 53(1)(d), Code on Social Security,2020.

¹⁷ *Fixed-Term Employment Extended To All Sectors To Boost Ease Of Business*, The Economic Times, (21/03/2018), Available at <https://economictimes.indiatimes.com/news/economy/policy/government-extends-facility-of-fixed-term-employment-for-all-sectors/articleshow/63382807.cms>, last seen on 09/06/2022.

changes in their employment standing orders. Since 2001 fixed-term employment was prevalent in Gujarat.¹⁸

The labour ministry while introducing fixed-term employment admitted that it (FTE) will be on a par with permanent work. The salaries of fixed-term employment must be within seven days of a wage period. The union Labour minister said that “By giving an option of fixed-term employment (in the new labour codes), we have given a flexibility to the industry and I am confident that such contract will mostly be used by businesses of short duration and of seasonal nature.” The notification restricts the applicability of the Fixed-term employment: “No employer of an industrial establishment shall convert the posts of the permanent workmen existing in his industrial establishment on the date of commencement of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 as fixed-term employment thereafter”.¹⁹ Under the new regime of FTE, permanent employment can potentially be turned into FTE at any time and fired at will. The term ‘non-standard’ employment includes different forms of employment in different countries but it is generally covered all those employments which are excluded from the standard employment (full-time, open-ended and entitlement to social protection). In the case of non-standard employment, there are low wages, job insecurity and poor working conditions. Examples of non-standard employment include fixed-term employment and casual contacts and temporary workers and self-employees. Job uncertainty has developed the main ingredient of labour markets in the last few decades and its importance is even assumed to keep on rising.²⁰

4. CHALLENGES

Fixed Term Employment could lead to exploitation of workers and endorse hire and fire. This law now is an open-ended provision. In such employment it is based on contracts with a prearranged termination date, which is considered to be one of the most noticeable indicators of job insecurity as compared to regular employment, which is considered to be the standard employment relationship, fixed-term contracts can be projected to harmfully affect individuals in many ways. The trade Unions apprehend that there could be a possibility that FTE becomes a permanent feature by giving

¹⁸ *Overview of Labour Law Reforms*, PRS Legislative Research, Available at <https://prsindia.org/billtrack/overview-of-labour-law-reforms>, last seen on 10/06/2022.

¹⁹ Ministry of Labour and Employment, Government of India Ministry of Labour and Employment Notification No. G.S.R. 235(E) dated 16.3.2018 to incorporate Fixed Term Employment Workman category under the Industrial Employment (Standing Orders) Act, 1946 and Rules made thereunder

²⁰ Kalleberg, A. L, *Precarious Lives: Job Insecurity And Well-Being In Rich Democracies*, 49(3), Econ Soc Rev, 241, 245, (2018), Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6703155/pdf/nihms-1045391.pdf>, last seen on 10/06/2022.

employment after the completion of every term. FTE workers shall not get any termination notice or payment instead of their services in case of non-renewal of the contract. This provision gives freedom to the hirer to terminate their services at any time. Nowhere Code prescribes the tenure for the fixed term of employment and nor does it mention how many times fixed-term contracts can be renewed. The lack of such clarity creates insecurity in the minds of employees. The number of hiring contract workers is much higher than fixed-term employment workers in the industries. No doubt the hiring of contract workers remains lower as compared to fixed-term workers. In addition to that contract, workers are the responsibility of the contractor. This is the reason that supply of contract labour keeps on increasing.

5. DIFFERENCE BETWEEN A CONTRACT WORKER AND A FIXED-TERM WORKER.

Contract workers are generally engaged through a middleman or agency and they are not on the payrolls of the company where they work. Fixed-term employment is for a fixed period and the employer engaged fixed-term workers directly for the fixed period. Fixed-term-employment are entitled to the same statutory benefits as those permanent workers in the industry are entitled.

6. FIXED TERM EMPLOYMENT IN OTHER COUNTRIES

Fixed-term employment is considered non-standard employment in most European countries.²¹ The main cause of non-standard forms of employment is mainly because of technology and low labour costs. Fixed-term employment always occurred in the labour markets. They offer flexibility to employers to hire workers. In many European and Latin American countries through legislative changes, fixed-term employment was introduced.

7. INTERNATIONAL AND REGIONAL SOURCES OF REGULATIONS OF FIXED-TERM EMPLOYMENT

As far as regulation is concerned there are two ILO instruments, ILO Conventions on the Termination of Employment Convention²² and its accompanying Termination of Employment Recommendation²³. These two instruments regulate fixed-term contracts. The member states of ILO legislate their laws in line with the requirements of the Convention and Recommendation in their labour laws. Convention on No.158 (Art.2)

²¹ Non-Standard Forms Of Employment, International Labour Organisation, Available at <https://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm>, last seen on 11/06/2022.

²²Termination of Employment Convention 1982 (No. 158).

²³Termination of Employment Recommendation 1982 (No. 166).

excludes a few categories of persons from the requirements regarding termination of employment by the employer:

“(a)Those workers who are employed under a contract for a specific period or specific work; or

(b) Workers engaged by the employer on a casual basis for a short period.”

In addition to that Convention No.158 in its article 2(3) incorporates that protection needs to be provided against remedy to contracts of employment for a particular period to avoid any abusive recourse to fixed-term employment. Recommendation,1982 (No. 166) too protects the fixed-term employment workers. Apart from international instruments, the most important and detailed document is ‘European Union Council Directive 99/70/EC’²⁴ which was framed by different European agencies. Most countries are having its law to regulate fixed-term employment. Over the period, the demand for fixed-term employment is growing its policy and law must bring balance between employers’ needs and lessen workers’ vulnerabilities. Having a balanced legal outline intended at restraining the abusive alternate to fixed-term contracts is important in this respect.

8. SUGGESTIONS

If the government wanted to encourage fixed-term employment in such a case government has to prohibit the use of contract labour. The Code of Occupational Safety and Health has permitted the engagement of contractual workers in the core activities under certain circumstances. Such involvement boosts the unexpected rise in the core activity of contractual labour and discourages the employment of fixed-term workers. Now is the time to differentiate two categories of workers.

²⁴European Union Council Directive 99/70/EC’.

THE NEW LABOUR CODES: DIGITAL ACQUIESCENCE AND THE CONUNDRUM OF CONTRACT WORKERS IN INDIA

Munmunlisa Mohanty, Prof. Raju. K.D. **

Abstract

The reform made in Labour Jurisprudence through New Labour Codes is the Government of India's effective endeavour to pursue the objective of ease of doing business. To avoid the tangled web of numerous labour legislations and simplify the procedure for accessing benefits under various governmental policies, workers must register through digital compliance to make the labour force a "Nation Builder." Digital compliance for contract workers is a significant issue due to incorrect classification of workers in such portals as a contract worker shifts his industry from farming to construction to mining. The scope and applicability of statutory digital registration compliance for a contract worker, and the impact on his flexible work style, are the goals of this paper. This chapter examines legislative compliance and sets the document's foundation, explores the problem of Indian contract employees and various avenues for integrating them into digital operations and also highlights the significant impact of digital compliance on contract workers, and an organized summary of the author(s)' observations is also provided.

KEYWORDS: Contract worker, Digitalization, Industry, Principal Employer, New Labour Codes of India.

1. INTRODUCTION

"The New Labour Codes of India is a shining example of Minimum Government and Maximum Governance, giving every worker an equal opportunity to become a Shram Yogi, Rashtra Yogi, and Nation Builder."

- *Shri Narendra Modi, PM of India*

The right to work is not only a fundamental right that guaranteed under Article 21 of the Indian Constitution¹; it is also essential to an individual's dignity, well-being, and development as a human being. Every employment is the creation of a contract that establishes the core relationship of right and duty between an employer and an

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¹ Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors, 1985 SCC (3) 545

employee; wherein it casts the right to work on the employee, an employer becomes legally obligated to provide a decent working condition to his employee. Better working conditions encourage hardworking workers to contribute more efficiently to industrial productivity, which is critical for industrial growth and national economic development. However, the growing presence of contract workers in all industrial establishments is an exception to this cardinal principle of the direct employer-employee relationship.

The unprecedented use of contract workers has boosted the nation's economic growth by increasing the quality and quantity of productivity at a low cost of production. On the one hand, where contract labour benefits industrial development, it is detrimental to individual growth and prosperity. Contract workers have been legally forced to work in discriminatory working environments for centuries. Despite the existing provision for contract worker protection from exploitation under the Contract Labour Act 1970; however, over 75 years of Independence, the Indian labour legislation have proven insufficient to regulate and abolish contract workers. As a result, the New Labour Codes of India have been codified to create a better working environment for all workers, regardless of whether they work in organized or unorganized sectors.

The New Labour Codes are the major reform that has been brought into the Indian Labour Jurisprudence to contribute to a better working environment that accelerates the pace of Indian economic growth with the global market.² Indian employability, mobility, and the flexible labour force structure result of several amendments, consolidations, and enactments. These various labour legislations at the Central and State levels govern and regulate the labour issues and challenges within 75 years of Independence. The Second National Labour Commission 2002 was constituted with two significant tasks:

- i) to suggest rationalization of existing laws relating to labour engaged in the organized sector, and
- ii) to recommend an Umbrella law to ensure a minimum level of protection for the workers engaged in the unorganized sector.³ And it was observed by the Commission that the existing labour legislations are felt to be unsatisfactory, and it needs to be amalgamated into a) industrial relations, b) wages; c) social security; d) safety; and e) welfare and working conditions.⁴ And finally, the New Labour Codes were codified in the year 2020 by subsuming 29 Central Labour Legislations into four (4) significant

² Ministry of labour and Employment, New Labour Code for New India, Available at https://labour.gov.in/sites/default/files/labour_code_eng.pdf, last seen on 10/11/2022.

³ V.V. Giri National Labour Institute, Ministry of Labour & Employment, Government of India, *The Report of the Second National Commission on Labour, 2002* Vol. I, Available at <https://vvgnli.gov.in/en/commissionsoflabour19292002/report-second-national-commission-labour-vol-i> last seen on 02/11/2022

⁴ The Occupational Safety, Health, and Working Conditions Code, 2020.

Codes that broadly deal with industrial relations, wages, social security, and occupational safety. One of the notable features of these New Labour Codes is to provide a platform for ease of doing business by ensuring enterprise empowerment by reducing statutory compliances, red-tapism, and Inspector Raj.⁵

The use of an IT-enabled system has been initiated to achieve the goal of "ease of doing business" and to make labour reforms more transparent and accountable. The Codes have made the most effective use of technology for the benefit of both workers and industry mandatory.⁶ The New Labour Codes' digital compliance provides every worker with a consistent and straightforward platform to access various social security benefits and other welfare policies. The launch of the "Shram Suvidha portal," "e-shram portal," the standard registration format on the e-biz Portal available under the Department of Industrial Policy and Promotion (DIPP), Government of India, as well as online registration for accessing provident fund and State Insurance benefits, has boosted industry's socio-economic growth.⁷ The "Digital India" initiative has ensured that various governmental services are made available to citizens electronically under the New Labour Codes.

However, it has been observed that these portals are not designed to benefit contract workers. "E-shram portal" is a national database designed exclusively for the unorganized sector that provides digital registration for categories of migrant workers, agricultural workers, domestic workers, construction workers, and so on. However, contract workers in the unorganized sector do not have proper categorization. Whether the worker is a migrant or a construction worker, he is ultimately a contract worker, but not every contract worker is a migrant worker or the construction worker. Furthermore, States such as Uttar Pradesh, Bihar, West Bengal, Madhya Pradesh, and Odisha have claimed complete registration of workers within their respective state jurisdictions without clarifying the nature of work in which they were engaged in the unorganized sector. So, at first glance, these portals establish the benefit of the doubt on their reliability and transparency in managing the national database for contract workers engaged in various industries in either organized or unorganized sectors in India.

As a result, the paper focuses on analysing the current quandary of contract workers engaged in various industries in India within the scope and applicability of digital compliance under the New Labour Codes of India. This paper is divided into four (4)

⁵ Supra 3.

⁶ Ibid.

⁷ Himanshu Jain, *8 Years of #Digital India and Work Force Reforms*, (04/07/2022), Available at <https://newsroompost.com/opinion/8-years-of-digitalindia-and-work-force-reforms/5131375.html>, last seen on 11/11/2022.

sections, wherein the first part broadly introduces the topic along with its structure. The second segment analyses the significance behind the proliferation of contract workers in the industry. The third segment investigates the significance and implications of digital compliance for contract workers under the New Labour Codes of India, and the fourth and final segment comprises summarised observations of the author(s) about the topic. The author(s) used doctrinal research methodology to draft the current paper.

The author(s) had used the relevant provisions of The Occupational Safety, Health, and Working Conditions Code, 2020 (OSH), The Contract Labour (Regulation and Abolition) Act (CL), 1970, along with The Contract Labour (Regulation and Abolition) Rules, 1971 as primary data, and various governmental and non-governmental reports of national and international reputation used as secondary data. However, the author(s) has observed that to achieve the "decent work" agenda along with inclusive industrial growth in India, the legal position of contract workers needs to be addressed at this epic time, when the massive transformation through the codification of the Labour Legislations in the form of New Codes is taking shape and mode. The author(s) recognized that a huge transformation in Labour Jurisprudence through the codification of Labour Legislation is taking shape and mode.

2. THE LEGAL CONUNDRUM OF CONTRACT WORKER UNDER THE NEW LABOUR CODES OF INDIA

The concept of "contract worker" is different from the "contractualisation of employment" as latter establishes the direct employer-employee relationship while the same is absent in the former one. Contract workers are among those who have a direct employer-employee relationship with the contractor but not with the principal employer for whom he works on hire.⁸ The contract worker, also known as contract labour, is a worker who deemed to be employed or working in an establishment on a hire basis via the contractor. Such a hire has been taking place with or without the knowledge of the Principal Employer. Contract workers also include interstate migrant workers, but they do not have regular employees hired by the contractor on a fixed-term basis, and are subject to a mutually agreed standard of working conditions and eligible for periodic pay raises, social security, and other welfare benefits.⁹

After the globalization of the domestic market, hiring contract workers become a significant and growing form of employment, whose population are millions in

⁸ C. Upadhyay, *A Social Inclusion Perspective of the Unorganized Sector in India*, 2(2), NJLI, 1, 2, (2019)

⁹ S. 2(m), The Occupational Safety, Health, & Working Conditions Code, 2020, Available at <https://www.scribd.com/document/439662722/A-Social-Inclusion-Perspective-of-the-Unorganised-labour-sector-in-India#>, last seen on 11/11/2022.

number¹⁰ and are majorly engaged in agricultural operations, plantation, construction industry, ports and docks, oil fields, factories, railways, shipping, airlines, road transport, and mining.¹¹ The integration of liberalization and globalization in the Indian economy has boosted the engagement of contract workers by the industrial establishment because it improves the efficiency of industrial productivity at a cheap cost of production.¹² It is a well-known fact that employment generation has always been a national priority of any nation; however, outstripping employment due to an increase in the employable population, which subsequently has increased the growth of unemployment, ultimately generated contract workers.¹³ These contract workers were forced to work in a discriminatory working environment due to financial restraint, lack of supervision by the principal employer, and inability to access any registered trade unions to avail the tools of collective bargaining and other social welfare benefits.

The earlier Contract Labour (Regulation and Abolition) Act (CL), 1970, has been repealed and merged with the Occupational Safety, Health, & Working Conditions Code (OSH), 2020, with the goal of simplifying, amalgamating, and rationalizing the provisions for contract workers' welfare benefits.

This OSH Code 2020¹⁴ was enacted with the objective of consolidating and amending the laws governing occupational safety, health, and working conditions for those employed in an industrial establishment.¹⁵ The OSH Code 2020 includes a "common license" option for factory workers, contract workers, and workers in Beedi and Cigar establishments. For the first time, the OSH Code, 2020 includes a statutory provision for an All-India license to engage contract workers in any establishment for a period of five (5) years, implying that the contractor could engage and shift any contract worker from one establishment to another based on industrial requirements within the prescribed period of five years. Furthermore, the provisions of the OSH Code shall apply to industrial establishments employing fifty (50), or more contract workers on any single day in the previous twelve (12) months.¹⁶ However, establishments that hire contract workers for casual or intermittent work are exempt from the provisions of this Code.¹⁷ The nature of the work, whether casual or permanent, is a question of fact that the appropriate government must decide after consultation with the respective National/

¹⁰ D. Saini, *The Contract Labour Act, 1970 Issues & Concerns*, 46(1), IJIR, 32, 33, (2010).

¹¹Ministry of Labour & Employment, Government of India, *Annual Report 2021-22*, Available at https://labour.gov.in/sites/default/files/annual_report-21-22.pdf last seen on 05/11/2022

¹² *Practical Guide to Contract Labour- Regulation & Abolition*, 2 (H.L. Kumar, 5th Ed., 2010).

¹³ *Ibid.*

¹⁴ The Occupational Safety, Health and Working Conditions Code, 2020.

¹⁵ *Supra.* 7.

¹⁶ S. 45(1) (i) & (ii), The Occupational Safety, Health, & Working Conditions Code, 2020

¹⁷ *Ibid.*, 45(2).

State Advisory Board.¹⁸ However, the OSH Code 2020 defines "intermittent nature of work" as any work performed for more than one hundred and twenty (120) days in the previous twelve (12) months; or if the assigned work is seasonal in nature and was performed for more than sixty (60) days in a year.¹⁹ Even from a slew of the cases, the honourable Supreme Court of India has categorically stated that the engagement of contract workers in the perpetual nature of work can be prohibited by notification of the appropriate government;²⁰ moreover, despite the express prohibition, if the principal employer engaged any contract worker(s) in the core activity zone, it would be considered illegal and punishable by law.²¹

Another essence of contract worker employment is that the principal employer shall not engage them in the perennial or core nature of the work. If it is required to engage them in the such nature of work due to circumstantial compulsion, then the principal employer must regularise their terms of employment. They shall be treated as permanent employees rather than just contract workers. The OSH Code 2020 expressly states that the work of contract workers in core activities of industrial establishments is prohibited.²² And which types of work will be designated as "core activity" under the Code 2020 will be determined by designated authorities appointed by the appropriate governments.²³

It has been observed that economic liberalization has resulted in a sea change in the industrial scenario.²⁴; wherein high-level and tough market competition among multinational and national organizations has liberalized employment opportunities and transformed the labour force into a dynamic and flexible workforce. It increased contract worker employment for the following reasons:

- a. Contract workers relieved the principal employer from direct supervision and control over those contract workers.
- b. The use of contract workers reflects task-oriented work that is completed promptly while meeting the required specifications.

¹⁸ Ibid. Ss. 16 & 17.

¹⁹ Supra 16.

²⁰ All India General Mazdoor Trade Union (Regd.) v. Delhi Administration, AIR 1995 SC 3039; K. Ramakrishnan v. Bharat Petroleum Corporation Ltd., (1997) 2 LLN 1181; Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha, AIR 1995 SC 1893; and Steel Authority of India Ltd. v. National Union Water- Front Workers, AIR 2001 LLR 961 (S.C.).

²¹ Pola Satyanarayana v. Secretary, Government of India, Ministry of Labour, (2000) II LLJ 1278.

²² S. 57, The Occupational Safety, Health, and Working Conditions Code, 2020.

²³ Ibid.

²⁴ Supra 12, at 5.

- c. The contract worker is less expensive because the burden of wage payment falls primarily on the contractor. In the event of default, the principal employer is obligated to pay it.
- d. The presence of contract workers significantly reduces industrial disputes between employers and employees.

As a result, while the need for contract workers for rapid production and delivery of goods and services is undeniable, the presence of the same workers raises the industrial dispute from various legal and social welfare perspectives. Because the liability of the principal employer under the CL Act 1970 was limited to wage payment and other social security and occupational safety, the role of the principal employer was merely a mask.²⁵ The OSH Code 2020 has altered this perception to some extent. The principal employer is now responsible for ensuring occupational safety and other social security for contract workers employed in such establishments.²⁶

The presence of a contract worker creates a tripartite form of employment in which the contract worker, the contractor, and the principal employer have a three-way employer-employee relationship. The contract worker is an actual employee of the principal employer who is hired or engaged in working in an establishment by the contractor, with or without the principal employer's knowledge. The concern of employment exploitation of contract workers is not new to this legal domain; rather, the introduction and development of information technology in the employment sector has signified such a problem. From the analysis, it is well established that to keep up with the ever-increasing international demand for industrial products, the use of contract workers has proven to be a boon to the industry; not only it increases profitability, but it also brings long-term industrial sustainability in the market.

However, the socio-economic standard of living of contract workers has deteriorated to a drastic extent due to the absence of a direct employer-employee relationship, no opportunity for collective bargaining, and the prevalence of wage disparity with regularly employed workers, which has forced them to work under such discriminatory working conditions.²⁷ Industrial economic growth has created a smoky eye to undermine the concern of contract workers who are being exploited in a most legally organized manner.²⁸ Without a doubt, in the span of 75 years of surviving as a democratically independent country, various initiatives and amendments in Indian

²⁵ Chand Chihap Fertilizer and Chemicals Ltd. Kanpur v. Labour Commissioner (Uttar Pradesh) Kanpur, 2006 LLR 724 (All H.C.)

²⁶ S. 53, The Occupational Safety, Health, and Working Conditions Code, 2020.

²⁷ Meenakshi Rajeev, *Globalisation and labour market flexibility: a study of contractual employment in India*, 8(2), IJDI, 168-183, (2009).

²⁸ Ibid.

Labour Jurisprudence have been brought up with respect to protecting and preventing contract workers from all forms of employment exploitation, and that has proven inadequate; as a result, the pathetic suffering of contract workers persists, and it is getting worse by the day.

Therefore, the New Labour Codes have been codified in response to the changing requirements of the Indian labour force, where occupational safety and other social security have been extended to workers in the unorganized sector, the majority of whom are contract workers. The most important feature of the New Codes is the mandate provision of digital compliance for the registration of workers, particularly those in the unorganized sector, to keep, maintain, and monitor the national database for the labour force and assist them in the event of unforeseeable financial destitute in the future.

3. SIGNIFICANCE OF THE DIGITAL ACQUIESCENCE ON CONTRACT WORKERS UNDER THE NEW LABOUR CODES OF INDIA

It has been observed that liberalization has resulted in significant changes in the Indian economy, and the Indian labour force is not an exception. Furthermore, the advancement of information technology and scientific innovation in the industrial sector has impacted the labour force at its most basic level. Digital compliance under the New Labour Codes is the most effective initiative toward achieving the goal of "*ease of doing business.*" The registration through digitization process provides a platform for one assessment and one return filing by the appropriate authority, resulting in easy compliance and, ultimately, a stable regime for business investment that establishes a win-win situation for the employee as well as for the employer.²⁹

The presence of digital processes in the labour force provides transparency, simplification, universality, cost-effectiveness, and accuracy in monitoring and regulating workers across the country. The primary benefit of codifying labour laws is that it provides the benefits of digitalization on the following grounds:

- a) A digital platform is provided for single registration, allowing access to a single license and a single Statement with minimal forms.
- b) It helps in avoiding confusion and chaos in the multitude of definitions provided in various Labour Statutes; a common description is provided.
- c) Encourages the formation of minimum committees as and when needed.
- d) It improves web-based surprise inspection by relevant authorities.

²⁹ Supra 3.

- e) It also provides aids in the maintenance of a national database for issuing, renewing, or cancelling licenses electronically, as well as preparing our workforce for any future pandemics or financial crises.
- f) Reduction in the cost of statutory compliance and industrial disputes are significantly addressed.³⁰

"Shram Suvidha portal," "e-shram portal," "Samadhan portal," and "common registration format on the e-biz portal of DIPP for accessing the provident fund, employees" are the most prominent and valuable digital platforms for workers designed under the broad area of New Labour Codes of India. Building and other construction workers, contract workers, and interstate migrant workers are eligible for state insurance, protection, and welfare benefits."³¹

The "Shram Suvidha portal" is a particular digital portal designed to facilitate inspection reporting and return submission. This is a unified portal that has been designed to promote a harmonious relationship between the employer, the employee, and the enforcement agencies, ultimately establishing transparency in such a trio relationship.³² As we know, Indian labour context is a concurrent subject under the Indian Constitution, and currently, labour jurisprudence has undergone a drastic transformation by codifying earlier Labour Laws into four major Codes, which are being enacted but not yet enforced, with the exception of The Wage Code, 2019 (Constitution of Central Advisory Board); as a result, the digital compliance on labour law under Shram Suvidha portal has not made it clear whether web-generated inspections and return filings are taking place under which regulation, i.e., under New Codes or respective earlier Labour Legislations?

Furthermore, the launch of the "e-shram portal" is regarded as another watershed moment in Indian labour law because, for the first time, the protection and recognition of workers in the unorganized sector has been considered at the national level. The "e-shram portal" is the result of the Ministry of Labour and Employment's ongoing efforts to improve the lives and dignity of workers by protecting and safeguarding their interests, promoting welfare, and providing social security to workers in both organized and unorganized sectors through various Labour Legislations. It is a unique portal dedicated to monitoring and regulating a national database of unorganized

³⁰ Supra 3.

³¹ *Improve Ease Of Doing Business*, Ministry of Labour & Employment, Government of India, Available at <https://labour.gov.in/policies/improve-ease-of-doing-business> last seen on 10/11/2022

³² *Shram Suvidha – One Stop for Labour Law Compliance*, Ministry of Labour & Employment, Government of India, , Available at <https://shramsuvidha.gov.in/home> last seen on 12/11/2022

workers, aiming to maximize their employability and extend social security and other welfare benefits to them.³³

According to the "e-shram" portal, migrant workers, construction workers, agricultural workers, domestic and household workers, street vendors, gig workers, and platform workers will now be able to collect and register data digitally.³⁴ It is a universally acknowledged fact that, as a result of globalization, the demand for contract workers has increased to the point where, today, every worker, particularly those in the unorganized sector, is a contract worker; however, every contract worker does not have to be a migrant or a construction worker. And, because the nature of contract work is so dynamic and flexible, he could easily be replaced from one industry to another and directed to work according to the contractor's whims and caprice, with or without the knowledge of the principal employer. So, in those circumstances, how would a contract worker be able to register himself in the "e-shram portal," which is silent on contract worker registration?

Furthermore, the goals of designing and launching the "e-shram portal" are to improve implementational efficiency and extend social security benefits to the unorganized sector, provide migrant and construction workers with the portability of social security and welfare benefits, and provide a comprehensive database of workers engaged in the unorganized sector at the national level.³⁵ The Portal also specifies the eligibility criteria for workers to register in the "e-shram portal," stating that any worker who is a home-based worker, self-employed worker, or wage worker in the unorganized sector is eligible. Employees in the organized sector are also suitable for registration if they are not members of the Employee State Insurance Corporation (ESIC) or the Employees Provident Fund (P.F.), nor are they government employees.³⁶ Furthermore, approximately 90% of the Indian workforce is employed in the unorganized sector³⁷ and the majority of them are contract workers. As a result, these workers are eligible to register in the "e-shram portal," but they are unable to register in any of the prescribed categories because there is no separate category of registration for contract workers, and

³³ *E-Shram Portal*, Ministry of Labour & Employment, Government of India, available at <https://eshram.gov.in/e-shram-portal> last seen on 12/11/2022

³⁴ *Ibid.*

³⁵ *e-Shram Portal – Objectives*, Ministry of Labour & Employment, Government of India, available at <https://eshram.gov.in/e-shram-objectives> last seen on 13/11/2022

³⁶ *Ibid.*

³⁷ Yogima Seth Sharma, *National Database Of Workers In Informal Sector In The Works*, The Economic Times, (19/01/2020), Available at

https://economictimes.indiatimes.com/news/economy/indicators/national-database-of-workers-in-informal-sector-in-the-works/articleshow/73394732.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst, last seen on 13/11/2022.

the existing categories are not clear enough to allow the contract worker to register in any of them. Furthermore, even if a contract worker registers himself in the "e-shram portal" under the category of a migrant worker and then changes his work of nature from migrant worker to agricultural worker or construction worker, the following legal issues arise:

- a) Is a contract worker still eligible for all social security benefits under the migrant worker category if he changes his nature of work without changing his registration?
- b) Is the contract worker required to de-register from the migrant worker category and re-register under the changed category after changing industries? What would be the legal status of his right to social security and other welfare benefits if he did so?
- c) What about those contract workers who does not fall under any of the mentioned categories of worker provided in e-shram portal and they remain as contract workers who keeps on changing his workplace and industry according to the sweet will of the contractor and under the economic compulsion to survive.

These are some of the grey areas in which these digital portals are insufficiently accurate, casting doubt on their dependability. Even as per the series of governmental annual reports published time to time by the Ministry of Labour and Employment, Government of India categorically mentioned that, the proliferating demand of contract workers are equally be increasing in organized sector, whose workforce population is accounted to only 10% around, but the large quantity of such workforce be visible in unorganized sector.³⁸ Because in unorganized sector they engaged in various industries and their nature of work also diversified to large extend.

Furthermore, Uttar Pradesh, Bihar, West Bengal, Maharashtra, and Madhya Pradesh are the top five (5) Indian states that claim to have completed 100 percent registration for workers in the unorganized sector within their respective states in the "e-shram portal."³⁹ It has been observed that these states maintain a database of 100% workers registration without specifying whether they are contract workers are establishes a benefit of doubt on its reliability for future course of action for accessing

³⁸ Ministry of Labour and Employment, Government of India, *Annual Reports 2021-22, 2020-21, 2019-20, 2018-19*, Available at <https://labour.gov.in/annual-reports>, last seen on 12/11/2022.

³⁹ *Dashboard – e-Shram, Portal* Ministry of Labour & Employment, Government of India, available at <https://app.powerbi.com/view?r=eyJrIjoiNTRjOGEwMmEtYmJlMC00NGZkLWJkNDItNTgwZTA2MzBkZWNIiwidCI6IjA2ZjUzMmJmLTk3NTItNGVjNi04Y2Y4LTIzYTM3YmM2ZDQ2MSJ9> last seen on 13/11/2022

social security benefits under this e-shram portal. Furthermore, the status of workers in these states is unclear due to the rapidly changing nature of the work.

For example, it is unclear whether migrant workers registered in these five states are citizens of that particular states in which they registered or whether they are citizens of another state who migrated to these five states for work. Another observation is that out of such 100% registration, how many of them are contract workers? After such completion of registration, how many of these registered workers have taken benefits of various social security schemes framed by the Central government and how many are debarred from such social welfare benefits? Are these registered workers are still continuing their registered industrial sector or if they changed it, then what is the consequential impact on the process of accessing social security benefits through e-shram portal?

These are some of the questions on which such e-shram data go silent. These are critical concerns frequently overlooked when designing such a portal for the benefit of workers. So, according to the data provided under e-shram portal, the statistics and data for contract workers engaged in unorganized sector has not been provided as a result, they were squarely neglected from the social security benefits under e-shram portal.

The graph chart below substantiates the preceding contention in numerical figures.

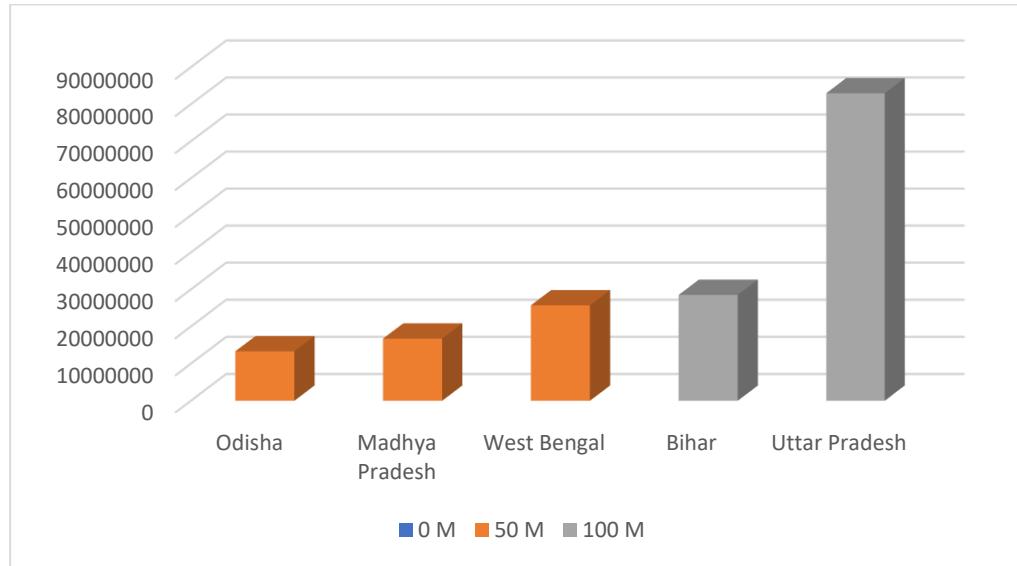


Chart 1: Source: e-shram portal - Dashboard⁴⁰

⁴⁰Ibid.

Therefore after analysing the above-mentioned figure depicting the top most States of India who claimed to have done 100% registration of unorganised workers in their respective States, it is observed that the above-mentioned States' claim of 100 percent registration of workers under the "e-shram portal" has not been sufficient to ensure the occupational safety and social security of those workers engaged in the unorganized sector, as they failed to highlight the registration process for contract workers and demonstrated a neglected approach towards contract workers during this digitalization process.

4. CONCLUSION

An employer-employee relationship is at the heart of any country's employment sector, and the presence of contract workers is no exception. Throughout the lengthy discussion, it is now well established that the need and demand for contract workers have always been undisputed and boosted for industrial growth and productivity; however, the need for decent working conditions for the same contract workers has been grossly neglected by both employers and the government. There is no doubt that the New Labour Codes of India have been codified to provide a better working environment for all workers, whether they are employed in the organized or unorganized sectors; however, digital compliance for ensuring and accessing social security and other welfare benefits has created an unexpected problem for contract workers, as these digital platforms are silent for contract worker registration. Even state governments, which work in accordance with the Centre to maintain and regulate workers within their jurisdictions, have failed to maintain, control, and supervise the data of contract workers engaged in various industries within their jurisdictions.

The lack of a national database for contract workers has hurt the socio-economic standard of living of such contract workers, who currently number in the millions in both organized and unorganized sectors in India. Contract workers are systematically forced to work in a discriminatory working environment due to a lack of supervision by the principal employer, wage disparities, non-regulation and lack of monitoring of working hours, and a lack of encouragement to form trade unions to avail of collective bargaining tools, and demand for ensuring social security. Furthermore, it has been observed that the digital mandate under the New Labour Codes has made no difference in the sufferings of contract workers; instead, the digital registration process has made contract workers' accessing ability more difficult.

For the time being, contract workers must register under any of the prescribed categories listed in the "e-shram portal" in order to receive welfare benefits and other

governmental policies, but registration sustainability cannot be guaranteed due to the highly flexible nature of contract workers' work.

Thus, it is observed that digital compliance under the New Labour Codes is the most effortful measure taken by the government, initiated to maintain and regulate the national database of workers, particularly those engaged in the unorganized sector; however, the reliability of such database is a source of concern, as the such database does not categorically speak about the registration of contract workers, nor is any data available specifying that the prescribed categories of workers are registered. As a result, contract workers' concerns are significant. The digital acquiescence under the New Labour Codes must be amended and re-designed to accommodate contract workers without undermining the statutory protection of other categories of workers in India.

REFUTATION OF “COMPETITION FOR LOWERING LABOR STANDARDS”

Luyao Sun*

Abstract

The importance of international labour standards is self-evident. It sets minimum labour standards, which can ensure a fair competitive environment and economic benefits, and ensure full employment and decent work. Decent work is closely related to a person's self-esteem, well-being and development as a person. International labour standards ensure access to decent work. The theory of "competition for lowering labour standards" holds that globalization and international trade lead to developed countries competing to lower labour standards, so as to resist globalization and international trade. In fact, globalization and international trade have not led to the reduction of international labour standards. The international labour organization undertakes the task of promoting social equity and justice and maintaining world peace in the field of work. Linking international labour standards with the trade sanctions procedures of the World Trade Organization will be an effective way to protect international labour standards.

Keywords: International Labor Standards; Globalization; Trade; Transnational Corporations etc.

1. INTRODUCTION

The International Labour Organization is the United Nations agency in the field of work, bringing together governments, employers and workers to promote a people-oriented approach to future work through employment creation, rights at work, social protection and social dialogue. The world is experiencing changes in population, technology and globalization. In order to meet these challenges and commemorate the 100th anniversary of the establishment of the International Labour Organization, the 108th International Labour conference in 2019 adopted the ILO Centenary Declaration for the Future of Work,¹ a people-oriented approach of the declaration focuses on three areas of action: increased investment in human capacity, increased investment in work institutions and increased investment in decent and sustainable work.

2. INTRODUCTION TO INTERNATIONAL LABOUR STANDARDS

2.1 Themes and Elements of International Labour Standards

2.1.1 Themes of international Labour Standards

International labour standards cover more than 20 topics, including freedom of association, collective bargaining, forced labour, child labour, equality of opportunity and treatment, tripartite consultation, labour management, labour inspection, employment policy, etc. The principle of freedom of association is the core of ILO values. Articles 22 and 23 of the Universal Declaration of Human Rights emphasize the protection of human rights to work and rest.²

Collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--(a) determining working conditions and terms of

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¹ ILO Centenary Declaration for the Future of Work, International Labour Organization, Available at [wcms_711674.pdf](https://www.ilo.org/wcms_711674.pdf) (ilo.org), last seen on 18/04/2022.

² Universal Declaration of Human Rights

employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.³ Taking into account the special environment and circumstances of enterprises or industries, collective bargaining is the best way to achieve balance, and can reassess the rationality of wage setting in low wage sectors dominated by women. Facts have proved that it is essential and has high social value during the crisis.⁴

Despite widespread condemnation of forced labour, the International Labour Organization estimates that 24.9 million people worldwide are still subjected to forced labour. For many governments around the world, the elimination of forced labour remains an important challenge in the 21st century. Forced labour is not only a serious violation of a basic human right, but also the main cause of poverty and an obstacle to economic development. The term "forced or compulsory labour" means all work or services that a person is forced to do under the threat of any punishment and that person does not voluntarily provide.⁵

2.1.2 Elements of International Labour Standards

Four core elements of labour standards. The impact of globalization on workers in developing countries (including Post Communist countries) is difficult to predict theoretically. The pressure of globalization on labour force is reflected in two aspects: one is the demand for better labour standards, and the other is the demand for greater labour flexibility.⁶

In response to the demand for labour standards, the US Congress, major labour federations, the International Labour Organization and various non-governmental organizations (NGOs) require that the labour standards of developing countries are equivalent to those of industry, and the four core standards of industrial labour standards are : a ban on forced labour, elimination of discrimination in the workplace, abolition of child labour, and freedom of association and the right to bargain collectively.

In response to the demand for labour flexibility, individual companies, trade associations, governments of developed countries and international financial institutions require that the labour market in developing countries change rules, which make it easier to hire and fire workers, redistribute tasks and working hours, set wage grades and promotion standards based on performance rather than seniority, and limit the role of trade unions. While supporters believe that greater flexibility will improve competitiveness and stimulate job creation, trade unions worry that it will eliminate jobs, reduce wages and erode other benefits.

2.1.3 The Relationship between Labour Standards and Labour Flexibility

³ *Collective Bargaining Convention*, 154, International Labour Organisation, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299, last seen on 15/04/2022.

⁴ *Global Wage Report 2020-21: Wages And Minimum Wages In The Time Of COVID-19*, International Labour organisation, *Official Record*, ILO/DTP/WEI/ICA, 3(2020), Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_762534.pdf, last seen on 15/04/2022.

⁵ *Forced Labour Convention*, International Labour Organisation, Available at *Forced Labour Convention*, 1930 (No. 29), last seen on 15/04/2022.

⁶ B. Stallings, *Globalization and Labor in Four Developing Regions: An Institutional Approach*, 45 *Studies in Comparative International Development*, 127, 128(2010).

Barbara Stallings analysed the factual indexes of labour standards and labour flexibility in individual countries in four developing regions, namely Eastern Europe, Latin America, East Asia and the Middle East, and finally came to the conclusion.

First, the labour standard index of Eastern European countries is negatively correlated with the labour flexibility index. In fact, the average level of labour standards is very high, but there is low labour flexibility.⁷ Second, the de facto average level of labour standards in Latin America is lower than that in Eastern Europe, but the flexibility index is roughly the same as that in Eastern Europe. Third, the de facto labour standards in East Asia are lower than those in Eastern Europe and even Latin America. There is a negative correlation between labour standards and flexibility again, but Singapore is an exception. Singapore's labour market is much more flexible than any country in our four regions. Singapore is an urban country whose economy is mainly based on the investment of multinational corporations. It is very open in all aspects of the economy. Labour policy is closely related to this overall situation. Its history as a former British colony may also help explain its openness. Fourth, the labour standards in the Middle East are the lowest among the four regions. The two oil monarchies in the region, Saudi Arabia and the United Arab Emirates, have no formal labour rights at all.

In general, de facto labour standards are positively correlated with minimum and average wages, while flexibility is negatively correlated. Unemployment is positively correlated with labour standards, while flexibility is not.⁸

2.2 The Importance of International Labour Standards

2.2.1 Ensuring Employment and Decent Work

International labour standards guarantee full and productive employment and decent work for all. At the 2005 United Nations World Summit,⁹ heads of state and government declared their firm support for Fair Globalization and their determination to make full and productive employment and decent work for all, including women and young people, the central objectives of our relevant national and international policies and our national development strategies, and to ensure the role of International labour standards as an effective means to achieve all these objectives.¹⁰ Article 1 of DECLARATION OF PHILADELPHIA makes it clear that labour is not a commodity, that freedom of expression and association is essential for sustained progress, and that poverty everywhere threatens prosperity everywhere.¹¹

2.2.2 Set Minimum Social Standards

⁷ Ibid, at 137.

⁸ Ibid, at 145.

⁹ *Report of the Resolution adopted by the General Assembly on 16 September 2005*, Resolution adopted by the General Assembly on 16 September 2005, New York, September 14 -16 2005, U.N Document, A/RES/60/1, (October, 2005), Available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf, last seen on 15/04/2022.

¹⁰ *ILO Declaration on Social Justice for a Fair Globalization*, International Labour Conference, *Official Record*, Sess. 97, 2, Available at http://staging2.ilo.org/wcmsp4/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf, last seen on 20/04/2022.

¹¹ *Declaration Concerning The Aims And Purposes Of The International Labour Organisation (DECLARATION OF PHILADELPHIA)*, International Labour Conference, *Official Record*, Sess. 26, Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:62::NO:62:P62_LIST_ENTRY_ID:2453907:NO#declaration, last seen on 24/04/2022.

International labour standards set the basic minimum social standards agreed upon by all actors in the global economy.¹² Achieving the goal of decent work in a globalized economy requires action at the international level. The international community is partially responding to this challenge by developing international legal instruments on trade, finance, the environment, human rights and labour. ILO contributes to this legal framework through the development and promotion of international labour standards aimed at ensuring economic growth and development that go hand in hand with the creation of decent work. The unique tripartite structure of the International Labour Organization ensures that these standards are supported by the government, employers and workers.

2.2.3 Ensure Fair Competition Environment and Good Economic Benefits

International labour standards can create a fair competitive environment and promote economic efficiency. Without international labour standards, the profit seeking nature of enterprises will urge enterprises to ignore labour rights, reduce wages, extend working hours, increase work intensity, or reduce safety protection equipment, so as to reduce product costs and obtain product competitiveness. When an enterprise does so, other enterprises of the same type will also choose to ignore labour rights in order to remain competitive. International labour standards help governments and employers avoid the temptation to lower labour standards, while compliance with international labour standards is often accompanied by increased productivity and economic performance.¹³ The protection of labour rights will be rewarded by high labour satisfaction, high performance and low mobility.

2.3 Formulation of International Labour Standards

The formulation of international labour standards by the International Labour Organization is a unique legislative process involving representatives of governments, workers and employers from all over the world.¹⁴

As a first step, the Council agreed to include an issue on the agenda of the future international Labour conference. In general, the General Assembly should hold two discussions on this topic, that is, at two sessions of the general assembly; The Council may hold one-time discussions or other special decisions under special circumstances. In the second step, the International Labour Office will prepare a report on the laws and practices of various countries and send it to governments 18 months before the opening of the relevant session of the general assembly, and governments will provide replies; On the basis of these replies, the ILO prepared a second report and sent it again to governments. Third, according to the government's reply and the first discussion of the conference, the labour office drafts a convention or proposal, and it needs a two-thirds majority vote to adopt a standard at the second conference.¹⁵

3. GLOBALIZATION AND THE “COMPETITION TO LOWER LABOUR STANDARDS”

3.1 "Competition for Lowering Labour Standards"

¹² *The benefits of International Labour Standards*, International Labour Conference, Press Release, , Available at <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>, last seen on 28/04/2022.

¹³ Ibid.

¹⁴ *How International Labour Standards Are Created*, International Labour Conference, Press Release, Available at <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>, last seen on 25/04/2022.

¹⁵ *Handbook of procedures relating to international labour Conventions and Recommendations 3-5(Centenary Edition 2019)*.

Economic globalization refers to the integration of a country's economy into the world economy through trade, foreign direct investment, short-term capital flow, cross-border flow of labour and human resources in a broader sense, technology transfer and so on.¹⁶ Those who are pessimistic or even hateful about globalization believe that the negative impact of globalization in the field of labour is reflected in the reduction of labour standards in developed countries.

The challenge of globalization makes international labour standards more important than ever before. Anti-globalization advocates support the theory of "competition for lowering labour standards".¹⁷ They believe that due to the low labour standards of developing countries, some multinational corporations begin to move to these regions, thus "taking away jobs", which makes developed countries feel threatened. Therefore, in order to ensure competitiveness, the pressure of developed countries to reduce labour standards has arisen, resulting in a race to reduce labour standards.

Jagdish N. Bhagwati is a firm defender of globalization. He believes that trade is not an enemy of workers, but a friend.¹⁸ Among the factors affecting the decline of real wages in the 1980s, trade accounts for a small proportion. It is technological change that makes the employment of unskilled workers more powerful, resulting in the decline of wages, while trade can alleviate this decline of wages.

There are two different types of anti-globalists. The first type is the stubborn opposition with deep prejudice against globalization. Their attitude is a mixture of anti-capitalism, anti-globalization and anti-multinational corporations. The second type of anti-globalization is the mainstream of opposition. They believe that economic globalization is the cause of many social ills today, such as poverty in developing countries and environmental degradation worldwide.¹⁹

3.2 Globalization Has Not Led to a "Race to Lower Labour Standards"

In fact, the theory of "competition for lowering labour standards" does not exist. First, trade with developing countries did not decrease, but increased wages in developed countries, because it slowed down the decline in wages caused by non-trade factors such as labour-saving technological innovation.²⁰ Just as trade with developing countries has not reduced wages, it is unreasonable for workers and trade unions in developed countries to worry about lower labour standards.

Take the garment industry as an example. In the garment industrial zone of New York City, there is no evidence that this competition has led to a decline in labour and safety standards. Although there are indeed many sweatshops in the garment industrial zone, the reason for this phenomenon is not "trade and investment with developing countries", but the lack of implementation of industries across the country and the inability or fear of illegal immigrants to claim legal rights for fear of deportation.²¹

¹⁶ *Economic Globalisation*, WITA, Available at <https://www.wita.org/ustrade/basics-of-trade/economic-globalization/>, last seen on 17/04/2022.

¹⁷ Jagdish Bhagwati, *Anti-globalization: why?*, 26, Journal of Policy Modeling, 439, 440, (2004), Available at https://manoa.hawaii.edu/ctahr/aheed/ALex/Bhagwati_Anti-Globalization.pdf, last seen on 21/04/2022.

¹⁸ J. N. Bhagwati, *In Defense Of Globalization*, 123 (1st ed., 2004).

¹⁹ *Ibid*, at 3.

²⁰ *Ibid*, at 124.

²¹ *Ibid*, at 128.

Secondly, multinational corporations generally do not easily migrate to places where workers' rights are ignored. The quarter century after the Second World War was the golden age of capitalism. In this prosperous period, multinational corporations acted as the vanguard of global economic expansion. For the first time, they have acquired the technologies needed for global operations, including container transportation, satellite communications and computer cash management systems. Multinational corporations export not only manufactured goods but also factories to the third world; In third world countries, the daily wage is often not higher than the hourly wage of multinational companies, and sometimes lower.²²

The existence of low labour standards in developing countries does not necessarily infer that multinational corporations will take advantage of this, because multinational corporations cannot ignore the reputation effect compared with economic benefits.²³ The discharge of waste into water or air and the bad treatment of workers, which violate the universal code of ethics, will cause very serious reputation losses to multinational corporations, even more than the additional profits they can obtain. In addition, the sprouting of democracy in developing countries and the development of non-governmental organizations also make it impossible for multinational corporations to take advantage of the lax control of the host country to make profits without pressure.

Finally, political efforts are sufficient to withstand the pressure of trade and foreign investment on labour standards in developed countries.²⁴ In fact, politics has raised labour standards. Because of concerns about international competition from manufacturers in developing countries with low labour standards, trade unions have turned to raising labour standards in these countries. Forcing exporting countries to raise standards will increase production costs, thereby weakening the competitiveness of developing countries. For example, the standard of automobile airbag is naturally extended to imported vehicles. For foreign automobile manufacturers, the cost of reinstalling airbag is too high.

To sum up, globalization has not led to the reduction of labour standards. Anti-globalization advocates support the theory of "competition for lowering labour standards", believing that trade and investment with developing countries will take away jobs originally belonging to developed countries, while local enterprises compete to lower labour standards in order to maintain competitiveness. In fact, the low labour standards in some industries have nothing to do with trade and investment with developing countries. In addition, multinational corporations generally do not easily use lower labour standards to obtain economic benefits; Finally, domestic politics does not lower labour standards, but forces exporting countries or host countries to raise labour standards in order to weaken each other's export competitiveness or as a condition for investment.

4. CONCLUSION

"Competition theory of lowering labour standards" is the expression of anti-globalization critics' criticism and resistance to globalization in the field of international labour standards. They worry that labour standards in their region will face the threat of decline as multinational companies take jobs away.

²² L. S. Stavrianos, *A Global History : From Prehistory To The 21st Century*, 637 (7th ed., 2004).

²³ Supra 13, at 130.

²⁴ Ibid, at 131.

In this way, the rights of freedom of association, collective bargaining, minimum wage and employment will not be guaranteed. Economic globalization and international trade will not lead to the reduction of international labour standards, and multinational corporations will not easily take advantage of the neglected conditions of workers' rights to obtain economic benefits.

In fact, the low labour standards in some industries have nothing to do with trade and investment with developing countries. In addition, multinational corporations generally do not easily use lower labour standards to obtain economic benefits. Finally, domestic politics does not lower labour standards, but forces exporting countries or host countries to raise labour standards in order to weaken each other's export competitiveness or as a condition for investment.

The International Labour Organization undertakes the task of promoting social equity and justice and maintaining world peace in the field of work. One possible way to solve the problem of trade and international labour standards may be to link the labour standard setting and implementation procedures of the International Labour Organization with the trade sanctions model of the WTO.

GIG ECONOMY: ENSURING WORKERS' WELFARE AMIDST RISE IN SOCIAL SECURITY CONCERNS

Raju Kumar & Harshima Vijaivergia**

Abstract

Researchers shall discuss the concept of 'gig workers' and 'platform workers' [both terms used together to form "gig workers"] and account for how these Gig workers are typically excluded from social security and minimum wage protection since they work outside of traditional employment frameworks, which leaves them vulnerable when they are unemployed. The Researchers will analyse the journey that led the world to the gig economy and therefore will aptly use statistics to show their prevalence in the contemporary economy, how they have been impacted as well as their role in the COVID-19 pandemic. Furthermore, in order to support these gig workers, the Code on Social Security, 2020 constitutes a significant development. The goal cannot be achieved just by the inclusion of these gig workers in the Code on Social Security; rather, it is critical to examine the opportunities and difficulties it presents. The researchers will briefly shed light on the international scenario in this backdrop and so its status in India. Recommendations are made in the end for securing the rights Gig-economy workers are entitled to and how their role can be duly recognised in the economy post-Pandemic.

KEYWORDS: Gig-economy, Labour, Code on Social Security, Social Security, COVID-19

1. INTRODUCTION

In the year 2020, an attempt was made to include the doctrine of 'Universalisation of Social Security' in the Code of Social Security, 2020.¹ The Bill was introduced in the Lok Sabha on 19th September 2020,² and later on, it was passed on 23rd September 2020 in the Rajya Sabha.³ For the first time, the term 'Gig Worker' was brought under the umbrella of Labour law. The International Labour Organization (hereinafter referred

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¹ The Code on Social Security, 2020.

² Ibid.

³ Ibid.

to as ILO) defines the term ‘Social Security’, as “a human right which responds to the universal need for protection against certain life risks and social needs.”⁴ It comprises two things. Firstly, the Right to have a standard of living, and secondly, the Right to have Income Security.⁵

The rise in the gig economy finds its footprint somewhere after 2010, at that time ‘Flipkart’ was the only digital platform. However, over time various other digital platforms came into the picture. For instance, ‘Zomato’ started its food delivery service in India in the year 2015,⁶ and ‘San Francisco-based company namely ‘Uber’ started services in India in the year 2013.⁷

Before we indulge ourselves in details, let us first understand what the term ‘Gig- worker’ actually stands for. A Gig- worker is a modern concept, where a person is indulging in income-earning activities that are different from what the traditional employer-employee has. When gig worker uses online platforms like websites or apps, for instance, Ola, Uber, Swiggy etc. to connect with customers they are known as ‘platform workers.’

The term ‘*Gig-Worker*’ has been defined under *Section 1 (35)* of the Code on Social Security, 2020⁸ as “*Gig Worker means a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship*”. Involving independent contractors and freelancers for a brief time or on a project-by-project basis is a part of the gig economy. It is an unconventional or informal style of employment where independent contractors or freelancers do not have set fixed working hours, vacations, or salaries.⁹ Now, the question arises before us is that Who participates in the gig economy? Gig and non-standard employees represent the racial, cultural, and socioeconomic diversity of the nation. They are both men and women, young and elderly, and they live all over the nation. Although there are certain trends in this population's demographics, there are

⁴*International Labour Standards on Social security*, International Labour Organization, available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm#:~:text=Social%20security%20is%20a%20human,life%20risks%20and%20social%20needs>, last seen on 03/09/2022.

⁵ *Ibid.*

⁶ Salman S H, *From Foodiebay to Zomato: The 12-year Journey That Changed How India Consumes Food*, INC 42, (11/06/2021) Available at: <https://inc42.com/features/from-foodiebay-to-zomato-the-12-year-journey-that-changed-how-india-consumes-food/> last seen on 03/09/2022.

⁷ *Comprehensive Marketing Mix of Uber – With Detailed Explanations of 4P's*, IIDE the Digital School, Available at: <https://iide.co/case-studies/marketing-mix-of-uber-4ps/>,last seen on 03/09/2022.

⁸ The Code on Social Security, 2020.

⁹ *Ibid.*

also many differences between surveys. Since different groups are disproportionately represented in various types of arrangements, a large chunk of this variance results from discrepancies in how each survey defines non-standard work.¹⁰ Moreover, the next thing we should understand is to know, what kinds of work are done through gigs. There is non-standard employment in a lot of different professions. Website design, driving, management consulting, caring for others, and other activities may be included. Non-standard work blurs traditional distinctions since it frequently defines itself by its organization rather than its content. It's not always necessary to make distinctions between service and goods, manual labour and intellectual labour, or blue-collar and white-collar workers. Depending on how it is structured, work in any of these categories may fall under the gig economy. Further, at this juncture, it is worthwhile to mention that 'the gig economy is not a new concept, it has been coined a few decades earlier. However, it has not achieved significance due to various reasons which include, the introduction of technology, lack of long-term staff retention goals on the part of the company, or multi-party transactions.¹¹

The expansion of the gig economy is changing the structure of India's labour force. As far as India is concerned, presently there are between 8 and 18 million gig economy jobs available, and it is anticipated that this number would increase to over 90 million over the next decade.¹² As a result, India's gig economy is projected to witness over 250 billion USD in transactions by the end of the next decade, or 1.25% of the GDP of the nation.¹³ The industries in India with the greatest potential to provide "gigable" jobs in the future can be categorized into four categories namely (i.) Construction; (ii.) Manufacturing; (iii.) Retail; and (iv.) Transportation and Logistics. The gig economy is fast-expanding and its presence can be noticed in other industries such as textile, banking, financial services, electricity, gas, and water; real estate, IT and ITES, education, and personal services.¹⁴ Currently, more than 75% of the companies have less than 10% gig headcount, but this proportion is bound to rise with MNCs turning to flexible hiring options.

¹⁰ *Gig Economy*, DATA HUB, Available at: <https://www.gigeconomydata.org/basics/who-participates-gig-economy>, last seen on 03/09/2022.

¹¹ Suresh Nadagoudar & Rajashree Patil, *Social Security Code 2020: An Analysis*, 10(2), Christ University Law Journal, 19, 21, (2021).

¹² Michael & Susan Dell Foundation, *Unlocking the Potential of the Gig Economy in India*, 10, (Boston Consulting Group, 2021), Available at <https://media-publications.bcg.com/India-Gig-Economy-Report.pdf>, lastseen on 03/09/2022.

¹³ NITI Aayog, Government of India, "India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work" (June, 2022).

¹⁴ *Ibid.*

1. THE GIG ECONOMY IS SYNONYMOUS TO THE FUTURE ECONOMY

2.1 What Gig-Economy Means?

The term gig economy initially refers to artists playing "gigs" at different jazz clubs, taverns, and concert halls.¹⁵ The term first came into use "during the height of the 2009 financial crisis in early 2009, when the unemployed made a living by "gigging," or working many part-time jobs."¹⁶ However, the gig economy has always been a type of labour market with flexible hours associated with short-term or freelance employment agreements.¹⁷ Gig workers frequently follow erratic schedules that are determined by changes in the demand for their services.¹⁸ Most gig workers receive piecework payments.¹⁹ So, rather than being paid an hourly wage, employees are paid for each assignment.²⁰

Two types of employment are typically included in the gig economy: "crowd work" and "work-on-demand through an app." Crowd work is work done through online platforms that link clients, employers, and workers with organizations, companies, people, and individuals.²¹ It frequently entails tedious and mundane internet "microtasks" (such as tagging pictures or filling out surveys) that are outside the scope of artificial intelligence.²² As a result, crowd-work is primarily carried out online, giving employees the freedom to work from anywhere in the world.²³ However, work-on-demand via an app entails performing regular working tasks including driving, cleaning, shopping, and other types of traditional employment.²⁴ Technology companies, like Uber, DoorDash, and others, who choose, monitor, and set minimum quality criteria for their workforce, channel this labour through smartphone applications under their management.²⁵ Work-on-demand through an app varies from crowd-work while having a comparable online character because it matches the online supply and demand of tasks

¹⁵Leslie Hook, *Year in a Word: Gig Economy*, Financial Times, (29/12/2015), Available at <https://www.ft.com/content/b5a2b122-a41b-11e5-8218-6b8ff73aae15>, last seen on 02/09/2022.

¹⁶Ibid.

¹⁷ Bill Wilson, *What Is The 'Gig' Economy?*, BBC News, (10/02/2017), Available at <https://www.bbc.com/news/business-38930048>, last seen on 03/09/2022.

¹⁸Andrew Stewart & Jim Stanford, *Regulating work in the gig economy: What are the options*, 28 (3), The Economic and Labour Relations Review, (2017). Available at <https://journals.sagepub.com/toc/elra/28/3>, last seen on 03/09/2022.

¹⁹Ibid.

²⁰Ibid.

²¹ Valerio De Stefano, *The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork and Labor Protection in the "Gig Economy"*, 37(3), Comparative Labour Law & Policy Journal 471, 474, (2016).

²²Ibid, at 477.

²³Ibid, at 478.

²⁴ Brishen Rogers, *The Social Costs of Uber*, 82(1), University of Chicago Law Review Online 85, 95 (2017), Available at

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1037&context=uclrev_online, last seen on 04/09/2022.

that are carried out locally.²⁵ Retailers and service providers in the gig economy have experienced unparalleled market success as a result of the flexibility for both consumers and workers.²⁶ However, many people who engage in the gig economy are forced to enter a labour market with subpar working conditions.²⁷

2.2. Gig Economy: A Future Perspective

According to a study conducted by Kalra Sahi (2013), where 374 Indian adults were taken as the sample, those working in government offices had a beneficial impact on their ability to maintain their financial stability. Consideration of job security and work-life balance has existed forever. People frequently have an obsession with working in government or the public sector. It is important to remember that according to the Census of India²⁸, in India, there are 402 million people are employed. Consequently, it is expecting this entire population of 402 million people to fit into traditional government employment. There are, of course, many alternatives, such as those for jobs in the private sector. However, the lack of employment possibilities has persisted. At that point, people began to change their focus from the standard employment strategy to the creative employment approaches, where there might not always be a formal employer-employee relationship. The Gig Economy got its start with this change in employment away from traditional work relationships.

2.3 What Led to The Growth of Gig-Economy?

There are many reasons for the growth of the Gig Economy which includes Unemployment, the growth of start-up culture, the Progressive approach to work by millennials, Generation X signing up for gigs, MNCs employing contract-based workers, Growth of freelancing platforms, Blockchain-based payments, etc. There is no doubt that the labour market has seen a clear transformation as a result of technological advancement.

²⁵ Ibid, at 92.

²⁶ Uttam Bajwa, Lilian Knorr, Erica Di Ruggiero, Denise Gastaldo & Adam Zendel, *Towards An Understanding Of Workers' Experiences In The Global Gig Economy*, 19, (Global Migration and Health Initiative, 2018). Available at https://www.glophi.org/uploads/7/4/4/8/74483301/workers_in_the_global_gig_economy.pdf, last seen on 04/09/2022.

²⁷ Leticia Saucedo, *The Legacy of the Immigrant Workplace: Lessons for the 21st Century Economy*, 40(1), Thomas Jefferson Law Review, 1, 18 (2017).

²⁸ Prashant K. Nanda, *Formal Jobs In India May Be More Than Estimated*, Mint, (9/07/2017), Available at <https://www.livemint.com/Politics/Le8m9TN1AqTmPQHwlrlrBK/Formal-jobs-in-India-may-be-more-than-estimated.html>, last seen on 8/09/2022.

When we look back at the causes of the Gig Economy's growth, unemployment ranks as the primary factor. We won't stay at home just because we are forced to be unemployed, am I right? By hook or by crook, people will find a substitute, as seen by the growth of the gig economy. Here, the transformation has caused the formal character of employment to become informal. The growth of the gig economy is a result of the emergence of new kinds of jobs. The advancement of technology is yet another key factor contributing to the growth of the gig economy. This growth in the gig economy would not have been feasible without the rising use of smartphones and the internet, as the online platform is the main factor influencing the relevance of the gig economy. Artificial intelligence is also changing how organizations operate today. In this cutthroat business environment, businesses tend to adopt new technologies to increase profitability.

The potential for gig workers develops naturally as company organizations gradually become more digitally oriented. Workplace flexibility has been made possible by the gig economy. In certain ways, the gig economy benefits all of the major market participants, including customers, gig workers, and employers. From the perspective of the employers, they can use the services of the gig workers as needed. Even when they are not working, they do not need to waste money on wages. Additionally, the gig economy will be cost-effective for businesses because they just need to accommodate temporary workers based on client demand. From the perspective of gig workers, they do not need to limit their employment opportunities to a single position. Due to the flexible nature of the gig economy, workers now have more freedom. With a few exceptions, the workers on this technologically advanced platform are not even obligated to the company; they are free to select the length of their employment with the Gig enterprise. The customer finds it flexible and practical to use the services. for example, Nowadays, users may access services like taxis at their fingertips whenever they need them.

2. NOW AND THEN – PRE-CODE V. THE POST- CODE ERA

The Second National Commission on Labour's 2002²⁹ recommendations that the *current body of Labour laws* is harmonized based on the subject matter led to the development of the *Code on Social Security, 2020*. The Ministry was given the 2017 draught of the labour code's social security and welfare provisions for review and consultation. *The Social Security Code*, which was gazetted on September 29, 2020, is a scaled-back version of the comprehensive draught that was first submitted to the

²⁹ Ministry of Labour and Employment, Government of India, Report of the Second National Commission on Labour with emphasis on Rationalization of Labour laws and Unorganized Labour, Available at https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf, last seen on 08/09/2022.

Parliament in 2018.³⁰ The Code was submitted in December 2019, and the Parliamentary Standing Committee's report on it was prepared on July 31, 2020. The *current Code on Social Security 2020* was then introduced, with the intention of making it easier to implement social security laws, streamlining the number of authorities under various laws, reducing the number of definitions, and guaranteeing the preservation of fundamental ideas of worker welfare. Another goal of the Code is to promote technology so that it is simple to accomplish compliance with and enforcement of the rules.³¹ *The Social Security Code 2020* supersedes the *Code of 2019*, which integrated and updated laws relating to employees' social security in order to extend social security to all employees and workers, whether organized/unorganized or in any other sector. The *Code on Social Security 2020* combines the provisions of nine central labour laws, including the *Employees Compensation Act, 1923*, *The Employees Provident Funds and Miscellaneous Provision Act, 1952*, *The Employees' State Insurance Act, 1948*, *The Maternity Benefit Act, 1961*, *The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959*, *The Payment of Gratuity Act, 1972*, *Cine Workers Welfare Fund Act, 1961*, *The Unorganized Workers' Social Security Act, 2008*, *The Building and Other Construction Workers Welfare Cess Act, 1996*, *The present Social Security Code, 2020*, consists of 164 Sections encased in 14 Chapters beside 7 Schedules.

The *Social Security Code 2020*³² has made it much simpler to understand the full spectrum of *social security legislation*. It attempts to introduce a number of new elements that fall outside the purview of the previous labour laws. It is possible to see the following implications of the Social Security Code:

The Code of Social Security guarantees the composition of Social Security Organizations³³ for the administration of finances for the workers who are covered by the Code, although the existing Acts do not provide for the formation of such organizations. According to rule 7 of the Employee Provident Fund Appellate Tribunal Rules,³⁴ the Employer's appeal will not be taken into consideration by the Tribunal unless they provide a Demand Draft made out to the fund bearing 75% of the amount owed by them. In accordance with the current Code, the Tribunal will not examine an

³⁰ Dr. K. R. S. Sundar & Rahul Suresh Sapkal, *Social Security Code: Another Historic Opportunity Missed*, The Leaflet, (11/10/2020) Available at <https://theleaflet.in/social-security-code-another-historic-opportunity-missed/>, last seen on 08/09/2022.

³¹ Monar, *Brief - Social Security Code, 2020*, Legal Services India, Available at <https://www.legalserviceindia.com/legal/article-4078-brief-social-security-code-2020.html>, last seen on 08/09/2022.

³² The Code on Social Security, 2020.

³³ Chapter II, The Code on Social Security 2020.

³⁴ Employee Provident Fund Appellate Tribunal Rules, 1997.

employer's appeal until that person has paid 25% of the outstanding debt to the Social Security Organization in question.

The Previous labour laws did not contain an excessive sickness benefit clause. In the event of unsanitary working conditions in the factory or accommodations as a result of the owner's negligence, the Code provides for additional costs, such as illness benefits.³⁵ Also there are no supported programs for platform workers, gig workers, or unorganized workers in the existing labour laws. The SS Code outlines welfare programs at the national and state levels for gig workers, unorganized employees, and platform workers on matters relating to accidents, education, health, life insurance, and skill upgrading, particularly on old age home provisions.³⁶

There were no benefits for platform employees, gig workers, or unorganized workers because they were not included in the current Acts. However, under the new Code, unorganized workers, gig workers, platform workers, as well as their families, are entitled to Employees' State Insurance benefits.³⁷

The Social Security Code 2020, allows for the creation of a toll-free help desk or helpline to provide information on the current social security program's availability, the application process, and support for these workers in gaining registration, among other things. The Code was written in such a way as to include the broadest spectrum of employees across the country, including gig workers, unorganized labour, platform workers, construction workers, home-based workers, and organized labour. In light of this, it can be said that the current Code protects and provides for different social security benefits by formulating plans and also maintains the accuracy of data of such workers by maintaining the registers.³⁸

3. THE PRESENT POSITION OF GIG ECONOMY: INTERNATIONAL FRAMEWORK

It is anticipated that the number of such workers would increase across all jurisdictions, especially given the current economic situation. People who operate or work in the gig economy may find it difficult to comply with the rules that regulate the relationship between an employee and an employer in the traditional sense., therefore jurisdictions around the world have had difficulty determining the exact nature of their employment status, and therefore no universal agreement on the standing and treatment of employees on digital platforms currently exists. The status of gig economy employees

³⁵ The Code on Social Security, 2020, S. 65(3).

³⁶ Ibid, S. 32.

³⁷ Ibid.

³⁸ Ibid.

in several jurisdictions is examined in this briefing, along with how some inspiration can be taken from these countries in developing a regime of Social Security for workers in India against COVID-19.

4.1 The United Kingdom

According to a survey showing the development of insecure working conditions, there are currently 4.4 million adults in England and Wales working for gig economy companies, which is an increase of two and a half times from 2016.³⁹ The UK Supreme Court recently held in *Uber BV & Ors v. Aslam & Ors.*,⁴⁰ that drivers on the Uber Platform should be deemed employees of Uber rather than independent contractors, despite the fact that the UK does not directly address the status of gig economy workers. Based on the tight control Uber has over its drivers—including non-negotiable standard employment contracts, prices established by the Uber App, and communication limited to the Uber App—this was clarified.⁴¹

Due to the company's involvement in "every aspect of operation" and "evidence of employee status by virtue of the relation of subordination,"⁴² numerous jurisdictions including California⁴³ and France⁴⁴ have upheld the same. The UK has undoubtedly taken a step closer to protecting the rights of its employees and guaranteeing that they can continue to get the social security payments they are entitled to.⁴⁵ When it comes to including gig economy employees generally as opposed to just a small portion of them, there is still a long way to go.

Courts, tribunals, and HMRC will examine the substance of the connection rather than any labels that the parties have given to the partnership when determining employment status, according to case law in England and Wales. In evaluating job status, the tribunal and court will take into account a number of variables, such as mutuality of obligation, personal service, and degree of control.⁴⁶ Other aspects, such

³⁹ Sarah Butler, *Gig-Working In England And Wales More Than Doubles In Five Years*, The Guardian, (5/11/2021), Available at <https://www.theguardian.com/business/2021/nov/05/gig-working-in-england-and-wales-more-than-doubles-in-five-years>, (last seen on 8/09/2022).

⁴⁰ *Uber BV v. Aslam*, 5 UKSC (2021), (House of Lords)

⁴¹ *Ibid.*

⁴² Aryan Roy, *The UK Supreme Court's Uber Decision & Status of Gig Workers*, NMIMS Law Review Journal and Blog, Available at <https://lawreview.nmims.edu/the-uk-supreme-courts-uber-decision-status-of-gig-workers/>, (last seen on 8/09/2022).

⁴³ *Uber Technologies Ltd v. Barbara Berwick*, CGC-15-546378, EK (2015, California Superior Court).

⁴⁴ Labour Chamber of the Cour de Cassation, no 19-13.316 (2020).

⁴⁵ Arush Mittal & Mehak Jain, *A Gig-Antic Step Towards Making India Labour Friendly: Extension Of Social Security To Gig Workers*, RMNLU Law Review Blog, Available at: <https://rmlnlulawreview.files.wordpress.com/2022/06/r51-revised.pdf>, last seen on 07/09/2022.

⁴⁶ *Doing Business In The Gig Economy: A Global Guide For Employers*, Mondaq, Available at <https://www.mondaq.com/canada/employee-benefits-compensation/1026496/doing-business-in-the-gig-economy-a-global-guide-for-employers>, (last seen on 8/09/2022).

as limitations on the person working for other organizations, the compensation and benefits supplied to the person, integration into the business, the tools offered, and the degree of financial risk is also taken into account.

The UK's FinTech community banded together to create "Covid Credit," which would enable sole proprietors to self-certify lost income, for the security of gig workers. Their goal was to use the Open Banking technology to broaden government assistance, which was previously only available to salaried individuals, to the self-employed, gig workers, and small enterprises.⁴⁷⁴⁸

4.2 The United States of America

President Joe Biden and Vice-President Kamala Harris have fought for stricter rules on the gig economy and supported workers' rights throughout their campaigns. On the Biden-Harris campaign website, their recommendations are listed. The "Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions"⁴⁹ has called for labour law reform, including: "legal benefits and protections for gig workers",⁵⁰ "changes to perplexing legal tests to grant gig workers independent contractor status",⁵¹ and the "adoption of stricter classification schemes like California's ABC test."⁵²

The "ABC" Test was developed by the California Supreme Court to assess whether a worker should be classified as an employee or an independent contractor in *Dynamex Operations West Inc. v. Superior Court of Los Angeles*.⁵³ According to this test, unless it could be proven that (i) The worker was free from her employer's control with regard to the performance of their task; (ii) The task performed was outside the employer's routine business; and (iii) The worker was ordinarily involved in the line of work as performed for the employer, there shall be a presumption of the existence of employer-employee relation.

⁴⁷ UK Fintech Community Comes Together To Build Covid Credit And Let Sole Traders Self-Certify Lost Income, Tech Crunch, Available at <https://techcrunch.com/2020/03/24/covid-credit/>, last seen on 07/09/2022.

⁴⁸ NITI Aayog, Government of India, *India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work* (2022) Available at https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf, last seen on 8/09/2022.

⁴⁹ *Gig Economy Regulation Under Biden*, CATO Institute, Available at <https://www.cato.org/blog/gig-economy-regulation-under-biden>, last seen on 6/09/2022.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ *Dynamex Operations West Inc v. Superior Court of Los Angeles* 4 Cal.5th 903, 416 P.3d 1, 232 Cal.Rptr.3d 1 (2018).

Evidently, many platforms like Uber and Lyft won't pass this test, resulting in the designation of their employees as opposed to independent contractors for their workers. As soon as these platform workers were classified as employees, they became eligible for all of the social security benefits to which employees were previously entitled.⁵⁴ The Test was codified in California law in 2019 after Assembly Bill 5 (hereafter, the "AB5 Bill") was approved.⁵⁵

In contrast, "Proposition 22" which was passed later attempted to provide an exemption to the platform-based delivery and transportation businesses against the implementation of AB5. These businesses stated that the implementation of AB5 will increase the price of delivery and ridesharing services and alter the level of flexibility currently provided by the gig economy.⁵⁶ "Proposition 22" found a medium ground that, while giving workers a number of advantages including a minimum salary guarantee, accident compensation, health insurance, etc., also took away their right to be unionised and be deemed as a worker within the AB5 and thereby enjoy the social security aid.⁵⁷

The argument here is that it is just improper to classify platform workers under AB5 as employees. Instead of classifying gig workers as employees, efforts should have been made to define them and clarify their role in the economic and legal system. Mainly, care should have been taken to preserve the unique characteristics of the gig economy and prevent the blending of various job arrangements. The flexibility that the gig economy offers in terms of operations and finances would be reduced if gig workers were considered to be "employees." Additionally, the problem of multiple employment and its resolution is still up for debate. Laws that improperly classify employees will be detrimental to the gig economy's participants and the constrictive belief that all employees should be treated as Employees would result in illogical policy suggestions.⁵⁸

New York City provided assistance to the gig workers by finding them delivery jobs. These gig workers have licences from the Taxi & Limousine Commission.⁵⁹ Along with a guarantee of a minimum compensation of at least USD 15 and payment for gas mileage and tolls, the jobs also included a minimum wage guarantee. In a similar vein,

⁵⁴ Tom Spiggle, *Gig Workers As Employees: Why America Won't Follow The U.K. Anytime Soon*, Forbes, Available at <https://www.forbes.com/sites/tomspiggle/2021/02/26/gig-workers-as-employees-why-america-wont-follow-the-uk-anytime-soon/?sh=dcfea2c1db85>, last seen on 8/09/2022.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Tina Bellon, *Uber, Lyft Spend Big In California To Oppose Even Costlier Gig-Worker Law*, Reuters, (05/10/2020), Available at <https://www.reuters.com/article/uber-california-idUSKBN26Q2LX>, last seen on 09/09/2022.

⁵⁸ Ibid.

⁵⁹ Megan Rose Dickey, *NYC Is Offering Gig Workers Delivery Jobs During Covid-19 Pandemic*" Yahoo! News (24/03/2020), Available at <https://au.news.yahoo.com/nycs-taxi-limo-commission-offering-221526572.html?guccounter=1> (last seen on 8/09/2022).

delivery service Postmates established a fund to assist with the medical costs of delivery personnel impacted by Covid-19.⁶⁰ In the aftermath of business closures, this offered social security to those who were experiencing income loss.

4.3 France

Gig economy platforms in France operate under the presumption that each user is an independent contractor.⁶¹ From a legal standpoint, the contrast between the status of an employee and a self-employed service provider is crucial and frequently causes conflicts. The distinction is crucial, especially in light of France's stringent employment laws, which include limitations on working hours and termination protections, as well as employer obligations for social security contributions⁶² (employers must make these payments only for employees; self-employed workers are exempt), as well as potential entitlement to unemployment benefits after termination.

The Case law has established that in evaluating the employment status, courts must consider the nature of the relationship rather than any labels that the parties have given to that relationship, as is the case in many other nations. The degree of the employee's integration into the business activities, the tools offered, and the degree of corporate control will all be taken into consideration.

4.4 Other Nations

Australia - Australian workers can be broadly classified as either "employees" or "independent contractors." An employee is given complete safeguards, including a minimum wage, a certain number of hours they can work, paid time off, and protection in the event of termination.⁶³ When a relationship ends, a contractor is not given the same entitlements as an employee and is not entitled to the same claims. When defining the relationship between a worker and a business, Australian courts take a multi-

⁶⁰ *Postmates Reveals Plans To Cover Medical Cost For Couriers As Part Of Covid-19 Response*, Tech Crunch, Available at <https://techcrunch.com/2020/03/10/postmates-reveals-plans-to-cover-medical-costs-for-couriers-as-part-of-covid-19-response/> (last seen on 8/09/2022).

⁶¹ Claire Dufils, Clara Jousselain, *French Court Finds Gig Platform Workers Are Independent Contractors, Not Employees*, JDSupra, (10/02/2023), Available at <https://www.jdsupra.com/legalnews/french-court-finds-gig-platform-workers-4566410/#:~:text=French%20Court%20Finds%20Gig%20Platform%20Workers%20Are%20Independent%20Contractors%2C%20Not%20Employees,->

Claire%20Dufils%2C%20Laura&text=A%20recent%20decision%20issued%20in,is%20a%20fact%2Dspecific%20inquiry., last seen on 22/02/2023.

⁶² Joël Grangé, Camille Ventejou & Flichy Grangé Avocats, *Employment and Employee Benefits in France: Overview*, Thomson Reuters Practical Law, (01/07/2022), Available at [https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true), last seen on 20/02/2023.

⁶³ *Doing Business In The Gig Economy: A Global Guide For Employers*, Norton Rose Fulbright, available at <https://www.nortonrosefulbright.com/en-au/knowledge/publications/87afaec5/doing-business-in-the-gig-economy-a-global-guide-for-employers>, last seen on 22/02/2023.

factorial approach, with no one factor being more important than any other. It is a balance issue and the entirety of the connection is taken into account. The courts have also stated that the crucial issue is whether or not a worker is operating their own business (in which case they are an independent contractor) or exclusively rendering their services to a third party (in which case they are an employee).⁶⁴

Although they admitted that there are difficulties, Australian courts have up to this point ruled that the better perspective is that gig workers are independent contractors rather than employees.

Hong Kong - Employers in Hong Kong are increasingly choosing to hire consultants and contractors on a self-employed basis to meet some or all of their workforce needs.⁶⁵ An employee is granted rights and protections under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and at common law, whereas independent contractors are expected to take care of their own needs with regard to job safety, accident insurance, retirement plans, leave periods, job security, and other benefits typically associated with employment.⁶⁶

Italy - Initially classified as "para-subordinate workers," a unique class of independent contractors whose operation is carried out through continuous and organized collaboration with the principal, gig workers in the gig economy have become more prevalent in Italy.⁶⁷ However, there has been a growing movement to provide such workers with a minimal amount of job protection over time (i.e., minimum wage; insurance protection etc.). This gradual trend was set in motion by case law, which, following a few initial claims, granted gig economy workers the fundamental employment protections typical of subordinate employees after ruling that, despite rare instances, their performance was frequently strictly managed by the employer through a digital platform.⁶⁸

⁶⁴ ZG Operations Australia Pty Ltd v. Jamsek (2022), HCA 2 (High Court of Australia).

⁶⁵ *Hong Kong: Categorising Individuals As Contractors Or Employees*, Herbert Smith Freehills, (20/12/2016), Available at <https://hsfnotes.com/employment/2016/12/20/hong-kong-categorising-individuals-as-contractors-or-employees/>, last seen on 24/02/2023.

⁶⁶ Ss. 21B, 31R, 32I, 32M & 43M, Employment Ordinance 1968, (Hong Kong).

⁶⁷ Silvia Sciorilli Borrelli & Davide Ghiglione, *Italy Emerges As Next Front In Gig Economy Labour Battle*, Business & Human Rights Resource Centre, (08/04/2021), Available at <https://www.business-humanrights.org/en/latest-news/commentary-italy-emerges-as-next-front-in-gig-economy-labour-battle/>, last seen on 06/09/2022.

⁶⁸ Ibid.

4. PREVAILING CHALLENGES IN THE PROTECTION OF GIG-WORKERS

Prior to the analysis of the difficulties and challenges faced by gig and platform workers in India, it is significant to be aware of various complaints the platform world economy is struggling with

5.1 Risks to Jobs and Financial Security

Approximately, 88% of gig economy workers had run out of money even before the month had ended, according to a survey by Catalyst Fund and Karma Life.⁶⁹ The majority of them blamed rising gasoline and home prices for this. A staggering 90% of the workers polled also stated that they wish to take out a personal loan to pay for family expenditures but are unable to do so because of the nature of their business. Furthermore, a substantial degree of workers' salary is unable to access credit. There are unexpected, unforeseen expenses that can be burdensome.

5.2 Insurance Coverage

The survey revealed that approximately 40% of the gig economy workers had no insurance, and only 24% of them had employer-provided insurance coverage.⁷⁰ The rest 36% resorted to self-purchasing of insurance via premium. It is evident that a large percentage of the workers engaged in Gig-economy do not have sufficient insurance coverage despite being subject to occupational hazards and accidents. It is safe to say that incentive models, based on performance efficiency, put these workers under pressure and financial burden without any layer of protection.

5.3 Income Variation

Before the COVID-19 pandemic, gig workers earned more than Rs 25,000, but after the pandemic, 9 out of 10 workers started earning less than Rs 15,000.⁷¹ There is a variety of reasons for the said substantial income fluctuation.

⁶⁹ Neelanjit Das, *Gig Economy Workers Face Many Challenges In India; How Fintechs Are Trying To Solve Them*, Outlook (29/04/2022) Available at <https://www.outlookindia.com/business/gig-economy-workers-zomato-swiggy-bigbasket-blinkit-uber-ola-face-a-many-challenges-in-india-how-fintechs-are-trying-to-solve-them-news-193217>, last seen on 5/09/2022).

⁷⁰ Ibid.

⁷¹ T K Rajalakshmi, *Gig Workers Vulnerable To Exploitation*, Frontline, (17/03/2022), Available at <https://frontline.thehindu.com/social-issues/gig-workers-vulnerable-to-exploitation/article65221492.ece>, last seen on 13/09/2023.

5.4 Issues of Accessibility

The availability of internet services and digital technologies can be a limiting factor, even though the gig economy is open to everyone who is ready to engage in such employment due to the large range of employment opportunities it offers. Those who live in rural and distant places will find this to be especially true. Due to this, the gig economy is mostly an urban phenomenon.⁷² This suggests that platforms that demand in-person assistance may be more readily available to urban men and women or to rural men and women who are ready to move to a town or a city or regularly commute there.

5.5 Challenges in Occupational Safety and Health

According to studies, employees who work for digital platforms, particularly women employees in the app-based taxi and delivery industries, face a variety of workplace safety and health concerns. ILO global surveys on freelance platforms show that employees, particularly women, in the taxi and delivery app industries also suffer a number of occupational safety and health concerns. About 83% of workers in the app-based taxi industry and 89% of workers in the app-based delivery industry said they were concerned about safety at work, frequently in relation to road safety, theft, and physical assault.⁷³

5.6 The Delayed Implementation of Labour Laws

The State Governments' delay in finalising the draft rules, elections in a few states, and the resurgence of COVID-19 cases in the other states were the main causes of the postponement of the Indian labour codes, which were originally scheduled to be enforced in April 2021.⁷⁴ Although this delay provided desired relief to businesses and other organisations attempting to restructure remuneration policies and human resources, it also negatively impacted the gig economy. The benefits assured to the gig workers were also delayed as a result of the delay in passing the code. Due to the absence of labour rules, there is no legislation granting gig workers any form of social security or benefit.

⁷² *India's Emerging Gig Economy: The Future of Work for Women Workers*, IWWAGE & The Asia Foundation, Available at https://asiafoundation.org/wp-content/uploads/2020/07/Indias-Emerging-Gig-Economy_The-Future-of-Work-for-Women_update7.24.20.pdf, last seen on 08/09/2022.

⁷³ *World Employment And Social Outlook: The Role Of Digital Labour Platforms In Transforming The World Of Work*, International Labour Organisation, Available at <https://www.ilo.org/global/research/global-reports/weso/2021/lang--en/index.htm>, last seen on 08/09/2022.

⁷⁴ *Govt Defers Labour Codes As States Fail To Finalise Rules*, The Times of India (01/04/2021), Available at <https://timesofindia.indiatimes.com/india/govt-defers-labour-codes-as-states-fail-to-finalise-rules/articleshow/81805494.cms>, last seen on 4/09/2022).

The Indian Federation of App-based Transport Workers (IFAT) filed a suit with the Supreme Court of India in response, requesting daily cash transfers until December 31, 2021, or until the pandemic abates.⁷⁵ The petition detailed numerous instances of workers suffering during the COVID-19 pandemic without health coverage or minimum wages, as can be seen from the petition. "Being deprived of the most basic social security benefits and with absolutely no regulation of their working conditions, and having suffered immensely during both the 1st and 2nd phase of the Covid-19 pandemic, the Petitioners are constrained to file this Petition."⁷⁶ Therefore, it is of paramount significance that the labour codes are made effective with urgency so that the workers in the gig community need not require to appeal before the Supreme Court to seek the implementation of rights they are entitled to.

5.7 The Loopholes in Code on Social Security

The definition used for 'wages', under the Code of Social Security,⁷⁷ is identical to the one used in the Employees Provident Fund Act, of 1952. "Deemed wages" have been newly added, where an employee receives more than 50% of total salary as allowances, and other amounts do not fall under its ambit. The additional income will be constituted as wages for EPF contributions. This in turn would be a financial onus on employers, thereby also deteriorating employees' financial status.

Given that there are no explicit definitions of domestic workers, agricultural workers, or bidi workers like there are for home-based workers, self-employed individuals, and gig and platform workers, it is unclear from the code whether they fall under the category of unorganised workers even though they are included under wage workers.

As in the instance of a driver, the conceptual boundary between the self-employed and gig workers has not been drawn. Working for a cab aggregator with an app wherein there are no appointment letters, but social security benefits are absent, the employer has no influence on the timing of the workday. The driver has the choice to work for either an employer or a cab aggregator that is competitive.

Social security is given to unorganised workers under section 109 of the CSS, although under Section 114 of the CSS, gig workers and platforms covered by social security workers are offered. As a result, three plans are created for three different kinds of workers, which might have been easily avoided. Where gig workers are concerned,

⁷⁵ The Indian Federation Of App Based Transport Workers (IFAT) v. Union of India; S. Kakkar, Writ Petition(s)(Civil) No(s).1068/2021.

⁷⁶ Ibid.

⁷⁷ S. 2(88), The Code on Social Security, 2020.

this approach results in wasteful duplication and platform employees could be included in the category of unorganised labour. In addition, it confuses the issue of whether there is a difference between these three types of workers, or whether they are all included in the broader category of organised labour.

5.8 Insufficient Recognition of Gig-Workers

Out of the four labour law codes, only the Code on SS has recognised gig and platform workers and extended social security and benefits to them; other codes are silent with regard to their applicability to gig and platform workers. The new set of regulations combines 44 central labour legislations into four labour codes, which might be the root cause of concern of the gig community.⁷⁸ First off, the Industrial Relations Code, of 2020, which only applies to employees who work in industrial premises, makes no mention of gig or platform workers because they lack a fixed place of employment.

Accordingly, these workers are excluded from the applicability of provisions of unionization, fair hiring and firing procedures, and collective bargaining, among others. Secondly, the Occupational Health, Safety and Working Conditions Code, 2020, excludes gig workers as well. Thus, while gig and platform workers worked as unsung heroes for the people during the pandemic by working coherently throughout the day, they would not be getting the benefits of this code.

Lastly, the Code on Wages, 2019, does not extend its provisions to gig workers either which translates into dis-entitlement from a minimum wage. Gig workers work efficiently, but they are paid little compared to permanent employees, which emphasises the need to establish a fundamental minimum wage.

5. RECOMMENDATIONS AND CONCLUSION

After careful consideration, it has been determined that the Code on Social Security is unquestionably a turning point from a global perspective since a sizable portion of the working population is present. However, several modifications can be suggested, such as shifting from casual to formal work modes. Some of the Security Code's specifications have also drawn criticism. Some clauses are ambiguous. The exact mechanism via which the provisions will be followed through on, and if done without sufficient. Despite safety measures, the transfer time can be extremely difficult for businesses under various Social Security Act 2020 clauses.

⁷⁸ 44 Labour Laws To Be Amalgamated Into 4 Codes, The Hindu, (15/10/2015), Available at <https://www.thehindu.com/news/national/other-states/44-labour-laws-to-be-amalgamated-into-4-codes/article7762305.ece>, last seen on 09/09/2022.

The "individualization of social protection strategy" or individualization of labour has been gaining popularity recently.⁷⁹ This strategy proposes that, rather than connecting social security benefits according to the sort of employment, these advantages should be connected to each individual, such as the name implies, any person who makes an economic contribution ought to get irrespective of their employment status, receive social security benefits.⁸⁰ One account should be used to store contributions made by the individual, their employer, or the government.

The necessity to establish a dispute resolution mechanism also arises. It will serve as a tool for resolving conflicts between platform and gig employees and their employers. The necessity of the hour is for an impartial authority that listens to workers' concerns and gives them a chance to explain their side of the story.

Drawing inspiration from KarmaLife, in order to provide gig workers with seamless access to liquidity when needed, KarmaLife is developing a complementary portfolio of financial products. These solutions will let them take advantage of their prior work experiences and earning trends. Today, Karmalife provides adaptable small credit options, such as Earned Wage Access to cover everyday expenses, Lines of Credit to give consumers access to the potential future income, and Instalment-Linked Loans to cover larger, lumpier expenses.⁸¹

When opposed to typical insurance products, micro-insurance solutions designed specifically for low-income groups can assist gig economy employees in protecting themselves without incurring significant premium costs.

One must be registered to receive benefits under Chapter IX of the CSS; therefore, receiving social security benefits for gig and platform workers is optional and subject to their registration with the aforementioned organization. Ideally, it is a general suggestion that gig and platform workers should be required to enrol in insurance, particularly state-funded medical insurance, and employers in part. Furthermore, in cases when accidents happen while an employee is on the job, the employer should cover the associated costs. Lastly, the implementation should be made effective on a fixed date, with pressing urgency.

⁷⁹ A. Erickson & I. Meyer, "Economic Security for the Gig Economy", *Etsy*, available at: <https://extfiles.etsy.com/advocacy/Etsy_EconomicSecurity_2016.pdf> last seen on 4/09/2022).

⁸⁰ Michael Allvin, "The Individualization of Labour" (2004 Palgrave Macmillan).

⁸¹ Aparajitha Saxena, *Karmalife's Digital Karma Delivers Financial Services To Underserved Gig Workers*, Your Story, (14/07/2022), Available at <https://yourstory.com/2022/07/httpsyourstorycom202207fintech-startup-karmalife-provides-financial-services-to-gig-workers>, last seen on 12/09/2022.

THE CHANGING LANDSCAPE FOR GIG WORKERS IN INDIA: A COMPARATIVE ANALYSIS BETWEEN INDIA, USA AND EU LAWS

- *Drishti Rathi, Tarun Tripathi, and Nabeela Siddiqui**

Abstract:

The Indian market is witnessing a new form of economy booming - famously styled as 'Gig Economy'. The opening of the Indian market was also opening of the Indian legal system to foreign ideas and rights jurisprudence. The dominance of digital platforms is omnipresent, impacting aspects from determining wages to management. The increase in the number of individuals employed as digital labourers or gig workers have prompted the lawmakers, regulatory bodies and judiciary to contemplate and settle the law on the legal status of such form of employment. The paper would understand, explore and further dialogue on these lines with a comparative analysis.

Keywords: Labour, Law, Gig Workers, Code, Comparative, India, USA, European Union etc.

1. INTRODUCTION

Under meek scenarios, a new form of economy is booming in the Indian market famously styled as 'Gig Economy'. A gig economy is a form of the economy under which the employees are being hired by the corporations on contractual terms to discharge functions such as food delivery executives or cab drivers, these are mostly application-based service, and conventionally do not fall within the premise of '*Employer-Employee*' relationship and because they are hired on contractual terms, the sense of security attached to their job is pretty low as compared to the job security with a permanent employee.¹ Further, this market dynamism though ray of hope for the mass unemployed population of India yet has certain severe repercussion on the human rights front, mostly because the person working with a lot of platform-based services are mostly over-worked, less-paid with minimal health insurance.

The opening of the Indian market was also opening of the Indian legal system to foreign ideas and rights jurisprudence. One such sector that saw (un)parallel increase

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¹ Ben Lutkevich & Alexander S. Gillis, *Gig Economy*, Techtarget, Available at <https://www.techtarget.com/whatis/definition/gig-economy>, last seen on 02/02/2022.

after the post-liberalization era was the service sector, with many of the service industries entering into the Indian market in search of making a profit.² The State is held hostage to the corporate demand, knowing that the youth population of India is at ever high with a skewed job opportunity, the State is not in a competent position to provide job opportunities to all. Thus, the youth have to turn to the corporate sector which is willing to offer a job but again at its own term and conditions. The labor law reforms proposed in 2019 are also more in the favor of the corporate firms, which at large diminishes the bargaining power of the employee, who has no other option but to agree to the whims and fancy of the corporate contract.

The post-liberalization era has seen some drastic steps in the socio-economic condition of modern-day India, the question will always come back to haunt India whether it was ready for such a change, the next question, which naturally follows up this argument is whether the legal jurisprudence of India was in a state to be able to handle such drastic changes? The dominance of digital platforms is omnipresent, impacting aspects from determining wages to management. The increase in the number of individuals employed as digital labourers or gig workers have prompted the lawmakers, regulatory bodies and judiciary to contemplate and settle the law on the legal status of such form of employment.³ The issues under consideration are although novel (owing to the dynamic technological advancements and its utilization by unique business arrangements operating through digital platforms), yet the discussion it entails are not entirely alien because of the years of contribution by the courts and academicians on the discussion of how the contractual models used to structure ‘atypical’ work in ‘fissured’ workplaces⁴ might fit into our received regulatory categories.⁵

An approach centred on Human Rights and utilization of human rights instrumentalities could be an effective mechanism to influence the law-making process and policy formulation, but only in such conditions where the governments in different jurisdiction carryout their obligations diligently. To achieve an economic arrangement that culminates into an effective materialization of obligations pertinent for protection of human rights, a substantial revision of our approach towards formulation and evaluation of economic policy is required. Furthermore, the “Personal Work relation”⁶

² Latha C. M & Dr. V. Shanmugam, *Growth of Service Sector in India*, 19(1), IOSR Journal Of Humanities And Social Science, 8, 9, (2014).a

³ The Code on Social Security, 2020.

⁴ D Weil, *The Fissured Workplace*, 24, (Harvard University Press 2014).

⁵ E Albin and J Prassl, *Fragmenting Work, Fragmented Regulation: The Contract of Employment as a Driver of Social Exclusion*, 209, 211 in *The Contract of Employment* (Mark Freedlan, Alan Bogg, David Cabrelli, Hugh Collins, Nicola Countouris, A.C.L. Davies, Simon Deakin, Jeremias Prassl, 2016).

⁶ Mark Freedland, *Application Of Labour And Employment Law Beyond The Contract Of Employment*, 146(1-2), International Labour Review 3, 4 (2007). (notion of personal work relationship stipulates a valid normative paradigm in the concerned context, through exclusion from the coverage of labour law (commonly including individual and collective labour law as well as employment equality law),

approach propounded by Mark Freedland can be adopted to comprehend and articulate the peculiar types of jobs that will employ gig workers. This outlook towards the work relationship may prove to be effective as it '*the self-employment monolith is revealed to be artificial, and it is broken down. In addition, it goes beyond contractual classifications to provide access to protection.*'⁷ Further, this will entail a paradigm shift from erstwhile approaches towards delimiting the scope of labour law by defining what it safeguards in contrast to what is beyond its protective canopy and this is ought to be defined by placing a reliance on the principle of subordination and control, according to said principle, an individual could be protected as a worker if they dispense personal service without in any manner helming a business or economic arrangement upon their self-controlled/owned account (as such a situation will invoke the application of competition/anti-trust laws).⁸ The other drawbacks hindering gig workers their deprivation from the protection of occupational safety, health and sanitation laws etc. Nature of gig employment is such that their course of activities is not limited to a fixated workplace, and major portion of their activities are dependent on their movement from a particular location to another in order to perform their gigs. This results in peculiar considerations that an employer must deal with, namely -

A. Safeguarding workers from Sexual Harassment⁹

B. Working in the Night-shift¹⁰

C. Contract Labour Laws¹¹

D. Compensation in case of accidents¹²

employment that cannot be termed personal, and is majorly (excluding temporary scenario or one time situations) performed through dependents or substitutes, or as an accessory to capitalized and asset-intensive (as opposed to labour intensive) form of organizations).

⁷ The European Confederation Report (n 27) 65.

⁸ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations*, 122, (OUP 2011).

⁹ The Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 ("SHW Act") prohibits sexual harassment of women at the workplace and imposes obligation upon employers to spread awareness among their employees as well as deal with complaints in a private and time bound manner through a stipulated mechanism.

¹⁰ The laws related to shops, commercial establishments, and factories deals with certain aspects of night shifts (to ensure their protection). However, given that gig workers are not 'employed' to work out of shops, commercial establishments or factories, the requirements of the platform in this respect are not effective.

¹¹ The Contract Labour (Regulation and Abolition) Act of 1970 (the "CLRA Act") governs the employment of contract labour, which is defined as the employment of workers by a third party (outsider) who acts as a contractor to perform specific services related to the course of work of the workplace, business, or employer. The CLRA gives contractors the option to be covered by digital platforms (which offer gig-based labour) and this imposes obligations to get licences and uphold legal obligations.

¹² The Employees Compensation Act of 1923 addresses the issue of compensation for illnesses or injuries sustained while doing tasks related to employment (ECA). According to the ECA, an employer must provide compensation for injuries brought on by mishaps that occur during the course of employment,

Digital platforms have become an emerging source for providing income generating opportunities to various sectors of the society. However, these are not free of challenges such as working conditions, flexibility in work and income and so on. There was also a dearth of any laws or provisions in India which could define gig economy worker which was the reason for the digital platforms to escape the social security obligations towards these workers. However, in common understanding, it can be stated that a gig economy is characterized by flexible and temporary jobs like freelancing and as Independent Contractors for the workers. It helps to create a more adaptable work which in turn meets the needs and demands of today's flexible lifestyles¹³. Businesses around the globe have been largely affected by Covid 19 pandemic paving the way to accelerate our thinking towards gig economy. Moreover, the advent of Ola, Swiggy, Urban Company and so on has been a significant part in the growth of gig economy¹⁴. India has a humongous number of daily wage workers which were never considered a specialized sector. However, gig economy provides an opportunity for 90 million jobs which is approximately 1.25% of the total Gross Domestic Product of India¹⁵. For the first time in India, the Social Security Code, 2020 provides for numerous provisions for the gig workers.

2. SHIFT TOWARDS GIG WORKERS IN INDIA

India has majority of their employees in the informal sector which has estimation of around 81% of the unorganized sector.¹⁶ Furthermore, 26% of the regular salary earning employees has very low social security coverage which makes this sect very vulnerable¹⁷. However, India saw a significant growth in the gig economy which helped workers pave their way out of the traditional employment systems and mechanisms. The development of legal provisions for gig workers started of late. It began by witnessing few judicial pronouncements like

including situations in which employees are compelled to travel for the employer. This statute's relevance to gig work on digital platforms is still up for debate.

¹³ Richard Heeks, *Digital Economy and Digital Labour Terminology: Making sense of the “Gig Economy”, “Online Labour”, “Crowd Work”, “Microwork”, “Platform Labour”*, 73 ESRC, 70, 71 (2017).

¹⁴ Uma Rani, *The role of Digital Labour Platforms in transforming the World of work*, 85 ILO, 45, 45 (2021).

¹⁵ Sanaya Sinha, Gig Worker's access to Social Security in india, Accountability India- Center for Policy research, <https://accountabilityindia.in/blog/gig-workers-access-to-social-security-in-india/>, (last accessed 3rd Feb, 2022, 7:45pm).

¹⁶ *Nearly 81% of the Employed in India Are in the Informal Sector: ILO*, The Wire, (18/05/2018), Available at <https://thewire.in/labour/nearly-81-of-the-employed-in-india-are-in-the-informal-sector-ilo>, last seen on 10/08/2022.

¹⁷ Women and Men in the Informal Economy: A Statistical Picture, International Labour Organisation: Third edition, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf, (last accessed 2nd Feb, 2022, 3:45pm).

Dhrangadhara Chemical Works v. State of Saurashtra¹⁸ and Ram Singh and ors v. Union Territory, Chandigarh and Ors¹⁹ where the Courts adjudged that workers will be considered as the employees of the employer as they were completely under the control and direction of the employer and also the employer paid wages to the workers in return which established an employer-employee relationship. The Second National Labour Commission had suggested in 2022 for the amalgamation of the previous legislations and therefore, the Indian Government passed the new labour law codes, which subsumes the earlier labour law legislations and boils them down to four important codes²⁰. The Code on Social Security, 2020 prescribes for various benefits including a social security fund particular dedicated for the unorganized sector laborers which according to the said law, includes digital laborers and gig workers.

2.1 Social Security Code, 2020

This Code subsumes nine previous labour law legislations such as Maternity Relief Act, Employees Compensation Act and so on.²¹ The benefits and security protections provided to workers in both the organised and unorganised sectors have been significantly strengthened. It brings uniformity in the security provided and facilities given to different employees where only permanent employees were covered. One of the most attractive changes brought about by this Code is the inculcation of provisions for the gig workers²². Definition: The said code stipulates for a definition of gig workers under Section 2(35).²³ The Code states that gig workers are not included in the traditional relationship of employer and employee but are earning through the same working arrangement. This definition was the need of the hour due to the increasing number of independent contractors and digital workers in the country.

Constitution of the Board and the welfare of gig workers: A National Social Security Board shall be set up under this legislation which as per Section 6 clause (7) sub-clause (a)²⁴ of the Act functions to recommend the Central Government and also monitor on policies and schemes for the unorganized sectors, gig workers and platform workers. There exist varied benefits that are made available to the gig workers by the

¹⁸ Dhrangadhara Chemical Works v. State of Saurashtra, 1957 AIR 264.

¹⁹ Ram Singh and ors v. Union Territory, Chandigarh and ors Appeal (civil) 3166 of 2002.

²⁰ G Shivaji Rao, *The Report Of The Second National Labour Commission, 2002: An Overview*, Mondaq, <https://www.mondaq.com/india/employee-rights-labour-relations/20167/the-report-of-the-second-indian-national-labour-commission-2002---an-overview>, (last seen 02/02/2022).

²¹ *FAQs on The Code on Social Security, 2020*, V. V. Giri National Labour Institute, Available at <https://vvgnli.gov.in/en/code-social-security-2020>, last seen on 02/02/2022.

²² Minu Dwivedi & Shreya Chowdhury, Evaluating the Code on Social Security, 2020, Mondaq, <https://www.mondaq.com/india/employee-benefits-compensation/1001268/evaluating-the-code-on-social-security-2020>, (last accessed 3rd Feb, 2022, 7:08pm).

²³ S. 2(35), Code on Social Security, 2020.

²⁴ Ibid S. 6, (7)(a).

virtue of this Act. Section 109²⁵ of the Code clearly lays down that welfare schemes shall be devised for the gig workers in the areas of education, old age, life and disability, provident fund, health and maternity, funeral assistance, skill up gradation, housing, educational schemes of children and employment injury benefits and any other benefits shall be made available as deemed fit by the Central Government.

Section 112²⁶ of the Code on Social Security clearly lays down the Government has provided for various facilitation centers and also toll-free numbers for imparting all the information about the available social security schemes available, file, process and forward applications and enroll for the gig workers. Moreover Section 114(6)²⁷ of the Code provides for the National Social Security Board constituted by the virtue of Section 6(7)(a)²⁸ and states that this body shall be responsible for maintaining the welfare of the gig workers. One of the most eye-catching features of this Board is that it also provides for representation of the gig workers. The sub clause (d) of the same section provides that there shall be five representatives from the gig or the platform workers which is the need of the hour. Mere rights and privileges are not enough for their recognition and welfare. They need to represent themselves in order to convey to others their needs and their best interests. Lastly, the Section 141(1) of the Code²⁹ stipulates for a dedicated fund for guaranteeing social security to the gig economy workers.

Mandatory Registration: One of the major highlights of the Code is the Mandatory Registration provision for the gig workers. However, this registration is subjected to certain conditions which are:

1. Person must be above 16 years of age.
2. He should have worked for more than 90 days in the past 12 years.
3. Submission of an electronic self-declaration or a form of similar nature containing the information that the Central Government has prescribed has been done successfully.
4. The gig worker must have made an application for his or her registration with the essential documents and Identity proofs³⁰.

According to recent developments in India, gig and platform workers should both be given the status of "unorganised workers" or "wage workers" in order to be covered by the Unorganized Worker's Social Security Act of 2008, according to a public interest

²⁵ Ibid S. 109.

²⁶ Ibid S. 112.

²⁷ Ibid S. 114(6).

²⁸ Ibid S. 6(7)(a).

²⁹ Ibid S. 141(1).

³⁰ Ibid S. 113(1).

litigation (PIL) filed in the Supreme Court in 2020 by the Indian Federation of App-based Workers. The petition makes a number of accusations, including that the average monthly salary of gig workers has decreased by 80% and that no social security benefits, such as pensions or health insurance, have been granted. The Supreme Court had sent a notice to the Union Government in 2021 stating that social security benefits should be provided to gig workers and the online platform workers of Swiggy, Ola, and other companies. This PIL proved to be a landmark for the future of gig workers in India³¹.

3. ANALYZING THE LAWS OF OTHER COUNTRIES

3.1 European Union Directives on Transparent and Predictable Working Conditions 2019³²

The said directives are applicable in European Union member states and accord protection to the self-employed individuals who carryout one time or short-term work, demand-based contracts or similar contracts, these directives will accord protection to the rights of these workers and ensure transparency of information related to working conditions and work relationships³³.

Applicability: The directives in its very first article stipulated that any worker in the European Union will be protected by the directives if they fulfil the following criteria³⁴:

- The worker has an employment contract
- The worker is working under an 'work-relationship' specifically discussed in legislations or under a collective agreement or practice in force in such member state

The EU countries have the authority to exempt workers whose length of employment (either fixed beforehand or actual work hours) is less than or equal to an average of three hours per week for four consecutive weeks from the application of the code. As a result, a particular group of workers emerged that may be categorised as "gig workers," even though the directions make no explicit mention of this name.

³¹ *Petition in SC seeking social security benefits for Uber, Ola, Swiggy, Zomato employees*, The Leaflet, (20/09/2021), Available at <https://theleaflet.in/petition-in-sc-seeking-social-security-benefits-for-uber-ola-swiggy-zomato-employees/>, Last seen on 28/01/2023.

³² European Union, *Directive of the European Parliament and of the Council on Transparent and Predictable Working Conditions in the European union 2019*, Available at <https://data.consilium.europa.eu/doc/document/ST-6188-2019-ADD-1/en/pdf>, Last seen on 03/02/2022.

³³ EU law fixes minimum rights for 'gig economy' workers, Reuters, (16/04/2019), Available at <https://www.bbc.com/news/world-europe-47947220> Last seen on 03/02/2022.

³⁴ Directive (EU) 2019/1152 of the European Parliament and of the Council, Article 1.

Obligation to Inform, Transparency and Demarcation of Work Relationship: Article 3 of the directive enlists the mandatory list of information that every employee (as discussed above) must receive from their employer (who has the obligation to disclose). The information must be provided for the parties to the relationship (employer-employee), commencement date of work, manner of disbursing wages, probationary period (permitted to an extent of 6 months³⁵), duration of a working day, conditions for having other employment³⁶, etc.

Disclosure of Information in Cases of Transnational Work (Work in a third country): The directive intends to create an extraterritorial application wherein an employer in a third country (other than European Union member states) will be obligated to disclose all such information mentioned in above stated paragraph and other additional information stipulated in Article 6 pertaining to anticipated duration of work, currency in which payment is to be made etc.³⁷

Other Special Provisions: Dual employment is also permitted under the directive.³⁸ The directive also mandates the right to redress given to all workers³⁹ and provisions for compulsory training⁴⁰.

In the recent times, EU in 2021 published a proposal in lieu of which they were guaranteed all the rights of an employee rather than having the status of being self-employed. As per the proposal there were five criteria's laid down which if met would mean that the person has been employed by the company and they are- their pay has been evaluated by the platform, Worker's appearance, conduct and performance has been determined by the platform, the platform is instrumental in assessing the job performance of the workers by technological means, Platform has imposed sheer restrictions on the usage of the app, its timings and also barred turning off the app and lastly, there is a requirement of exclusivity or non-competition by the platform⁴¹. Various rights such as wages, paid leaves, insurance, social security etc would be granted to the gig workers. They would also be empowered to negotiate the terms and conditions of their salaries with the platform. Moreover, the burden of proof to prove whether the worker is an employee or is self-employed shall shift to the companies. In

³⁵ Ibid Article 7.

³⁶ Ibid. Article 3.

³⁷ Ibid Article 7.

³⁸ Ibid Article 8.

³⁹ Ibid Article 15.

⁴⁰ Ibid Article 11.

⁴¹ EU Proposes New Protection for Gig Workers, SHRM, (02/02/2022) Available at <https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/eu-proposed-protections-gig-workers.aspx>, last seen on 29/01/2023.

this manner, the gig workers gain an edge over the algorithms and achieve all the social security benefits of an employee which is a landmark development for the European Union⁴².

3.2.United States of America

In the previous 4 years, the laws of the United States have undergone manyfold changes to accommodate greater protection for workers that are employed outside the traditional work relationships such as in the nature of gig workers or other workers designated as ‘contractual workers’. The breakthrough was introduced by the pronouncement Supreme Court of Los Angeles in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018)⁴³ an accommodative approach was adopted, it reads as “The employer must establish in the light of the ‘ABC’ test, that an employee is a contractual employee not entitled to social security benefits”.

The honourable Supreme Court of Los Angeles while acting on a petition filed by a former employee of *Dynamex Operations West, Inc.* scrutinized the employer-employee relationship at the organization which had undergone a shift since 2004 after the said organization reclassified its employees as ‘independent contractors’. The said practice was easier for this organization as it has a large team of delivery personnel providing task-based services and with this reclassification, the said organization was not supposed to deliver mandatory legislative benefits/protections to these personnel as they were not ‘employees’. Aggrieved by this deprivation of legal rights, employees of the organization approached the courts and challenged the said reclassification of their relationship with the organization⁴⁴.

The court reached a conclusion that any exclusionary classification of any personnel as a contractual employee instead of an employee will leave an onus upon the employer to establish that the said personnel is not an employee in the light of a threefold test. The test has been stipulated below⁴⁵:

- A. Control** - That the employer has no control over the work performed by the worker;
- B. Nature of work** – That the work performed by the worker is not similar to the work undertaken by the employer or that no one can reasonably presume in a usual course

⁴² *Gig Economy Workers To Get Employee Rights Under EU Proposals*, The Guardian, (09/12/2021), <https://www.theguardian.com/business/2021/dec/09/gig-economy-workers-to-get-employee-rights-under-eu-proposals>, last seen 29/01/2023.

⁴³ *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal.5th 903

⁴⁴ Ibid.

⁴⁵ Ibid

that the work performed by the worker would come under the scope of work undertaken by the employer.

C. Independence of worker - The worker has an independent work arrangement where their nature of work is similar to the nature of work undertaken by the employer.

This decision of Hon'ble Apex Court (California) enabled the subsequent formulation of the California Assembly Bill 5 (AB5) – Gig Worker Bill.⁴⁶

3.3 The California Assembly Bill 5 (CAB5) – Gig Worker Bill

- The said bill which was passed to become an Act in 2020 was in the form of **multiple amendments to the existing labour laws in the State of California**.
- Pursuant section 2, the Act amended previous legislations such as the Unemployment Insurance Code to inculcate in the definition of 'employee' the threefold test to disprove that a person engaged in work is an independent contractor and not an employee⁴⁷, as discussed in the Dynamex case⁴⁸ and vide section 3 the labour code was amended to include in its ambit any and every person who provides their service to employer on a permanent or contractual basis as employee⁴⁹.
- The effect of this legislation was such that entities like Uber, Lyft, and DoorDash that hire workers in a gig arrangement on a large basis were compelled to bestow the labour benefits to those employees like any other ordinary employee.

One of the major developments in USA was the continuous speculation and debates in USA on whether gig workers fall in the category of independent contractors or employees. The Federal Trade Commission of USA has explicitly stated in their policy statement that gig workers fall in the category of consumers and are entitled to be protected by the laws. They have explicitly observed that modern businesses with modern technology have no license to malpractice and therefore the FTC shall use mince their consumer protection laws and competition laws together in order to protect the gig workers from this vicious circle. Moreover, the FTC has also been vigilant enough to highlight several key areas which are problematic for the well-being of the gig workers such as misrepresenting the gratitude of their nature of work, their decreased bargaining power and the concentrated markets⁵⁰.

⁴⁶ Assembly Bill No.5, 2019, State of California.

⁴⁷ S. 2 ibid.

⁴⁸ Supra 43.

⁴⁹ Supra 46, at S. 3.

⁵⁰ *FTC to crackdown on Companies Taking Advantage of Gig Workers*, Federal Trade Commission, (15/09/2022), Available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-crack-down-companies-taking-advantage-gig-workers>, last seen 29/01/2023.

Under the new President and there has been constructive attempts to bring in an entire policy change in the sphere of gig workers. This would change the entire perspective of classification of workers into independent contractors and employees based on the Fair Labours Standard Act⁵¹. During the rule of Trump, a whole new idea had been proposed by the Labour Department to determine the classification which would be on the basis of two questions- the control the worker has and the opportunity of making profit or loss out of his own investment or initiative. This test was extremely narrow and did not suffice to the needs of the situation at present. Therefore, a whole new idea of multi factorial test involving at least seven factors was considered appropriate for the situation which is the idea proposed by Biden's administration as well. Biden had even blocked this idea on May, 2021; however, this was removed by the US District Judge of Texas. Therefore, the Department of Labour prosed to bring in an entirely new proposal for the classification issue in order to clear the air and give the due rights to the gig workers. This proposal makes the entire classification extremely rigid and makes it difficult for the gig workers to be classified as independent contractors and therefore makes them eligible for all the social security benefits⁵². Moreover, in May 2021, Uber and Lyft (gig companies) had even won a case in the Federal appeals Court pursuant to which it was held that these drivers would be eligible for wages, paid leaves, sick leaves and all other social security benefits as an employee.

4. SHORTCOMINGS OF INDIA'S NEW LABOUR CODES WITH REFERENCE TO GIG WORKERS

The Parliamentary discussions on new labour codes in the light of development of domestic laws among different nations as seen above came as a hope that India will finally bestow the minimum standards of social security to its considerably growing gig workers' industry. However, the new social security code was not immune to deficiencies. Section 2(35) of the Code on Social Security, defines "gig worker" as *a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship*⁵³. The concluding part of the definition excludes the 'gig worker' from 'employee' which is separately defined under Section 2(26) of the code⁵⁴ and thereby distinguishes the benefits derived by the two classes of workers under the code. Prior to the code, the definition of 'employees'

⁵¹ *US Government Back And Forth On 'Gig' Workers, Contractors*, Reuters, (11/10/2022) <https://www.reuters.com/world/us/us-government-back-forth-gig-workers-contractors-2022-10-11/>, last seen on 28/01/2023.

⁵² *The Coming Fight Over The Gig Economy, Explained*, Vox, (12/10/2022), Available at <https://www.vox.com/policy-and-politics/2022/10/12/23398727/biden-worker-misclassification-independent-contractor-labor>, last seen 29/01/2023.

⁵³ S.2(35), The Code on Social Security, 2020.

⁵⁴ S. 2(26), The Code on Social Security, 2020.

was made inclusive by a series of landmark judicial pronouncements started with the case of Bangalore Water-Supply v. R. Rajappa & Others⁵⁵ where a detailed test was stipulated to classify a worker as an employee similar to the strategy adopted by the court in the case of Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)⁵⁶ It was expected that the aforesaid code will formalize the inclusion of ‘gig worker’ into the definition of employees however the approach adopted was contrary to the prevailing practices stipulated in international case laws such as that in Dynamex case.

The aforesaid distinction sanctioned differentiated social security schemes for employees under ordinary employer-employee relationships and the ‘gig workers’, as seen in the case of Provident Fund which is to be separately provided to ‘gig workers’ under a scheme that is to be formulated by the central government under Section 45⁵⁷ of the Social Security Code. Furthermore, there are other categories of social benefits which are to be ensured to gig workers under Chapter 9 of the Code however; these benefits will be provided only under a scheme that is to be formulated by the Central Government. The code is silent on any duration under which the aforesaid scheme must be formulated or whether the formulation of these schemes is obligatory on the part of the central government, differential usage of the words ‘may’ in section 45 and ‘shall’ in section 109 further aggravates the ambiguity and at present, leaves the gig worker deprived of basic social benefits.

In other labour codes protecting occupational safety and health of the workers, no specific provisions have been stipulated for protection of gig workers which keeps in consideration the peculiar hardships that may be faced by the gig workers. In the code regulating industrial relations, no specific provisions have been stipulated to promote and protect the right of gig workers to unionize which may result in deprivation of collective bargaining, an effective tool and basic right for all types of workers. The European Union directives had specific provision for the disclosure of work conditions when a gig worker works beyond the boundaries of the Union either physically or via digital medium,⁵⁸ such provision is absent in our codes.

The new labour codes might be silent on relevant aspects concerning gig worker however their mention in the social security code has initiated debates striving for greater protection and inclusion. In the light of growing debates, one can expect the central government to act on the enabling provisions under the code and promulgate the

⁵⁵ Bangalore Water-Supply & ... v. R. Rajappa & Others 1978 AIR 548.

⁵⁶ Dynamex Operations West, Inc. v. Superior Court of Los Angeles, 4 Cal.5th 903.

⁵⁷ S. 45, The Code on Social Security, 2020.

⁵⁸ Supra 32.

necessary social security schemes for the gig workers which will call for greater scrutiny by the Indian judiciary. The courts have played a commendable role in protecting labour rights over the previous few decades as seen in the accommodative interpretation of the employer-employee relationship. The next few years will witness the formalization of the protection accorded to gig workers however the immediate period post the implementation of the code might be an eclipse period for gig workers where they will have access to no tangible rights except what has been explicitly stipulated under the four codes.

5. CONCLUSION

Both gig workers and full-time workers, have felt the dearth of COVID-19, be it the stress of moving the work-spaces (Work From Home) from office buildings to their homes, to maintaining work life balance at home etc. While others have seen a more brutal side of these changes, with some employees being laid off citing financial crunch. While application-based delivery drivers were been exposed to the virus or going without money to pay their bills. The uncertainty of how *Work from Home* (apart from psychological, digital hindrances, safe cyberspaces, privacy issues with application-based systems) and quarantine orders impacted freelancers the most, if we were to safely put. The pre - COVID-19 debates concerning gig workers' health, finances and employment statuses initiated one of the most important debates, but COVID-19's spread seems to have added or probably exposed a fractured system. Knowing, that many Indians work in the gig economy is one thing, but recognizing them is another.

Recognizing how astronomic and varied this economy is, would be the key to knowing why and how the pandemic has affected these people so severely. Food delivery partners, grocery delivery and cab drivers have experienced a surged in the demand for their services making them the most vulnerable class of people, in terms of medical or financial impacts of COVID-19. Some workers may see more opportunities in digital marketplaces during the pandemic, however, the contrary also stands on solid ground, predicting in favour of anyone stance (given the lack of data) would be too early an observation. The pandemic has also shed light on the grounds that create a disparity between permanent workers from contract-based labourers (i.e., the manner in which an employee maybe guaranteed wages/livelihood and other security benefit (as well as health) benefits are protected under relevant laws). Many platforms that rely on gig workers have made their own amendments to improve the financial and other pandemic-related stresses, such as Swiggy and Zomato's *No-Contact delivery* options. Such adjustments have reignited the on-going battle between regulators and gig economy companies. The present government has been working to existing forty-four labour law statutes into four codes, with The Code on Social Security being recently passed, in between the debates surrounding 'data blackouts' during COVID-19.

Consequently, a growing number of states have used ordinances or presidential orders to enact modifications to their labour laws. Because legislative powers to promulgate laws on labour are enumerated under the concurrent list of the Indian Constitution, states can enact their own laws, but they must first obtain Central government permission. The recent move by states like as Uttar Pradesh, Madhya Pradesh, and Gujarat to modify some labour laws has sparked two opposed viewpoints. On the one hand, are those who argue, from the perspective of businesses largely employ workers on a non-permanent arrangement, hence, the water downing of labour laws (applicable to permanent workers, widely) won't make much of a departure. On the other side, activists and non-governmental organisations (NGOs) have slammed this claim, claiming that linking lack of commercial activity with strict labour rules is an "oversimplification" of the situation. Furthermore, it is argued on behalf of employees/workers that the stricter laws have always proven to be effective for a level playing field and enabling proper negotiation for reasonable wages, working conditions, and so a bargain based on these grounds would be equivalent to depriving the skeleton of muscle and skin.

Industrial units that are newly established enjoys an exclusion from the application of particular provisions governing the 'right of workers', which includes retrieval of information regarding their health and safety at the site of work, to be guaranteed a workplace that is equipped with reasonable amenities including drinking water, ventilation, crèches, weekend off as leaves, and reasonable break to rest, etc. Further, they are not required to maintain registers and undergo regulatory inspections and permitted to alter the work shifts at their convenience. Penalty provisions in case of violation of labour laws don't extent to such employers. The revamping of employment laws has always considered quintessential from a period of time.⁵⁹ The multitude of laws that existed hitherto, hindered investment and confused the investors who found themselves stuck in the overburdened and complex labour law regime. The two parties to this debate have found a common ground on one aspect—that pattern of that has been followed so far to effectuate the new laws may cause more chaos than order. Several states have prolonged the work hours.⁶⁰ The enormously saddening part about our response to pandemic was the hardship that was caused to most vulnerable sections and its vast underclass of labourer due to the effects of the situation.

⁵⁹*Labour Laws diluted*, DrishtiIAS, Available at: <https://www.drishtiias.com/daily-updates/daily-news-analysis/labour-laws-diluted>, last seen 10/05/2020.

⁶⁰*Unprecedented Changes To India's Labour Laws*, BQPrime, (14/05/2020), Available at: <https://www.bloombergquint.com/law-and-policy/the-unprecedented-changes-to-indias-labour-laws-social-chaos>, last seen 10/05/2020).

AN IMPACT ASSESSMENT OF WORK HOUR REGULATIONS ON EMPLOYEE PRODUCTIVITY BY USING THE M.L.S. FRAMEWORK

Neeraj Kumar Seth*

Abstract

Employee productivity measures the output produced in physical or monetary terms on an average by each employee per unit time. Labour laws across the world have mainly been driven by the concern for labour welfare and to put an end to labour exploitation. However, the economic rationale behind such laws have not been fully explored. Most nations around the world have enacted labour laws on maximum standard work hours allowed per week. This research work goes beyond purely welfare-based arguments and explores the socio-economic basis of such laws. The paper studies labour laws on work hours around the world as the first step. Secondly, it measures employee productivity in top five OECD economies and the five BRICS nations. Thirdly, it extends the analysis by measuring employee productivity in the 4 largest Information Technology companies in the U.S. and India each. The tools used to measure these is collectively named as 'The M.L.S. Framework on Employee Productivity,' Fourthly, the paper investigates into the relationship between the standard maximum number of work hours under labour laws in countries and employee productivity and analyses the reasons behind such relationship. Finally, it concludes by critically analysing the work hour regulations.

Keywords: Employee Productivity, Work-hour Regulations, MLS Framework on Employee Productivity, National Employee Productivity Ratio, Company-wide Employee Productivity Scale.

1. INTRODUCTION

1.1 Employee Productivity

Productivity is the rate at which output is generated or work is performed per unit time or factor of production. The higher this rate, higher is the productivity. Employee productivity is the average value addition carried out by each employee to the total output of a country or company.¹ The unit of measurement could be per capita

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¹ Manuela Bárcenas, *Employee Productivity: The Ultimate Guide*, Fellow, (23/10/2020), Available at <https://fellow.app/blog/management/employee-productivity-the-ultimate-guide-for-managers/>, last seen on 08/09/2022.

or per unit time or a combination of both (termed as ‘man-hour’). While the level of measurement could be in terms of nations, companies, or industries.

When aggregated at the firm level, higher employee productivity could make a huge difference in the absolute volume and overall quality of output generated by the firm, measured in terms of total production or revenue generated.² Further, when aggregated at the macroeconomic level, the average productivity of labour could impact the rate at which a nation generates output, i.e., Gross Domestic Product (hereinafter GDP) growth rate.

A lower GDP growth rate leads to lower annual additions to the GDP in absolute terms and translates into lower levels of savings and investment in human resource development, which further lowers employee productivity at the national level. This is a vicious cycle. A vice-versa scenario is the virtuous cycle of higher employee productivity which leads to higher GDP growth rate, higher annual additions to GDP, higher levels of savings and investment in human resource development and further higher levels of productivity. Therefore, measuring employee productivity is the basis of estimating the efficiency and effectiveness with which managers manage the human resources of their firms and a nation capitalises on its demographic strengths.³

2. WORK HOUR REGULATIONS UNDER LABOUR LAWS

2.1. Rationale

Work hour regulations mainly focus on mandating a minimum level of wages for a maximum number of standard hours in a week or a day. Beyond this work hour ceiling, workers are permitted to work but they are entitled to an inflated wage rate, set at a rate higher than the normal wage rate, and termed as ‘Overtime Premium.’⁴ This is to compensate the workers for extra work and discourage employers from imposing onerous terms in employment contracts such as excessively long work hours or unpaid overtime work. The conjoint and strict implementation of minimum wages for capped standard work hours along with overtime payment for work done beyond the standard work hours could have a positive impact on occupational health of workers and their disposable household income. It could bring the balance back in the labour-capital return distribution.

² John Baldoni, *Employee Engagement Does More than Boost Productivity*, Harvard Business Review, (04/07/2013), Available at <https://hbr.org/2013/07/employee-engagement-does-more>, last seen on 10/09/2022.

³ Ibid.

⁴ *What is overtime?*, Sage, Available at <https://www.sage.com/en-us/blog/glossary/what-is-overtime/>, last seen on 10/09/2022.

The objectives are fair pay for fair work and to secure just and humane conditions of work, consistent with Article 42 of Part IV of the Constitution of India.⁵ A pay structure that does not correspond to a fixed time ceiling and that does not compensate for extra work done beyond that ceiling can hardly be fair, just, or humane. Under Article 43 the Constitution urges the State to take steps to secure living wages, working condition that ensure decent standards of life and full enjoyment of leisure and social and cultural opportunities, *of all workers*, agricultural or industrial or otherwise, through suitable legislation or economic organisation.⁶ Thus these socio-economic rights were intended to be enjoyed by all workers – formal or informal, contractual, or permanent, agricultural, or industrial. Further, full enjoyment of leisure and social and cultural opportunities is impossible if work hours are not subjected to a ceiling and workers get exhausted by over-work. Under Article 39(e), the Constitution provides that the State shall direct its policy towards securing health and strength of workers.⁷ Health and strength of workers cannot be secure if workers do not get leisure and opportunities to rejuvenate, recover, and regain their strength on a regular basis. A more detailed analysis on the need for work hour regulations is given later in this chapter.

2.2. Global Review of Work Hour Regulations

The following is a brief global review of work hour regulations in 10 countries, 5 advanced and 5 emerging nations, from Organisation of Economic Cooperation and Development (OECD) (the top 5 OECD economies by nominal GDP) and all BRICS nations, respectively –

2.2.1. USA

Maximum standard hours permitted for workers aged 16 and older with normal wages is 40 hours a week. Normal wage rate cannot be lower than the minimum wage rate as provided under the Fair Labour Standards Act, 1938 (FLSA). Overtime rates at 1.5 times the normal wage rate applies for the overtime hours (hours worked in excess of 40 hours a week). There is no ceiling limit on overtime hours.⁸

⁵ Article 42, Constitution of India.

⁶ Ibid, Article 43.

⁷ Ibid, Article 39.

⁸ The Fair Labour Standards Act (Act of June 25, 1938) (United States).

2.2.2. Japan

The Labour Standard Law under Article 32 provides for 40 hours work week, beyond which overtime pay must be paid within a range of 25-50% over the normal wage rate per overtime work hour. There is no maximum ceiling on overtime hour.⁹

2.2.3. Germany

The Hours of Work Act provides for maximum of an average of 8 hours a day of work (considered over a period of 24 weeks). There is no work hours mandate for a week. However, the 8 hours a day work with Sunday and public holiday as mandatory leaves amounts to an average of 48 hours work week at maximum.¹⁰

2.2.4. United Kingdom

Maximum hours of normal work allowed for adults above 18 years of age is an average of 48 hours a week (considered over a period of 17 weeks). Employees may work more than this statutory limit by ‘opting out agreement’ voluntarily and in writing. Employees cannot be forced to do so against their will by employers or be fired for refusing to do so. Opting out must be consensual. There is no statutory provision for overtime payment. However, employees must be paid at or over the minimum wage rate for overtime work.¹¹

2.2.5. France

The legal work time is an average of 35 hours a week (considered over a period of 52 weeks), which may get extended to 48 hours a week with overtime. For any 12-week period, average weekly worktime may go up to as high as an average of 44 hours a week. However, over a 52-week period, it must average 35 hours or attract overtime pay for the excess hours worked. So, effectively annual average work time for normal work is 35 hours.¹²

⁹ Lilian Jung, *National Labour Profile: Japan*, International Labour Organisation, Available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158904/lang--en/index.htm, last seen on 13/09/2022.

¹⁰ *Germany (1,231) > Conditions of work (25)*, International Labour Organisation, Available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=37814&p_country=DEU&p_count=1231&p_classification=13&p_classcount=25#:~:text=The%20Hours%20of%20Work%20Act,of%20at%20least%2011%20hours, last seen on 14/09/2022.

¹¹ *Maximum Weekly Working Hours*, Government of UK, Available at <https://www.gov.uk/maximum-weekly-working-hours#:~:text=You%20cannot%20work%20more%20than,or%2040%20hours%20a%20week>. Last seen on 14/09/2022.

¹² *France Employment Law*, Replicon, Available at <https://www.replicon.com/regulation/france-labor-laws/> last seen on 14/09/022.

2.2.6. *China*

Standard working hours shall not exceed 44 hours week on an average with at least one day off a week. Beyond this overtime pay of 150-300% apply on overtime hours, based on the days on which overtime work is arranged (overtime premium on weekends or public holidays are higher than normal weekdays).¹³

2.2.7. *India*

The Occupational Safety, Health, and Working Conditions Code, 2020,¹⁴ provides that no worker shall be allowed to work for more than 8 hours a day and for more than 6 days a week. Beyond this statutory maximum, a worker may get overtime payment at the rate twice the normal wage rate on weekly or daily basis, whichever is favourable to him. So, effectively, the standard work hour at normal wage rate is 48 hours a week.¹⁵ However, now the cap of 8 hours a day has been increased to 12 hours a day, without affecting the weekly maximum work hours of 48 hours, to allow for a ‘4 days a week work regime’ in future. The maximum number of overtime hours allowed is 125 hours per quarter.¹⁶

2.2.8. *Brazil*

Maximum standard work hour shall not exceed 44 hours a week or 8 hours a day, subject to a maximum of 220 hours a month. Overtime hours are capped at 2 hours a day charged at 150% of normal wage rate.¹⁷

2.2.9. *Russia*

Article 91 of the Labour Code of Russia provides for a 40 hours normal work week. Overtime hours are allowed only with a written consent of workers and cannot exceed 4 hours for two consecutive days or 120 hours a year.¹⁸

¹³ *Labour Law of the People's Republic of China*, ILO, Available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37357/108026/#:~:text=Article%2036%20The%20State%20shall,a%20week%20on%20the%20average>. last seen on 14/09/2022.

¹⁴ S. 25, The Occupational Safety, Health, and Working Conditions Code, 2020.

¹⁵ *Ibid*, Ss. 25,26&27.

¹⁶ *Pay, Leaves and Work Hours: How the New Labour Codes Impact You*, Economic Times, (30 June 2022), Available at <https://economictimes.indiatimes.com/news/economy/policy/pay-leaves-and-work-hours-how-the-new-labour-codes-impact-you/articleshow/92562758.cms> last seen on 14/09/2022.

¹⁷ *Brazil Employment Law*, Replicon, Available at <https://www.replicon.com/regulation/brazil-labor-laws> last seen on 14/09/2022.

¹⁸ *National Labour Law Profile: Russian Federation*, International Labour Organisation, Available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158917/lang--en/index.htm, last seen on 14/09/2022.

2.2.10. South Africa

The Basic Condition of Employment Act, 1997 provides for an average of 45 hours a week with maximum 9 hours allowed a day. Beyond this normal work hour, overtime can extend to 10 hours a week or at maximum 3 hours a day. Overtime is charged at 1.5 times the normal wage rate.¹⁹

3. THE M.L.S. FRAMEWORK ON EMPLOYEE PRODUCTIVITY

‘The M.L.S. Framework on Employee Productivity,’ in honour of the author’s father, Late Shri Mukund Lal Seth. The Framework has been devised by the author to measure the average levels of employee productivity in nations and companies. Framework on Employee Productivity is a set of two quantitative tools to measure employee productivity across countries and companies. The objective of this framework is to measure the efficiency, effectiveness, and productivity with which countries and companies use their human resources. The two constituents of the Framework are detailed as below -

3.1. National Employee Productivity Ratio

The National Employee Productivity Ratio (‘the Ratio’) measures the average productivity of a country’s workforce in terms of output generated per capita per maximum statutory standard work hours allowed in the country. Here, output is denoted by Gross Domestic Product (‘GDP’) based on constant prices or Purchasing Power Parity (‘PPP’), which excludes the influence of inflation on output (Real and not Nominal GDP). Statutory maximum standard man-hours are derived by multiplication of size of workforce with the maximum standard work hours per annum allowed under the national labour laws of the country under consideration. The resultant figure shows us the value addition made by each employee in terms of average contribution to the nation’s GDP PPP per hour, if they are expected to work only as much as allowed under the national labour regulations for standard hours of work (without overtime).

So, the formula of the ratio is as follows –

*The National Employee Productivity Ratio = GDP PPP (latest available figure) / [Workforce * Statutory Maximum Standard Work-hours per annum].*

¹⁹ *The National Labour Law Profile: South Africa*, International Labour Organisation, Available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang--en/index.htm last seen on 14/09/2022.

3.2. Company-wide Employee Productivity Scale

The Company-wide Employee Productivity Scale ('the Scale') is the company counterpart of the Ratio. It measures the average employee productivity per hour of statutory work allowed under the laws of the country where the company is located. Output of the company is measured in terms of its annual sales revenue while the statutory maximum standard man-hours is computed by multiplying the size of the company's workforce with maximum statutory standard work hours per annum allowed in the country where the company is located. The resultant figure shows the value addition made by each employee to his company in terms of average contribution to the annual revenue per hour, if they are expected to work only as much as allowed under labour regulations for standard hours of work (without overtime).

It is a scale in the sense that it takes the company with the highest value addition per man hour as the base and then computes the value addition per man hour of other companies as a percentage of that base figure for ease of comparison. The company with the highest employee productivity is the standard used in the scale to evaluate employee productivity in other companies.

The formula for calculating the Company-wide employee productivity for each company is as follows –

*Company-wide Employee Productivity = Annual Sales Revenue (Latest Figure) / [Company Workforce * Statutory Maximum Standard Work-hours per annum]*

For calculating scale % the formulae is as follows –

*Scale % = [Company's Employee Productivity / Highest Employee Productivity among all companies] * 100*

(The scale % of company with highest employee productivity is assumed to be 100%)

4. IMPACT ASSESSMENT OF WORK HOUR REGULATIONS ON EMPLOYEE PRODUCTIVITY

4.1. Research Objectives, Variables and Hypothesis

This research is aimed at assessing the impact of work hour regulations on employee productivity in nations and companies. This is done with the help of the M.L.S. Framework on employee productivity. The two variables are number of standard work hours allowed under statutory laws of nations (independent variable) and employee productivity measured in man-hour terms (dependent variable). It is hypothesised that employee productivity has a negative relationship with the number of standard work hours allowed under statute and that work hour regulations have a

positive influence on employee productivity at the national and company-wide level. The results are then to be interpreted and analysed to diagnose the causes behind the relationship between the two variables. The following section demonstrates the application of the M.L.S. Framework on Employee Productivity to assess the impact of work hours regulations on employee productivity in nations and companies.

4.2. Impact Assessment on National Workforce (Using the National Employee Productivity Ratio)

Groups	Countries	GDP PPP (Mil) (2021) ²⁰	Workforce (Mil) (2021) ²¹	Annual Standard Number of Hours Allowed (X) ²²	Employee Productivity Ratio (Y)	Rank
OECD	USA	20932281	164.79	2080	61.1	1
	Japan	5124017	68.22	2080	36.1	4
	Germany	4400100	43.85	2496	40.2	3
	UK	3086193	34.65	2496	35.7	5
	France	3050123	30.97	1820	54.11	2
BRICS	China	24861343	792.08	2288	13.72	9
	India	9301492	471.3	2496	7.9	10
	Russia	4080294	71.77	2080	27.33	6
	Brazil	3127524	99.4	2288	13.8	8
	South Africa	788112	22.67	2340	14.9	7

Table 1: The National Employee Productivity Ratio for OECD and BRICS nations and ranking

This section uses the formula for computation of the Ratio, as laid down in the section 3.1.1. As depicted in Table 1, an employee in India on an average contributes \$7.9 per hour towards India's GDP PPP. While, in the U.S., the average employee contribution towards U.S. GDP PPP is \$61.1 per hour. This is nothing but the National Employee Productivity expressed in per capita per hour (man-hour) terms, calculated using the formula for the Ratio. All the OECD nations rank high from 1-5, while the

²⁰ GDP, PPP (Constant 2017 International \$ – India, The World Bank, Available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.KD?locations=IN>, last seen on 14/09/2022.

²¹ Labour Force, Total, The World Bank, Available at <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN> last seen on 14/09/2022.

²² See Section 3.3. (NOTE: Standard work hours per week taken from section 3.3. To arrive at annual standard number of hours, we multiply the weekly work hours by 52).

BRICS nations (highlighted in Grey) rank the lowest from 6-10. To conclude, while the BRICS nations are legally allowed to work for 4.75% higher number of hours than the OECD nations, average employee productivity in BRICS nations is 66% lesser than that of the OECD nations or one-third of the OECD nations.

The Pearson correlation coefficient between standard maximum work hours (X) and employee productivity (Y, calculated applying the formulae of the 'Ratio') is -0.5478, depicted pictorially in Figure 1 below. This proves that the two variables are negatively correlated. Thus, an increase in standard maximum work hours by 100% under labour laws will cause a fall in employee productivity in the national workforce by 54.78% on an average and vice-versa.

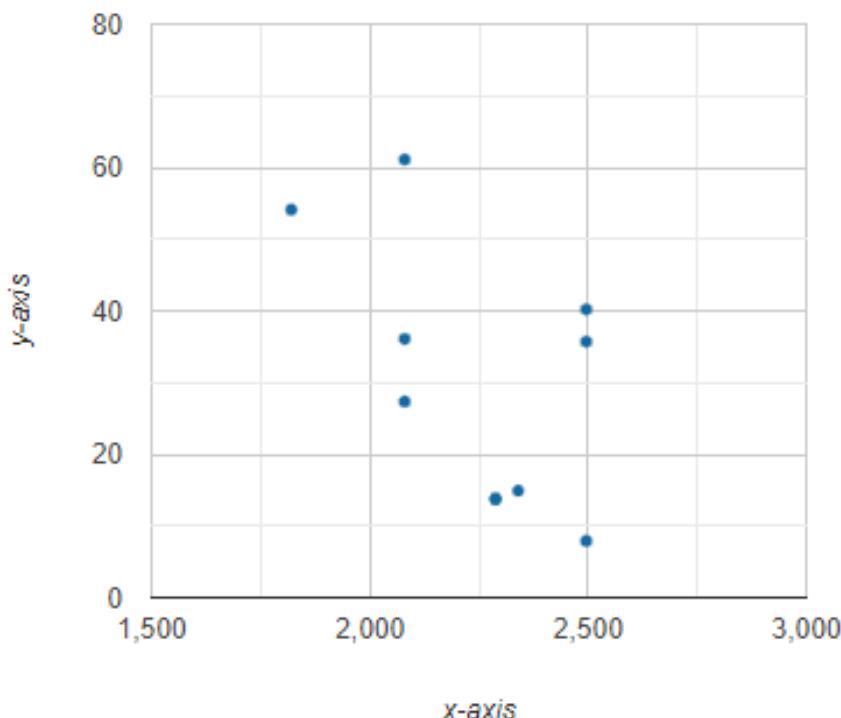


Figure 1

Figure 1: The scatter plot corresponding to Table 1, where the X-axis depicts the standard maximum work hours allowed under labour laws of nations and Y-axis depicts the National Employee Productivity Ratio or Employee Productivity calculated in accordance with the M.L.S. Framework

4.3. Impact Assessment on Company Workforce (Using the Company-wide Employee Productivity Scale)

Country	Companies	Revenue PPP (Mil) (2021-2022) ²³	Workforce (Mil) (2022) ²⁴	Annual Standard Number of Hours Allowed (X)	Company-wide Employee Productivity (Y)	Scale & Rank
USA	Apple	387540	0.1540	2080	1210	100.0 1
	Google	278130	0.1740	2080	768.5	63.5 2
	Microsoft	198270	0.2210	2080	431	35.6 4
	Meta	120200	0.0836	2080	691	57.1 3
India	TCS	87500	0.6063	2496	58	4.8 6
	Infosys	56000	0.3352	2496	67	5.5 5
	Wipro	33000	0.2586	2496	51	4.2 7
	Tech Mahindra	17000	0.1580	2496	43	3.5 8

Table 2: The Company-wide Employee Productivity Scale in 4 IT companies from the USA and India

The first 4 companies in the Table 2 are the 4 largest Information Technology ('IT') companies by market capitalisation in the USA, while the next 4 companies are the 4 largest IT companies in terms of market capitalisation in India (highlighted in Grey). To arrive at Annual Revenue for Indian companies in PPP terms, their nominal revenues for 2022 have been multiplied by a factor of 3.45 (a number obtained by dividing the current dollar-rupee exchange rate by the PPP Conversion Rate).²⁵ This converts the nominal sales revenues of Indian companies into PPP ones for better comparability with the American companies.

The formula for employee productivity at company level and the scale point has been laid down in the section 3.1.2. The company-wide employee productivity is nothing but average contribution made by each employee in \$ terms per hour to his/her company's annual revenue. For instance, employees at Infosys on an average contribute

²³ Companies Ranked by Revenue, Companies Market Cap, Available at <https://companiesmarketcap.com/largest-companies-by-revenue/>, last seen on 14/09/2020.

²⁴ Companies Ranked by Number of Employees, Companies Market Cap, Available at <https://companiesmarketcap.com/largest-companies-by-number-of-employees/>, last seen at 14/09/2022.

²⁵ PPP Conversion Factor, GDP (LCU Per International \$), World Bank Available at <https://data.worldbank.org/indicator/PA.NUS.PPP>, last seen 14/09/2022.

\$67 per hour towards Infosys's annual revenue. While employees at Apple contribute \$1,210 per hour on an average to Apple's annual revenue.

As can be seen from the Table 2 above, employee productivity in US IT companies is very high in comparison to Indian companies. While the Indian companies are legally allowed to work for 20% higher number of hours than the US companies, their employee productivity is 93% lesser than that in the US IT companies. The scale provides the relative measure of employee productivity in various companies. For instance, employee productivity in the most productive Indian company, which is Infosys, is only 5.5% that of employee productivity at Apple, which is the most productive company in the USA and overall, in this study.

Once again, a highly negative correlation between standard maximum work hours allowed under labour laws of the country where companies are based (X) and company-wide employee productivity (Y) has been discovered. The Pearson Correlation Coefficient between the two variables is -0.8759. This implies that if the standard maximum work hours allowed in the country where companies are located is increased by 100%, employee productivity in such companies would fall by as much as 87.59% and vice-versa. The correlation has been pictorially depicted in figure 2 below.

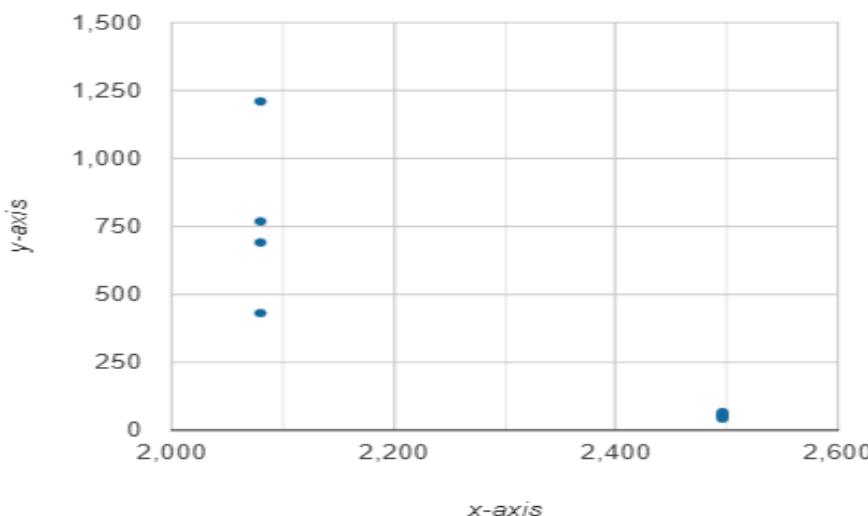


Figure 2

Figure 2: A scatter plot corresponding to Table 2, where the X-axis corresponds to standard maximum work hours allowed in the country where companies are located and the Y-axis corresponds to company-wide employee productivity.

5. ANALYSIS / INTERPRETATION OF RESULTS

5.1. The Relationship between Work Hour Regulations and Employee Productivity

The M.L.S. Framework on Employee Productivity demonstrates that standard maximum number of work hours allowed under labour laws and employee productivity in countries and companies are negatively correlated. Thus, If the maximum standard work hours ceiling is brought down, both nations and companies would reap higher employee productivity. In other words, countries with lesser number of maximum standard work hours do not have lower employee productivity. In fact, such countries, mostly OECD nations have a high employee productivity.²⁶ Countries with higher number of maximum standard work hours do not have higher employee productivity per man hour. In fact, these countries, all BRICS nations, have low employee productivity.²⁷

Further, working for longer hours will not guarantee higher output. This can be understood by an example of India and USA, which have an average employee productivity of 7.9 and 61.1 per man hour respectively, while their standard work hour ceilings are 48 and 40 respectively (refer Table 1). To achieve an average output per week equal to that produced by an average worker in USA, an Indian worker would've to work for 309 hours in a week! This is impossible, as a week has only 168 hours at maximum.

Among companies, the inferences are quite similar as in case of nations. Companies cannot expect higher sales revenue or turnover by making their employees work longer. A TCS worker in India would've to work for at least 790 hours a week to produce the same weekly output as an average worker at Apple. Once again, this is impossible. Mere long hours of work cannot make Indian firms outcompete their US counterparts in a globalised business environment of 21st century. Thus, work hour regulations under labour laws have a positive impact on employee productivity, both at national and corporate levels.

²⁶ Martin Neil Baily, The Sources of Economic Growth in OECD Countries: A Review Article, 7, International Productivity Monitor, 1, 2, (2003).

²⁷ *The ILO and the BRICS*, International Labour Organisation, Available at <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/multilateral-system/brics/lang--en/index.htm>, last seen on 15/10/2022.

5.2. Diagnosis of Reasons Behind the Relationship

The reasons behind the negative relationship established by the M.L.S. Framework on Employee Productivity could be explained in terms of dimensions summarised as follows –

5.2.1. *Psychological*

The World Health Organisation ('WHO') defines health as a state of complete physical, *mental*, and social well-being and not merely absence of diseases or infirmity.²⁸ WHO has released a *Guideline on Mental Health at Work* in September 2022, that recommends actions against mental health risk factors with an aim to make the work environment less stressful.²⁹ Thus, mental or psychological health of workers are increasingly being recognised as a relevant factor in creating a productive work environment. Lesser number of work hours and prevention from overtime work without pay improves the psychological wellbeing of workers, as they get more time for leisure, social and cultural opportunities as intended under Article 43 of Constitution of India.³⁰ Happy minds are the nurseries of invention, innovation, and creativity and fertile fields of disruptive ideas. Work related pressure can erode creativity and innovation and deteriorate mental health of workers.

5.2.2. *Physiological*

A statutory ceiling on standard work hours puts a legal bar on employers from resorting to excessively long hours of unpaid work that may deteriorate employee health in long term and lead to occupational diseases or hazards. Such longer hours of work could lead to decreased alertness, increased fatigue, lower cognitive functions, declining vigilance or diligence in work, poor sleep quality, burnout, and increased number of accidents or injuries. Shorter shifts of work on the other hand are associated with better sleep quality, alertness, and better mental health status in general.³¹ Lesser number of work hours could also mean less accidents and injuries, more vacations, more rest, and better work-life balance.

²⁸ *Mental Health: Strengthening Our Response*, World Health Organisation, Available at <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> last seen on 28/10/2022.

²⁹ *WHO Guidelines on Mental Health at Work*, World Health Organisation, Available at <https://www.who.int/publications/i/item/9789240053052>, last seen 28/10/2022.

³⁰ Article 43, Constitution of India 1950.

³¹ Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviours, U.S. Department of Health and Human Services Centre for Disease Control and Prevention, Available at <https://www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf>. last seen on 15/09/2022.

5.2.3. *Socio-economic*

Lesser number of standard work hours set as ceiling under labour laws, paid at minimum statutory wage rates, could guarantee a basic level of income security to workers. Workers can then freely decide to spend the remaining number of hours either working overtime at higher rates of overtime payment (most jurisdiction mandate a 25-300% overtime premium) or engaging themselves in any supplementary vocation, business, or profession. Workers could even use this surplus time for learning, up-skilling, and career growth. Overtime work at higher pay (at premium) improves the bargaining power of workers and leads to redistribution of income to some extent,³² thus marginally reducing the income inequalities between those who own capital and those who provide labour. This could also lead to a more amiable and peaceful industrial relationship. Improved socio-economic conditions of workers further improves their productivity at work, as they can invest more in education, learning, vacations, rejuvenation and can afford better standards of living due to higher income levels and more leisure time.

5.2.4. *Ethical*

Companies which deal with their labour in an ethical and dignified manner can attract and retain the best employees. Employee turnover or attrition is low and employee morale is high in such companies. Such companies are seen as socially responsible enterprises and are preferred by employees themselves. Fair pay for fair work, overtime pay at higher rate for excess work³³ and strict enforcement of work hours and minimum wages regulations make the labour market in a country more ethical and fairer in relative terms, giving them a competitive advantage over their rivals in the global labour market for migrant workers.

5.2.5. *Technical*

Having a lower statutory ceiling on standard work hours compels employers to resort to technical aids to speed up the work flow and processes to compensate for the man-hours lost due to such laws. Technology amplifies the productivity of employees per man-hour, by improving their efficiency at work, automating the processes, and

³² *Manage Overtime*, NI business info.CO.UK, Available at <https://www.nibusinessinfo.co.uk/content/advantages-and-disadvantages-overtime#:~:text=increased%20earning%20for%20employees%20and,done%20outside%20normal%20working%20hours>, last seen on 15/09/2022.

³³ *Ibid.*

reducing errors and wastage.³⁴ Employees end up delivering more output at work in lesser number of hours with the aid of technology.

6. CONCLUSION

A lower ceiling on statutory standard work hours at minimum wage rates not only prevents employees against excessively long unpaid work but also improves their productivity at work in man-hour terms. Overtime work beyond this statutory ceiling on standard work hours improves the socio-economic conditions of workers and gives a boost to their bargaining power in the tug of war between labour and capital. Improved socio-economic conditions can further lead to higher employee productivity, as workers spend more income on their health, education, and career advancement. With higher employee productivity, they can deliver higher aggregate output or value addition to their countries/companies in relatively lesser number of hours of work done. This leaves them with more time for leisure, rejuvenation, and recovery of lost productivity.

Work hour regulations also persuade employers to invest in technology, innovation, and creativity, to compensate for lesser number of labour hours allowed under statute. This adds to productive capacity of countries/companies and fuels future growth in a sustainable manner, without compromising with the health and safety of the workforce. Emphasis on productivity rather than work hours clocked also saves firms from the time, money and efforts spent on supervision, oversight, and recordkeeping. Therefore, work hour regulations and its stricter implementation can have a positive impact on employee productivity at national and corporate levels.

7. RECOMMENDATIONS

Countries should set a ceiling on the standard number of hours allowed for workers, which should not be too high. The American standard (40 hours a week)³⁵ or the French norm (35 hours a week)³⁶ seem to be the best. Lower ceiling ensures that employees get higher pay in the form of overtime wages, leading to more equitable distribution of business gains between capital and labour. This standard work hour should be paid at a guaranteed minimum wage rate which should be strictly implemented.

³⁴ 6 Ways Technology Increases Productivity, Intelligent Technical Solutions, Available at <https://www.itsasap.com/blog/6-ways-technology-increases-productivity>, last seen on 16/09/2022.

³⁵ Sophia Lee, *The History & Evolution Of The 40-Hour Work Week*, Culture Amp, Available at <https://www.cultureamp.com/blog/40-hour-work-week>, last seen on 16/09/2022.

³⁶ Joël Grangé, Camille Ventejou & Flichy Grangé Avocats, Employment and Employee Benefits in France: Overview, Thomson Reuters Practical Law, (01/07/2022), Available at

[https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true), last seen on 20/09/2022.

Any work done beyond this standard ceiling must compensate the workers at a higher rate, preferably a minimum of 150% of normal wage rate (or an overtime premium of 50% over the normal wage rate). Further, this overtime premium should be paid to employees immediately and without delay, as workers resort to overtime work often to meet certain exigencies or compulsions.

A culture of maximisation of productivity per hour rather than working for longer number of hours should be cultivated in the workforce, right since their training in educational institutions. Emphasis should be placed on thinking out of box, leveraging technology, and seeking creative or innovative solutions/methods to get the work done most efficiently and economically. The culture of excessively long hours of work should not be glamorised or promoted at the cost of productivity, innovation, and creativity at work and employee health and wellbeing.

STRUGGLE AGAINST OUTSOURCING AND CONTRACTUALIZATION: CAN REFORMING LABOUR LAWS PROTECT SOCIAL SECURITY OF LABOUR

*Sneha Jaiswal and Manjari Singh**

Abstract

The impact of the globalisation process in India has impacted workers and labourers in multiple ways which appear to be a setback to workers in spite of economic growth. The most significant mark that globalisation has left is on labourers, where it can be seen that there is a systematic erosion of legal protection given to labourers or workers, which was meant to protect them from the erratic behaviour of employers. Post-1991, the labour laws have seen various amendments and loosened up their rigidness on social securities rather focused mainly on attracting investments around the world. The post-reform scenario of capital and technology inflows coupled with labour market flexibility has altered the employment portfolio in Indian manufacturing industries. The transition of workers from directly employed to contractual status has resulted in labour concerns such as wage disparities in various ways. The practice of illegally terminating labourers that are employed on a contractual basis just to camouflage the employer-employee relationship between so-called contract workers and the principal employer. They intentionally created a legal loop to waive their accountability to contractors. The principal employer decided to hire the workmen on a contract basis only to defeat labour law and exploit the workmen by paying the contract employees lesser wage benefits, and facilities and terminating them as per their will. Employing various categories of labourers through various contractors is a sham and bogus contract. In this article, the researcher draws a parallel between radical changes in labour reform and the effectiveness of the reforms. This paper will also look at the various factors that hinder workers and workers, including, high inflation, rising poverty, large numbers of unskilled workers, and contract workers.

Keywords: Contractualization, Gig-Workers, Labour, Social Security, Globalisation etc.

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1. INTRODUCTION

In today's global economy, outsourcing and contractualization of labour have become widespread phenomena. As production becomes more and more decentralized, so do workers' rights and job security. Unscrupulous employers have resorted to outsourcing, subcontracting, and other forms of labour contractualization to avoid labour laws and regulations, resulting in the displacement of local and informal workers and the informalisation of labour.¹ This in turn has a deleterious effect on social security of labour. However, there have been efforts made to combat this growing trend of informal labour by reforming existing labour laws. In recent years, governments across the world have taken steps to reduce informal employment by strengthening labour laws, improving enforcement and oversight mechanisms, and introducing new regulations. All these actions aim to ensure greater labour protection, wage security, and social security for workers.²

Labour law governs the rights and duties of the workers, union members and employers. It regulates the legal rights of employees and employers such as minimum wages and hours, safety regulations, contract negotiations, employee benefits, and laws governing labour unions. It is also concerned with issues such as maternity and paternity benefits, taxation of incomes, terminations, and discrimination. Determining the most appropriate forms of remuneration in the workplace, ensuring that workers are adequately protected, and resolving disputes between employers and employees are also areas addressed by labour law.

The two main categories of labour law are; first, labour law relates to the tripartite collective bargaining process between employee organizations, trade unions, and employers' associations such as chambers of commerce. It covers collective bargaining regulation, strikes, and industrial actions. Second, Individual labour law concerns employees' rights at an individual level. It covers areas such as working conditions, contract of employment, wage levels, trade union rights, health and safety laws, equal pay, protection against discrimination laws and rights to leave and holidays. Collective and individual rights are often complementary, with the purpose of providing greater protection to the rights of workers.

¹ Prasanna Mohanty, *Labour Reforms: Contractual Workers' Hiring On Rise In Organised Sector; Is Informal The New Formal?*, Business Today, (19/07/2019), Available at <https://www.businessstoday.in/latest/economy-politics/story/labour-law-reforms-contractual-workers-organised-sector-informal-sector-indian-economy-213098-2019-07-19>, last seen on 19/09/2022.

² Arvo Kuddo, *Labor Regulations throughout the World: An Overview*, 2, (World Bank 2018), Available at <https://documents1.worldbank.org/curated/en/221471546254761057/pdf/Labor-Regulations-Throughout-the-World.pdf>, last seen on 19/09/2022.

In Part-III (Articles 16, 19, 23, and 24) and Part-IV (Articles 39, 41, 42, 43, 43A, and 54) of the Indian Constitution, in accordance with fundamental rights and directive principles of state policy, the dignity of human labour and the responsibility to defend and safeguard workers' interests have been enshrined.

The fundamental rights as enshrined in the Indian Constitution include the right to equality (Article 14-18) which prohibits any form of discrimination on the basis of caste, creed, race, sex or religion. This ensures that workers are able to work with no fear of discrimination or inhumane treatment. The Right to Life and Personal Liberty (Article 21), ensures that workers have the right to a dignified life. Furthermore, the Right to Freedom of Movement (Article 19) provides workers their right to travel unrestricted and look for job opportunities.

The Directive Principles of State Policy (DPSPs) as enshrined in the Indian Constitution,³ place the responsibility on the government to ensure that all the labour laws in the country are up-to-date and relevant to the changing needs of the workforce. Article 43 demands that the government shall promote the welfare of the people by providing a living wage, decent working conditions, safe environment and social security. Article 39 provides that the State shall take action to secure equal remuneration for men and women, including equal pay for equal work and to ensure that children do not suffer from Hunger, Unemployment, and Exploitation. It also provides for child welfare, maternity labour benefits and educational rights for all children.

Labour is a subject on which both the Central and State Governments may pass legislation, with some matters being reserved for the Centre, according to the Concurrent List of the Indian Constitution. Hence, both the Parliament and State legislatures have the authority to establish laws governing labour. According to the central government, more than 100 state and 40 federal laws regulate a variety of labour-related concerns, including the resolution of labour disputes, working conditions, social security, and remuneration.

The Second National Commission on Labour (NCL) in the year 2002⁴ concluded that existing law was convoluted, included antiquated clauses, and used contradictory terminology. It also suggested consolidating central labour regulations to make them easier to comply with and maintain uniformity in labour legislation. It was stated that both the federal government and individual states have a number of labour

³ Part IV, The Constitution of India.

⁴ Ministry of Labour and Employment, Government of India, *Report of the Second National Commission on Labour with emphasis on Rationalization of Labour laws and Unorganized Labour*, Available at https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf, last seen on 19/09/2022.

laws. Furthermore, because labour laws were developed piecemeal, they are ad hoc, convoluted, contradictory, have several interpretations, and use archaic language.

The Commission emphasised the need to simplify and consolidate labour laws for the sake of clarity, language uniformity, and methodological consistency. Because diverse labour laws apply to various employment classifications and wage criteria, consolidating labour laws would also permit more thorough labour coverage.⁵ The British Raj is where many labour law laws got their start. But when circumstances changed, many of them either lost their effectiveness or ceased to be relevant. These clauses created challenges for workers rather than serving to defend their interests. The web of legislation was such that workers had to fill out four forms to claim a single benefit. As a result, the current administration has abolished outdated labour laws. The four Labour Codes now exist as a codification of Twenty-Nine Labour Laws.⁶ The four Codes on social security,⁷ industrial relations,⁸ salaries,⁹ and occupational safety¹⁰ were enacted in the Parliament of India as a result of National Commission on Labour (NCL)'s recommendations.

2. AGONY OF CONTRACT LABOUR

In layman's words, contractualization of labour, often known as the "end of contract" arrangement, has led to employees being engaged across sectors (including public-sector occupations like working for the railway line, municipal sanitation, and healthcare) on short-term ad hoc contracts while being denied access to social security benefits, better pay, and a general feeling of tenure.¹¹ Contract labour is often seen as temporary and employers are not obligated to retain the same workers for an extended period of time. This puts workers in a vulnerable position and makes them more prone to exploitation by their employers. Unlike full-time employees, contract workers do not receive job benefits such as health insurance, paid leave and other benefits. This makes it difficult for contract workers to plan for the future or save money for retirement.¹²

A deeper discourse about India's unemployment crisis and the prevalent reality of contractualization of the workforce is required for progressive economic and social

⁵ Ibid.

⁶ Krishna Veera Vanamali, *Four Labour Codes That Everyone Is Talking About*, Business Insider, (29/12/2021), Available at https://www.business-standard.com/podcast/current-affairs/four-labour-codes-that-everyone-is-talking-about-121122900040_1.html, last seen on 19/09/2022.

⁷ The Code On Social Security, 2020.

⁸ The Industrial Relations Code, 2020.

⁹ The Code On Wages, 2019.

¹⁰ The Occupational Safety, Health And Working Conditions Code, 2020.

¹¹ Shantanu Sarkar, *Towards a Model of Contractualization of Labour in India: Testing the Effect of Unionisation of Regular Workers and the Wage Gap*, 16(1), NHRD Network Journal, 20, 21, (2023).

¹² Ibid.

policy and practise. It gives us an opportunity to consider the seriousness of structural problems in our existing labour market, which is badly fragmented due to contractualization and indifferent with worker concerns as against employers).

In India, there were 5.9 crore enterprises that employed 13.1 crore people, of whom 71.74% were self-employed and 28.26% had at least one employee, according to the Sixth Economic Census (2013-2014).¹³ More and more companies are using contract workers to get around inflexible hiring and firing policies that prevent them from adapting to changing production needs. In factories, the proportion of contract workers rose from 26% in 2004–05 to 36% in 2017–18, while the proportion of employees who were directly employed decreased from 74% to 64% during the same period.¹⁴ Contract workers are susceptible to unpredictable working circumstances since their rights to pay a wage and social security payments have not been maintained to the same extent as those of permanent employees.

The National Commission on Labour acknowledged that contract workers experience poor earnings, a lack of job security and social security, and restrictions on their ability to engage in collective bargaining.¹⁵ Numerous studies have also found that India's labour laws have not been sufficiently enforced and have not adequately safeguarded employees. In addition, the success of collective bargaining has also been found to be poor due to the absence of recognition of bargaining agents.

3. CONTRACTUALISATION OF LABOUR: THE RECENT TRENDS

We can say that since the 1990s, contract employees have become much more prevalent than permanent workers, resulting in significant changes in India's manufacturing industry. This shift from regular workers to contract workers is majorly attributed to the strict rules of firing. Nonetheless, in other cases, this change is one of the ways used to create a model of a flexible labour market in India.

Contractualization of labour does not just involve the addition of strict employment protection laws; in a broader sense, it also involves a significant wage gap between regular employees and contractual employees. Despite this, the workers are concerned about the security of their jobs because of this wage gap.

This feeling of fear develops and develops which becomes an obstruction to their regular working and because of this they are not able to work to full potential and

¹³ Ministry of Statistics and Programme Implementation, Government of India, *Highlights Of The Sixth Economic Census*, Available at https://www.mospi.gov.in/sites/default/files/economic-census/sixth_economic_census/all_india/5_HIGHLIGHTS_6ecRep.pdf, last seen on 19/10/2022.

¹⁴ Ibid.

¹⁵ Supra 4.

end up losing their jobs. Over the years, as stated above, the number of workers in contractual employment has shown a steady increase as compared to permanent workers.

4. LAW AND POLICY IN CONTRACT LABOUR

The 21st century has created independent innovative minds and also defeated the minds of the people to find jobs in unorganised sectors. The unorganised sector market has widened the scope in creating more jobs but resulted in short trends. The shortened trends require short term employment of labourers till the run falls short. Although states have made enough efforts in abolishing contractual labourers or the bonded labourers¹⁶ aftermath the Independence, the state government has made its legislatures flexible towards contractualization that the capital market demanded, having said that the laws and policies in India have observed likely that the contractualization of labourers resulted in losing up of social security of the labourers.

India's labour market was too much over-burdened with laws. India's labour legislation was primarily governed by four major laws. Along With these four major legislations there was Contract Labour (Regulation) Act, 1970. This Act predominantly speaks about the contractual workers- their working condition and employment. Even with all these labour laws which were enacted in a view to provide better working conditions, stable working hours, occupational safety, fair wages, maternity benefit schemes, insurance etc. Nonetheless, even after the 75th year of independence, the conditions of the labourers remained the same, with the same exploitation as during the British Raj. Though the government has implemented several labour laws with good intentions in the direction to bring positive change in the arena. However, when we look at the implementation of these labour laws as discussed, we see that it is very limited in nature.

Being a source of concern, and as these issues reflected the anguish of workers. The four labour codes were developed by the Indian government. The four codes implemented were as follows-

¹⁶ Rabindra Nath Sinha, *Victory for Trade Unions: Abolition of Contractual Engagement in Govt Jobs in Odisha and Rajasthan*, News Click, (30 Oct 2022), Available at <https://www.newsclick.in/victory-trade-unions-abolition-contractual-engagement-govt-jobs-odisha-and-rajasthan#:~:text=Kolkata%20The%20recent%20decisions%20by,years%20demanding%20contract%20workers%20regularisation.>, last seen on 31/10/2022.

5. CODE ON WAGE, 2019

The Code on Wages¹⁷ was passed in the year 2019 replaced four labour laws.¹⁸ This Act was introduced to amend and consolidate the laws governing wages and bonuses and related subject matter.

This code has generated arbitrariness in calculating minimum wages through floor price and binding pricing, where state governments are not granted the authority to determine minimum wages below the floor price, but only above the binding floor price. The issue arises because a dual wage rate has created a disparity between employers and employees. In order to combat this disparity, the State government should make the minimum wage a standard wage. The Act brought out a question as to how a gazetted officer will be able to determine a complicated question of law without having any legal knowledge on that subject matter.¹⁹ It brings a matter of concern. As per Section 45 of the wage, if there is a disagreement, the gazetted official will address it.

6. CODE ON SOCIAL SECURITY, 2020

Social security relates to human rights, where protection is provided by a society with respect to health-care, assistance for income security, and eradication of poverty and inequality. Social security will promote peace and human dignity. Keeping the thought in mind of maintaining the dignity of the workers, the new labour social security code was brought into effect in the year 2020.²⁰ The Code on Social Security is an Act that updates and harmonises social security-related regulations and expands coverage to all employees and workers in all sectors, whether they work in the organised, unorganised, or any other sector. This code will be solving the long-laying questions on the table of the government which majorly focuses on the following unorganized workers, platform workers and gig workers.²¹

This code has consolidated the nine central Acts.²² Like every other law, there is a legal lacuna in this code as well. The major issue that needs attention in this code is

¹⁷ The Code On Wages, 2019.

¹⁸ the Minimum Wages Act, 1948; the Equal Remuneration Act, 1976; the Payment of Wages Act, 1936; and the Payment of Bonus Act, 1965”.

¹⁹ S. 45, The Code On Wages, 2019.

²⁰ The Code on Social Security, 2020.

²¹ Ibid, Chapter IX.

²² The Employees’ Compensation Act, 1923, The Employees’ State Insurance Act, 1948, The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972, The Cine Workers Welfare Fund Act, 1981, The Building and Other Construction Workers Welfare Cess Act, 1996 and the Unorganised Workers’ Social Security Act 2008.

putting a bracket around only to those establishments where there are a minimum number of workers i.e., 10 to 20 workers²³ this is neglecting the other establishments where the number of workers can be less than 10. Such establishments will not be subjected to the benefits of pension or medical provided under this scheme. The legislation also states that extra benefits like provident funds, pensions, and health insurance are only provided to workers who earn more than a certain amount, which the government may define. Such a phrase leaves the other workers in the dark.²⁴

This code was to bring hope among the workers that it will bring some upgradation in the lieu of social security benefits but with this code, they are still focused on the previous social security benefits that were already present before which includes the following: (i) a Central Board of Trustees to administer the Employee's Pension Scheme (EPS), Employees Provident Fund (EPF) and Employees Deposit Linked Insurance (EDLI) Scheme. Schemes for the unorganised sector will be administered by national and state-level Social Security Boards, and an Employees State Insurance Corporation to administer the Employee State Insurance (ESI) Scheme.

7. THE CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020

In September 2020, the President signed this code,²⁵ which repealed 13 previous central labour rules.²⁶ The regulations governing workplace safety, health, and working conditions for persons employed in a variety of contexts were consolidated and amended under this code. This code comprises two major issues that are a matter of concern to be looked upon. Firstly, this code gives a discriminatory view as it contains provisions governing the working conditions of just a limited number of professions, such as those stating that sales promotion personnel are entitled to additional leave and that journalists are not permitted to work more than 144 hours in a row.²⁷ Other employees could view

²³ Schedule 1, The Code on Social Security, 2020.

²⁴Dezan Shira & Associates, *Introduction to the Social Security System in India*, India Briefing, (06/05/2022), Available at <https://www.india-briefing.com/news/introduction-social-security-system-india-6014.html>, last seen on 31/10/2022.

²⁵ The Code On Occupational Safety, Health And Working Conditions, 2020.

²⁶ The Factories Act, 1948, The Plantations Labour Act, 1951, The Mines Act, 1952, The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955, The Working Journalists (Fixation of Rates of Wages) Act, 1958, The Motor Transport Workers Act, 1961, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Contract Labour (Regulation and Abolition) Act, 1970, The Sales Promotion Employees (Condition of Service) Act, 1976, The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Cine Workers and Cinema Theatre Workers Act, 1981, The Dock Workers (Safety, Health and Welfare) Act, 1986 and The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

²⁷ S. 25, The Code On Occupational Safety, Health And Working Conditions, 2020.

this as discriminatory. Secondly, the charitable or non-profit-based establishments are not covered under the purview of this code.

8. THE CODE ON INDUSTRIAL RELATIONS, 2020

According to the International Labour Organisation (ILO), "*Industrial Relations deal with either the relationship between the state and employers and workers organisations or the relation between the occupational organisations themselves.*"²⁸ The Code on Industrial Relations²⁹ is an Act that unifies and amends the laws pertaining to trade unions, employment conditions in industrial establishments or undertakings,³⁰ the investigation and resolution of labour disputes, as well as any issues related to or incidental to those laws. This code tried to restrict strikes and lockouts. Having said that, the code had made mandatory fourteen days of prior approval for strikes and lockouts.³¹ This seems practically irrelevant as there might be disputes in the industrial segments that need immediate attention.

In case of strictly following the code will result in procrastinating the disputes. Procrastination of any issues will eventually lead to more disputes rather than having a peaceful environment in the workplace which is the main aim of this code. The code has probably tended towards reducing strikes and lockouts but rather than solving the disputes in the industrial segment. The code should have tended to solve any issues by insisting on constituting a committee which consists of the labour organisation and the employers' organisation. In the case of the authoritative monopoly power of the employer in a small segment of the industrial environment, the strikes of the employers are much essential instead of exploitation which tends to happen without strikes.

9. LABOUR REFORMS - The government's take off

The viability of giving social security to the unorganised sector has remained an unanswered subject. The informal workers constitute 22% of the country's total workforce.³² Therefore it's important to think about social security which can help to reduce poverty. There are three ways of providing social insurance schemes across the globe. These are contributions of employer and employee during their course of work. Secondly, the non-contribution of employer and employee but rather met through

²⁸ *Employment Relationship*, International Labour Organisation, Available at https://ilo.org/ifpdial/areas-of-work/labour-law/WCMS_CON_TXT_IFPDIAL_EMPREL_EN/lang--en/index.htm, last seen on 01/11/2022.

²⁹ The Industrial Relations Code, 2020.

³⁰ Trade Unions Act, 1926; Industrial Employment (Standing Orders Act), 1946; and Industrial Disputes Act (IDA), 1947.

³¹ Chapter VIII, The Industrial Relations Code, 2020.

³² Dr. Muna Kalyani, Hod & Reader, *Indian Informal Sector: an Analysis*, 4(1), International Journal of Managerial Studies and Research (IJMSR), 78, 80, (2016).

government tax revenues. Finally, the most effective system is a combination of both. Through the application of these four labour regulations, the Ministry of Labour & Employment on August 26, 2021, announced "E-SHARAM PORTAL" to build a national database for more than 38 Crores informal sectors, which will let the government expand its reach to deliver social security to the very last individual.³³

With all these reforms along with various laws and policies on labour laws there are still instances of a wide range of exploitation of labour. Still the contractualisation of labour is flourishing in an unlawful manner without giving any weightage to the social security norms. There is a need that centre and state governments should work in alliance with each other and bring conformity to the rules framed with a true spirit of implementing these laws and policies.

10. LIFTING VEIL VIS-A-VIS GIG WORKERS CONCERNS

The term "gig economy" came into limelight at the height of the Great Recession to describe the ever-growing number of independent workers who engage in short-term and often freelance work.³⁴ These types of jobs are perfect for those looking for flexible working hours and the opportunity to be their own boss. A gig worker is someone who works on a contractual basis on a "gig" basis, typically completing a task, then moving onto the next one. Gig work has become increasingly popular in the digital age, with millions of people using digital platforms to find and complete projects. These gig workers—those who look for work on websites like Upwork, Uber, Zomato, etc.—are covered by the present subject matter. The gig economy is estimated to continue to grow as more and more people are turning to alternative forms of income.

Gig workers are often seen as an asset to the economy due to their flexibility and ability to come up with creative solutions to problems. They also provide an alternative to traditional employment, allowing people to work on their own terms. However, gig workers are often not afforded the same rights and benefits as traditional employees, such as healthcare and retirement plans. This has led to some criticism of the gig economy, as there is concern over the lack of job security and economic stability for those involved.

³³ M. Govindarajan, *e-SHARAM Portal For Unorganized Workers*, Tax Management India.Com, (29/12/2021), Available at

https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=10148, last seen on 02/11/2022.

³⁴ Nicholas Kacher and Stephan Weiler, *Inside the Rise of the Gig Economy*, REDI@CSU, Available at <https://www.libarts.colostate.edu/redi/wp-content/uploads/sites/50/2017/02/REDI-Gig-Economy-1-NK.pdf>, last seen on 02/22/2022.

11. EXPANDING PERSPECTIVES ON GIG WORKERS

In common public discourse, the phrase "gig work" is widely used synonymously with the platforms that provide on-demand, in-person consumer services like food delivery, taxi hailing, etc. According to a study report released in 2021 this industry will have a phenomenal growth in India, adding 90 million employments in ten years from the current eight million.³⁵ This translates to a working volume of over \$250 billion and may boost India's GDP by an additional 1.25 percent. According to the survey, just around 30% of gig jobs need specialised training, and more than 50% of gig jobs are motivated by the need for low-paying, low-skilled work.

As per National Institution for Transforming India (NITI) Aayog, India's Booming Gig and Platform Economy is a groundbreaking government analysis of the industry, its potential to generate employment, and related recommendations to grow the business. According to the analysis, the gig economy will grow to accommodate 23.5 million workers by 2029–2030, with an emphasis on both high- and low-skilled labour in the coming years.³⁶ The gig economy will be a key building block in inclusively achieving the above goalpost as India moves towards its stated goal of becoming a \$5 trillion economy by 2025, bridging the income and unemployment gap.

12. INCLUSION IN THE LABOUR CODE

Gig workers have established themselves as a constituency and are pressuring the government to act. The Ministry for Labour and Employment noted that the Code on Social Security, 2020 "*already provided for framing of suitable social security schemes for gig workers and platform workers on matters relating to life and disability cover, old age protection, health insurance, accident insurance and maternity benefits, etc.*" citing the recent report of NITI Aayog on India's gig economy.³⁷

In 2020, the government passed the Code on Social Security,³⁸ which repealed total nine legislation's and gave the Centre authority to announce numerous social security programmes.³⁹ The Code on Social Security, 2020 is the only set of labour laws that

³⁵ Boston Consulting Group and the Michael & Susan Dell Foundation *Unlocking the Potential of the Gig Economy in India*, 10, (Boston Consulting Group 2021).

³⁶ NITI AAYOG, India's Booming Gig and Platform Economy, Available at https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf, last seen on 02/11/2022.

³⁷ Rituraj Baruah, *NITI Aayog Suggests Social Security For Gig Workers*, (27/06/2022), Available at <https://www.livemint.com/news/india/niti-aayog-recommends-social-security-measures-for-gig-workers-11656327999658.html>, last seen on 02/11/2022.

³⁸ The Code on Social Security, 2020.

³⁹ Supra 22.

apply to gig workers.⁴⁰ Although this class of employees entered the purview of labour laws for the first time, the very first step of policy makers was to come up with an operational description of what gig workers are. The Code defines a gig worker as “*a person who participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship.*”⁴¹ Gig workers are distinguished from ordinary employees and other non-employee groups of workers by the phrase, even if it does not define them exactly. There has been no attempt to classify gig workers as employees under the new labour codes. Under the Code, a Social Security Fund is also created for gig workers.⁴² The gig aggregators will be required to contribute 1% to 2% of their annual income. The maximum that an aggregator may pay or be obligated to pay to gig workers is 5% of that amount.⁴³

It is a positive idea that platform and gig workers are now covered by social security laws because their legal status was vague and made it easier for them to be exploited because they are viewed as independent contractors. The question of whether tech gig job platforms like Zomato, Swiggy, Uber, and others qualify as employers or are merely middlemen has also generated a considerable amount of debate in India. The Supreme Court of the United Kingdom, in its judgement *Uber BV & Ors. v. Aslam & Ors*,⁴⁴ held that

‘Platforms like Uber qualified as employers, making drivers eligible for employment benefits and protections.

There is a lack of clarity on which social security scheme would apply to whom because the Code envisages various social security schemes for each of these groups of workers. This might create difficulties during the implementation stage’.

The Code also mandates the establishment of facilitation centres or call centres to assist gig and platform workers as well as those employed in the unorganised sector.⁴⁵ But, it does leave this up to the government's decision. Again, this requirement is not a legal obligation, even if it provides the union government the right to design social security systems for gig and platform employees.

The government lacks the political will to include vulnerable workers in the social security system, as evidenced by the failure of the welfare-based approach to social

⁴⁰ Chapter IX, The Code on Social Security, 2020.

⁴¹ Ibid, S. 2(35).

⁴² Ibid, S. 141.

⁴³ Ibid, S. 114(4).

⁴⁴ *Uber BV & Ors. v. Aslam & Ors*, 5, 1,23, (UKSC 5).

⁴⁵ S. 112, The Code on Social Security.

security, the absence of legally binding obligations on the government to provide protection and assistance to gig and platform workers, and the lack of advancement.

13. CHALLENGES AND CONTROVERSY

The discussion about the rights and duties of platforms for gig workers in connection to labour law laws is still ongoing, despite gaining a lot of attention. Gig workers have greater flexibility regarding the job they may pick and the hours they can spend because there is no employer-employee connection. Also, gig workers are not bound to any one platform. Unique job connections have a trait that fundamentally alters how people operate in numerous ways. Companies benefit from the same flexibility when they are not reliant on a particular team of workers to complete tasks. By skipping the cost of social security and the set income that employees get, they also save money. The gig economy has nevertheless drawn praise and criticism.

As platform businesses have gained popularity over the years, some of its employees, notably those working in the taxi and delivery sectors, have also protested. In India, the complaints have primarily been over pay and working conditions.

- i. Gig workers in India claim that poor remuneration frequently forces them to put in more than eight hours a day and work every day of the week.⁴⁶
- ii. However, because a firm cannot be held responsible if the workers are not employees, the gig economy model itself exposes the workers to such risks. This prompts concerns about the gig economy's moral foundation and calls for deeper research into its layout plan.

A significant portion of gig workers lacked any form of social insurance, according to a study titled "Protecting Workers in the Digital Platform Economy" conducted by the Indian Federation of App-based Transport Workers (IFAT) in partnership with the International Transport Workers' Federation (ITF).⁴⁷ In reality, the very minimum "accidental insurance" was available to only 0.15% of the employees surveyed. In a similar line, the popular food delivery services Zomato and Swiggy were ranked lowest in the 2020 Fairwork India Ratings. Gig workers, who are usually regarded as the workforce of the future, are typically treated as independent contractors. This is normal practise in our neoliberal times across all industries, allowing firms to abandon their

⁴⁶ Amit Kapoor, *The Challenge With Gig Economy*, The Economic Times, (21/08/2021), Available at https://economictimes.indiatimes.com/jobs/the-challenge-with-gig-economy/articleshow/85031089.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, last seen on 02/11/2022.

⁴⁷ Indian Federation of App-based Transport workers and International Transport Workers' Federation, *Protecting Workers in the Digital Platform Economy*, 24, (2021).

responsibilities to provide workers with any form of social security or rights, boosting profits at the price of the dignity of the most vulnerable individuals.

In 2020–21, the gig economy employed more than 7.7 million people, according to the aforementioned NITI Aayog report. India is expected to have 23.5 million gig workers by 2029–30, or around 4.1% of the total number of people employed there.⁴⁸ Based on the numbers, it is necessary to change the federal labour legislation since social security regulations alone are insufficient to mainstream these workers.

14. INTER-STATE MIGRANT: LOOPHOLES IN SOCIAL SECURITY NORMS

Migration is a modern phenomenon and a universal phenomenon which exists in almost all the countries where people from different countries migrate from one place to another also sometimes from one state to another in pursuit of better employment conditions, higher wages, and better standard of living. The International Labour Organization (ILO) defines a “*migrant for employment*” as one who migrates from one country to another country with an intention to be employed.⁴⁹ Migration is neither wrong nor objectionable, it's a natural process of movement which is generally prevalent during some natural disasters, pandemics, or severe economic disturbances. It becomes objectionable when migrant workers use their right of free movement by replacing it with coercion. During Covid-19, there were drastic negative impacts on migrant workers. It has been catastrophic since the Covid-19.⁵⁰

According to the Global Economic Situation and Prospects as of mid-2021,⁵¹ the global crisis has "obviously increased poverty and within-country inequality" and is expected to "leave long-lasting scars on labour markets while reversing progress on poverty and income disparity in many nations." Two UN Special Rapporteurs raised concerns about the "well-being of more than 100 million internal migrant workers enduring hardship when COVID-19 laws forced them to commute long distances home, frequently on foot" in June 2020.⁵²

⁴⁸ Supra 36.

⁴⁹ Migration for Employment Convention, 1949, Article 11(1).

⁵⁰ Joshy Jesline, John Romate, Eslavath Rajkumar & Allen Joshua George, *The Plight Of Migrants During COVID-19 And The Impact Of Circular Migration In India: A Systematic Review*, 8, Humanities And Social Sciences Communications, 1, 2, (2021).

⁵¹ United Nations, *World Economic Situation and Prospects*, 14, (UNO 2021).

⁵² United Nations, Press Release, *COVID-19: Urgent Help For India's Forgotten Migrant Workers Must Follow Supreme Court Ruling, Say UN Experts*, Available at <https://www.ohchr.org/en/press-releases/2020/06/covid-19-urgent-help-indias-forgotten-migrant-workers-must-follow-supreme-0>, last seen on 03/11/2022.

Migration is majorly one of the causes of underdeveloped states where there are not enough means of a decent standard of living, good infrastructures etc. For instance, in the case of Himachal Pradesh, climate plays a very important factor in migration that takes place where due to mountainous regions and harsh weather it becomes completely difficult to sustain oneself.

15. MIGRATION FROM NEIGHBOURING STATES

Often, we see migrant workers in a developed state where they work for a low income. This is more evident in India where migrant workers from the north travel to the south and from the north-east to northern states. This is because of the unequal proposition of development across the nation. The evident spotlight over the grave concern of the inter-state migrant workers were seen during the pandemic situation. Social security of the workers remains a main point of concern therefore with the enactment of the two codes i.e., Social Security and Occupational safety and health code⁵³ for protection of workers seem to be a way forward. Although the inter-state migrant workers seem to be protected by the code, in reality the protection is in the failure note. Having said that, the inter-state migrant workers have to mandatorily register themselves to get these protections and benefits.⁵⁴

As we know the diverse nature of our country with diverse language, the migrant workers being so poor does seem fit enough to register themselves in the other state of different language. Since 1956, states have seen migration from various Southern states of India particularly from Tamil Nadu, Kerala, and Karnataka. According to the Labour Bureau under Ministry of Labour & Employment which launched All India Survey of Migrant Labourers with effect from the year 2021 states data on seasonal migrants as per the census of 2011, where in the State of Karnataka there were almost around 28,87,216 (persons) workers who migrated in search of jobs, In the state of Tamil Nadu there were around 34,87,942 (persons) workers who migrated and in the state of Kerala there were around 7,13,934 (persons) workers who migrated.⁵⁵ During July 2020-21, a total of 1,13,998 migrants shows that 51% of rural migrants have again migrated cities after the pandemic.

The absence of official data by the government about the unemployment crisis during the pandemic has stressed how to combat unemployment in declining economic

⁵³ The Code on Social Security, 2020 and The Occupational Safety, Health and Working Conditions Code, 2020.

⁵⁴ Akhileshwari Reddy, *New Labour Codes: What Changes for Interstate Migrants?*, Vidhi Centre for Legal Policy, Available at <https://vidhilegalpolicy.in/team/akhileshwari-reddy/>, last seen on 04/11/2022.

⁵⁵ Ministry of Labour & Employment, *Data on Seasonal Migrants*, Press Information Bureau, , (07/04/2022), Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1814543>, last seen on 05/11/2022.

growth. Reflecting on the reliable source of data by the survey conducted by The Centre for Monitoring Indian Economy (CMIE), states that around 122 million rural as well as urban jobs were lost in the month of April, 2020.⁵⁶ This loss of jobs has impacted the migrants in India on a quite larger scale. That's why it can be well said that the pandemic time of COVID-19 has created a severe devastating negative impact on migrant workers.

One of the issues that can also be highlighted from the case study of migrant workers is that it cannot be said to be surprising because it is a natural course that out of the total number of migrants who migrated just after the lockdown, 11% were women.⁵⁷ Who migrated which was completely different from one of the stereotypical thoughts that only men are one of those strata of the society who migrate from one place to another in search of jobs. The lack of social security and health benefits as well as the inadequate application of minimal safety requirements are the main problems migrant employees confront. Also, the likelihood of receiving state benefits, particularly through the Public Distribution System (PDS) systems, has gaps due to various individuals owning various PDS ration cards that do not correspond to the immigration states.

16. RESPONSE OF STATES TO THE MIGRANT WORKER CRISIS

With a note that social security and dignity of the labourers is the national obligation. Kerala was the first state to come up with social welfare schemes mainly to combat the evils of social security.⁵⁸ The scheme was famously known to be the “Kerala Migrant Worker Welfare Scheme 2010” provided four benefits; in case of accidents Rs. 25000 medical aids, in case of death Rs. 1 lakh compensation, children's education allowances, finally in case of termination a benefit of Rs. 25000.⁵⁹ With this scheme Kerala gave a priority to the migrant workers and their concern is very well reflected in the case where they constituted a Working Group on Labour Migration under a five-year plan for the year (2017-2022).

A recent study conducted by the Kerala Development Society funded by National Human Rights Commission (NHRC) revealed that most inter-state migrant workers lacked access to social security benefits on various grounds such as lack of

⁵⁶ *How Many Migrant Workers Left Cities During the COVID-19 Lockdown?*, The Wire, (20/06/2022), Available at

https://www.google.com/search?q=around+122+million+rural+as+well+as+urban+jobs+were+lost+in+the+month+of+April%2C+2020.&rlz=1C1VDKB_enIN1063IN1063&oq=around+122+million+rural+as+well+as+urban+jobs+were+lost+in+the+month+of+April%2C+2020.&aqs=chrome..69i57.647j0j4&sourccid=chrome&ie=UTF-8, last seen on 05/11/2022.

⁵⁷ Ibid.

⁵⁸ Dr. Haseena V A, *Welfare Scheme for Domestic Migrant Workers in the Analysis of Kerala*, 5(2), Public Policy and Administration Research, 1,1, (2015).

⁵⁹ Ibid.

knowledge or limited schemes.⁶⁰ Evidently, the report states the poor accessibility due to lack of information and language barriers. A pension scheme called PM Shram Maandhan Yojana was introduced for unorganised workers, but sadly 4.5 million have registered. The study further revealed that only 0.5% to 27.5% of migrant workers have access to any of these social welfare schemes. Although there is no data on migrant workers after 2011, it is estimated there is an increase of 9 million migrants every year.⁶¹ The Supreme Court's most recent ruling was supported by the idea that migrant labourers play a crucial role in the development of nations.⁶² As a result, their rights cannot be disregarded. The Awaz health insurance programme run by the state government only has 5.13 lakh enrolled migrant employees.⁶³

Although several initiatives have been made in response to the migrant workers, the accessibility of the social welfare schemes in the migrant state. In spite of the social welfare scheme introduced by the government, the migrant workers lack knowledge in registering for availing of the benefits. The inter-state migrant workers face problems with regional languages which are more prominent in the governmental matters of that particular state. Thus, the migrant worker's benefits have always ended on a negative note in pursuit.

17. CONCLUSION

According to the Periodic Labour Force Survey Report (2018-19), 52% of regular wage or salaried workers in the non-agricultural sector do not get any type of social security benefit, and 70% of them lack a formal written contract.⁶⁴ The framework of the present labour laws, according to the NITI Aayog, neither particularly nor purposefully promotes the growth of labour-intensive industries.⁶⁵ To provide a component of incentive for greater labour absorption, these laws need to be revised. The four codes that went into effect in 2020 are already in use.

⁶⁰ Jacob John Naveen Joseph Thomas Megha Jacob and Neha Jacob, *A Study on Social Security and Health Rights of Migrant Workers in India*, 59, (NHRC 2020).

⁶¹ Ibid.

⁶² *Migrants Important In Building Nation: SC Tells States And Centre To Issue Ration Cards To Them*, Scroll.in, (22/07/2022), Available at <https://scroll.in/latest/1028816/migrants-important-in-building-nation-their-rights-cannot-be-ignored-sc-tells-states-and-centre>, last seen on 08/11/2022.

⁶³ *5.13 lakh migrant workers registered under Awaz scheme*, The Hindu, (14/03/2022), Available at <https://www.thehindu.com/news/national/kerala/513-lakh-migrant-workers-registered-under-awaz-scheme/article65223711.ece>, last seen on 08/11/2022.

⁶⁴ Ministry of Statistics & Programme Implementation, Government of India, Periodic Labour Force Survey (PLFS) – Annual Report [July, 2018 – June, 2019], Available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1629366>, last seen on 11/11/2022.

⁶⁵ Supra 36.

But the same question arises as to when and how these codes will be properly implemented by all the states in India without any ignorance of the code. The existing research blames strict labour laws for the rising employment of contract employees in the organised manufacturing sector. But this is not the only factor contributing to these patterns, according to the analyses we provide in this study. Contract employees cost less than directly hired employees, whose inclusion in the plant's personnel reduces the negotiating position of the latter. The main problem which is still existing even after so many laws that have been implemented from time to time is the sustainability of the employment of these contractual workers. Can this be said that the sustainability of employment of these contractual workers has been met? This is questionable as these workers are still so vulnerable to being shed off due to their weak employment contracts. We as the people are always stuck in the loops of the government where there is always one argument or one say of the people to get recognition of humanity.

The impacts of any law can be seen when it is exercised by the government in a true spirit. It's important to bring conformity into action with the laws and policies that are brought in. The same lies with these codes as well if exercised in true spirit they can be a lifeline to the workers around the country who have been subjected to exploitation. These codes are mostly putting stress on the issues which are existing from the past and therefore they reflect on restorative justice for the workers. The code talks about the gig workers and the unorganised sectors which were hidden in the books of the government and never got equal opportunities to address their issues. As the technological world develops the labourers are left out with no jobs. The government has to keep in mind unemployment over technological developments. Having said that, the labour will be subjected to high exploitation in the contractualisation of employment. The legal framework to protect the rights of workers against exploitation is still lacking. A high level of expertise in labour rights has to be deployed to combat the emerging scenario of labour problems.

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