

Maintaining Labour Standards in India: Some Challenges and Approaches

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Special Reference to Disturbances
Resulting from COVID-19

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List of Abbreviations

AICCTU	All India Central Council of Trade Unions
ILO	International Labour Organization
GDP	Gross Domestic Product
SDG	Sustainable Development Goal
DOPT	Department of Personnel and Training
TFR	Total Fertility Rate
BOCW	The Building and Other Construction Workers
PLFS	The Periodic Labour Force Survey
EPF	Employees' Provident Fund
ESI	Employees' State Insurance
CMIE	Centre for Monitoring Indian Economy
IHD	Institute for Human Development

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Section 1:

Introduction

India is amongst the founding members of the International Labour Organization (ILO) and is committed to upholding its conventions in most parts. It has enacted laws that closely match the conventions, though the laws have been suitably formulated and worded to apply to the Indian labour environment. For the first decade or two after independence, the national laws were so formulated and implemented that they largely applied only to the organised industrial sector workers.

The reasons for this were:

1. The unions, which principally represented the workers' interests in the earlier decision-making process, were the textile unions (of Western India), and their purview of "workers" was accordingly shaped.
2. The governments at that time also believed that labour outside the organised sectors was transient

and that it was only a matter of time before all workers would fall within the ambit of "organised."

Over time, however, as the reality of the unorganised workers emerged new laws began to bring within their ambit, increased numbers of workers who had earlier been outside the organised sectors.

Backdrop

The country witnessed rapid economic growth, especially through the years 2000–2018. The GDP in 2020 was US\$ 2.87 trillion rising from US\$ 476.8 billion in 2000, a more than five-fold increase. The optimism, however, is dampened by the fact that the economy is not moving up the value chain and labour productivity is not growing adequately. Also, the growth has not been inclusive: the economy continues to have a large (low productivity

Box 1: The Unorganised Sectors and Unorganised Labour – Definitions

The Unorganised Sector "... consists of all **unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and directly engage less than ten total workers**" (Source: National Commission on the Unorganised Sector). It includes activities which are not officially registered as normal income sources. They are often not monitored by governmental labour (watchdog) agencies on workers' earnings, their working conditions, or the occupational hazards that the workers could face. The unorganised sector(s) have self-employed workers, wage-paid workers, paid and unpaid family workers, each of whom is generally unprotected by labour laws.

The unorganised sector should not be confused with the unorganised labour market; the latter consists of workers engaged in small or large numbers on small or large worksites or enterprises, on an intermittent basis (e.g., construction workers or agricultural labourers), or on regular basis (e.g., domestic workers), but are generally outside the purview of the labour laws. Many organised sector enterprises employ workers from the unorganised labour markets in large numbers (often on a contract or daily-wage basis), to save on costs. It is the latter that is of main concern here.

The term 'informal employment' is more conceptual than empirical. Different people have deployed it in varied manners.

The 17th International Conference of Labour Statisticians held by the International Labour Organisation in 2003 defines informal employment as those jobs where "...employment relation is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.)".

In India, very often, informal labour and unorganised labour are used interchangeably.

and low-skill) unorganised sector, and there is a large unorganised workforce. Further, it is a matter of concern that efforts to scale up the quality of human capital, which could then be the prime-mover for the above, have been very limited.¹ The unabated population upsurge has only worsened matters.

This raises some of the following questions: -

1. To what extent has the legal structure realistically grasped the different dimensions of the labour situation in the country?
2. To what extent do different segments of labour remain outside the purview of decent work owing to reasons relating to the legal framework and also reasons outside it?
3. What are the emergent challenges in achieving decent work?

This paper seeks to present a precis on the labour situation in the country in light of the above questions and labour laws concerning the fundamental tenets governing labour, considering the country's commitments to decent work that the ILO has put forth, which is now translated in the

form of Sustainable Development Goal (SDG) 8, requiring "...**full and productive employment and decent work for all**" by 2030.² The topic also assumes importance considering the recent grouping of some 29 labour laws into four codes, which aim to simplify the legal and other economic processes. The paper reflects upon the present labour conditions due to these disturbances.

Section II lays out the ILO conventions and the Indian laws;

Section III describes the conditions of labour, especially vulnerable workers, in light of the stated laws. In the process, the paper makes a critical analysis of the governance of labour;

Section IV briefly describes the work conditions and job losses of these (vulnerable) workers stemming from the outbreak of the COVID-19 pandemic;

Section V presents a way forward to achieve Goal 8 of the SDGs;

Section VI is the concluding section.

Section 2: Fundamental Labour Conventions and Indian Laws

Eight of the ILO's conventions and recommendations are termed "fundamental".³ This is because they envelop a very large number of workers and also uphold universal human rights.

A. The ILO's Fundamental Labour Conventions

1. Forced Labour Convention (No. 29, 1930)
2. Abolition of Forced Labour Convention (No.105, 1957)
3. Equal Remuneration Convention (No. 100, 1951)
4. Discrimination in Employment Occupation Convention (Convention 111, 1958)
5. Minimum Age Convention (No.138, 1973) – Child Labour (Prohibition or abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines)
6. Worst Forms of Child Labour Convention (No.182, 1999)
7. Freedom of Association and Protection of Right to Organise Convention (No.87, 1948)
8. Right to Organise and Collective Bargaining Convention (No.98, 1949)

India has endorsed the first six. It has not ratified Conventions 7 and 8 listed above, lest they violate certain restrictions imposed on government servants. As communicated by the Department of Personnel and Training (DOPT), Government of India, the ratification of these conventions would involve granting of several rights that are prohibited under the statutory rules for government employees, namely, to strike work, to openly criticise government policies, to freely accept financial contribution, to freely join foreign organisations, etc. Does it make a difference to the status of workers?

Also in the case of government servants, it should not, since government employees are generally among the most privileged workers in the country who have associations of their own to bargain for their rights and privileges, in addition to earning handsome amounts (i.e.,

a decent living salary plus other benefits and not market-determined earnings).

Even for workers and persons working outside the government but in the organised sector, freedom of association, collective bargaining, and the like, widely prevail through trade unions, staff associations, affiliations to political parties, etc.

B. Indian Laws Regarding the Fundamental Conventions

Within the Indian legal framework, there are at least 10 laws (or guarantees), which could fall within the preview of the Fundamental Labour Conventions. These relate to hiring, terms of labour engagement, payments to workers, working conditions, equality and safety, elimination of child labour and abolition of bonded labour, and grievance redress. Most of these were revised and grouped into four codes in 2020.

1. Constitutional guarantee against forced labour in Article 23 (1949)⁴

Article 23 of the Constitution attends to the Rights Against Exploitation. It prohibits the trafficking of human beings and forced labour, including *begar*, a system in which government officials and landlords (*Zamindars*), prior to 1947, compelled persons (including their servants) to carry their goods when they moved from one place to another, for which no remuneration was paid.

Comment on Forced Labour

The guarantee is broad-based. It needs to be more specific for it to be implemented as a law. This manifests from the fact that an explicit reference in the text was of the *begar* (a relic of that era) and not of forced labour per se. The Bonded Labour Act, therefore, had to be enacted in 1976 to convert part of the guarantee into a law some 26 years after the Constitution was adopted.

The implementation machinery is quite another issue.

2. The Bonded Labour System (Abolition) Act, 1976

The Bonded Labour System is defined as a method of forcing or at least partly forcing workers to work solely for specific employers, wherein workers borrow money from the latter and pledge their or any family members' or other dependants' labour or service to, or for the benefit of, the creditors until the debt is repaid. With the passing of the Bonded Labour Abolition Act in 1976, the Bonded Labour System has stood abolished (and all concerned debt written-off).

Comment on Bonded Labour Abolition Act

- a. Labour bondage exists because there has been a perennial demand for cash among the labouring groups (typified as being of low quality and in excessive supply). Since the borrowers of cash have no means to pay back other than through pledging their labour, bondage emerges. As per the law, on the date on which the law was passed, the standing debt was annulled and those debt-bonded stood freed. However, since there has been little effort to improve the livelihoods of these labouring groups, to enhance their skills to earn more, facilitate labour migration to places where there are jobs, distribute surplus land/assets to them, or promote means to reduce the Total Fertility Rate (TFR)—albeit some of these are long-term measures—debt bondage has existed all along (Toor and Kaur, 2018).
- b. The reach of the law is inadequate. Bondage can most effectively be reduced if the distribution of gains reaches the poor through their own enablement and empowerment, and if the labour supply is tightened.

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

If and when employer(s) faced shortages of skilled or even unskilled workers in the local labour markets, this Act created the provision to employ better suited workers from elsewhere. The Act's purpose was to protect workers whose services were requisitioned outside of their native states within the country. It applied to all those enterprises or contractors employing five or more inter-state workers and aimed to ensure that appropriate wage rates are paid, and other benefits such as holidays, hours of work, displacement allowance, travel allowance, etc. are extended to the migrant workmen. The Act is now merged with the Occupational Safety, Health and Working Conditions Code, 2020.

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

This Act is a labour regulation-cum-social welfare legislation aimed to benefit workers engaged in building and construction activities (who are all unorganised workers). It is meant to regulate the employment and working conditions of building and other construction workers, to provide for their safety, health, and welfare, and for other matters connected therewith. This Act is now merged with the Occupational Safety, Health and Working Conditions Code, 2020.

5. The Contract Labour (Regulation & Abolition) Act, 1970

This Act has aimed to regulate the employment of contract labour in establishments (engaging 20 or more workers) and to provide for its abolition in certain circumstances that violate any of the labour laws (wages, working hours, safety standards, etc.). This Act is now merged with the Occupational Safety, Health and Working Conditions Code, 2020.

Comments on 3-5

- a. The law imposes conditions on employers (e.g., on factories, larger establishments, railway yards, etc.) with regard to the working conditions of the workers they engage. This leaves out groups of workers engaged in unorganised sector factories or activities such as working in brick kilns, temporary construction work, sugarcane cutting, etc., and also leaves out small groups of workers engaged for shorter periods.
- b. In recent decades, there have been different streams of migrants seen in the country: nurses from Kerala (and now from elsewhere as well), single female (domestic) workers from Jharkhand, skilled crafts-persons from Bengal and Odisha, and many unskilled workers from Bihar and UP to Kerala and Tamil Nadu. These include persons belonging to the ST communities (of both sexes) from Central India to Delhi. There are, thus, migrant workers in sectors other than construction as well, and of both sexes. Some fill-in the gaps in local labour markets while others compete with the locals (e.g., Tamil Nadu – See IHD 2019). Who are they? There are no data on people's movement, nor is there a law or authority that could arbitrate in case of problems, other than the general laws of the land.

- c. The BOCW Act applies to work sites that engage a minimum of 10 or more workers, where the workers should have worked for at least 90 days. This leaves out those who do not satisfy these conditions.
- d. The Contract Workers' Act applies to employers engaging 20 or more workers, leaving out large numbers of unorganised workers.

6. The Payment of Wages Act, 1936

The Payment of Wages Act, 1936 was enacted to ensure that wages are actually disbursed to workers (in factories, mines, docks, railways, etc., in the organised sectors) earning less than a specified minimum amount. The Act requires that the wages are disbursed within a prescribed time-limit and that employees get their full wages without any unauthorised deductions. This Act is now merged with the Code on Wages, 2019.

7. The Minimum Wages Act, 1948

This Act concerns the Indian labour law that sets the minimum wage that must be paid to both skilled and unskilled labour. The Constitution has defined a "living wage," that is, the level of income to be paid to a worker which will ensure a basic standard of living, including good health, dignity, comfort, education (for off-springs), and provide for any contingency. This is now merged with the Code on Wages, 2019.

8. The Equal Remuneration Act, 1976 (ERA 1976)

This Act provides for the payment of equal wage for work of an equal nature to male and female workers, and for not discriminating against female employees in matters of transfer, training, promotions, etc. This Act is now merged with the Code on Wages, 2019.

Comments on 6-8

- a. Both 6 and 7 were enacted for the organised sector and are applied therein, i.e., for some 10% of the workforce.
- b. ERA 1976 is widely violated with impunity even in the formal sectors for want of adequate inspections and because of the excess supply of workers compared to demand, i.e., labour redundancy. Among the reasons for its continuity is the prevalence of gender inequity. The law scarcely explores this issue.

9. The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

This Act seeks to protect women from sexual harassment at their place of work. It supersedes the Vishaka Guidelines for Prevention of Sexual Harassment (which was not an Act) set by the Supreme Court in 1997.

10. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

This Act prohibits the employment of children below 14 years of age in certain occupations and processes, and provides for regulation of employment of children in all other occupations and processes. The Constitution of India states that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment.

Comments on 9 and 10

- a. The problem in implementing 9 is that an "employer" is to be clearly identified, which is not easy in the case of casual workers.
- b. Child labour exists since household incomes are low, and the law is poorly implemented in this context for reasons of poverty and labour redundancy, as stated earlier.

C. Codes of Labour

As of 2020, the government has grouped some 29 labour laws into four codes, with a view to simplify and rationalise the governance of labour issues and aim to bring into its ambit, labour deployed in sectors hitherto not covered by the law. These are appended. This paper discusses the Wage Code and parts of the Occupational Safety Code.

1. The Wage Code: This groups the following four existing laws:

- a. The Payment of Wages Act, 1936;
- b. The Minimum Wages Act, 1948;
- c. The Payment of Bonus Act, 1965; and
- d. The Equal Remuneration Act, 1976

The Wage Code implies that minimum wage would be uniform across all enterprises across all sectors in a region. Further, payments of wages are to be made by cheque

or bank transfer to ensure honest payments. Finally, payments could be made daily, weekly, or monthly, but not any later. Its principal aims are to eliminate wage discrepancies across sectors, to formalise the unorganised sectors in terms of wage payments, and to make all payment “overboard.”

Wages are given out as per the demand and supply of workers. Can the law reach out to the unorganised sectors, given that the code logically groups the existing organised sector laws?

The answer is “Yes” in terms of the word of the letter of the law, but in practice, there are problems:

1. A large number of small unorganised activities thrive on cheap labour since they work with dated and cost-inefficient methods. If labour cost rises through a legal process, these processes will give way to machines, and the poorest will lose their jobs.
2. The labour governance system is small and weak, and like the legal system, it can drag cases for a long time, adversely affecting all parties.
3. ERA 1976 is good in practice but its enforcement will drive women workers away from jobs since employers intrinsically believe that men are more efficient and flexible at work.

2. The Occupational Safety, Health and Working Conditions (OSH) Code: This groups the following 13 existing laws:

1. The Factories Act, 1948
2. The Plantations Labour Act, 1951
3. The Mines Act, 1952
4. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
5. The Working Journalists (Fixation of Rates of Wages) Act, 1958
6. The Motor Transport Workers Act, 1961
7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
8. The Contract Labour (Regulation and Abolition) Act, 1970
9. The Sales Promotion Employees (Conditions of Service) Act, 1976
10. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

11. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
12. The Dock Workers (Safety, Health and Welfare) Act, 1986
13. The Building and Other Construction Workers (Employment and Conditions of Service) Act, 1996 (BOCW)

The OSH Code mostly relates to health, leave, and the provision of some allowances to workers. Four of these laws apply to unorganised workers: the BOCW, the Contract Labour Act, Inter-State Migrant Workmen Act, and the Dock Workers Act. Would workers covered by these Acts be extended the medical and other facilities that organised industrial sector workers are provided, keeping in view the itinerant and temporary nature of their work and some of the workplaces (e.g., construction sites)?

There are no clear answers yet. However, conjectures suggest that workers could be offered health benefits since the government already has a scheme for rural and urban health covering the whole populace. These, though, will be under the general health programme of the state, i.e., the cheapest option, and might not entail specialised private health services. Also, it is not clear whether the Employees State Insurance (ESI) hospitals will be open to workers listed in the four groups above.

D. Summary

The Laws: Some of the laws were formulated and de facto implemented for the organised sectors. In the early 1950s, it was believed that the unorganised sectors and workers were an aberration and in time, all or most non-farm activities would come under the umbrella of the law and would qualify to be in the “organised” category.⁵ This did not happen. Yet, large trade unions and their apex organisations (representing organised workers), in partnership with political parties, became powerful political forces, influencing law-making to protect their segments of workers.

In general, the following is the labour situation:

1. Many workers are outside the purview of the some of the fundamental laws that govern decent work since the laws are archaic and exclusive;
2. There are many new developments in the labour markets, like the emergence of new streams of *migrant workers* and *gig-workers*, on which the existing laws are silent; and

3. The law-enforcing machinery, designed in the 1950s, has only incrementally changed and is thus, quite inadequate.

The government has brought about four new labour codes, grouping together some of the existing laws. At least the two discussed here suggest that occupational health might expand to the unorganised workers, but otherwise, little else is expected to happen. Particularly, a convergence in wages is unlikely.

A final word: Laws can be implemented to bring about justice if the two sides are equally matched. In India, there are too many (low-skill) workers chasing too few opportunities and they would settle for much less than their legal due since they want a livelihood at any cost. Child labour is a part of this process. Labour redundancy is thus an issue that comes in the way of effective law implementation and achieving decent work.

Section 3: The Situation Analysis

This Part presents the structure of the workforce, income of the low-earning unorganised workers, issues of migrant workers, labour bondage, and child labour. Cases of workers from select industries are also presented.

A. Structure of the Workforce

1. Organised and Unorganised Workers

The size of the Indian labour force was about 486.1 million in 2019, out of which about 340.2 million were male workers and 145.8 million were female workers (Ghose and Kumar, 2021). The total formally unionised workforce in industry and manufacturing (though contested, and authentic data are available for not later than 2011) is estimated at about 10 million. Additionally, there are some 21 million employees and workers in various central and state government departments and in the third tier of governance.⁶ Then, there are others like bank employees, railway and airline sector employees, workers in utility services, police personnel, and those in defence. All of these cumulatively add up to a figure close to about 50 million. This is a little over 10% of the workforce—the organised workforce. The rest are the unorganised workers, either in self-employment, unpaid family work, or working as casual and unprotected workers.

Note 1: The Periodic Labour Force Survey (PLFS) defines regular employees as persons who work in others' farm or nonfarm enterprises and in return receive salary or wages on a regular basis (i.e., not on the basis of daily or frequent periodic renewal). PLFS data of 2018-2019 show that about 23% of workers were "regular salaried employees" in that year. It should be noted that not all salaried employees fall under the canopy of the labour laws and cannot, therefore, be classified as formal workers.

The organised sector workers are protected by laws and they have access to labour courts in the event of a dispute. There are trade unions, specialised lawyers, and political lobbies to protect their interests. Fortunately, a few of these protections, especially with regard to occupational safety and social protection, are now available to unorganised workers as well, especially those employed on government sites such as large earthworks, construction works, and

even the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). Further, a few among the unorganised workers are well-to-do self-employed persons in agriculture and non-agricultural activities (large or medium farmers, shop-owners, owners of small mechanical or electrical workshops, etc.).

However, this is not all, there is a low-end as well. The low-end unorganised occupational groups include agricultural labourers, other casual labourers, brick-kiln workers, beedi (raw rolled cigarette) workers, scavengers, construction workers, loaders and unloaders, and the like. A lot of them are migrant workers and contract workers, some of whom are even engaged as attached (bonded) and child workers. The four characteristics common to all of them are that they are difficult, dirty, and dangerous; they fetch low wage; there are repeated breaks in their engagement; and there is exposure to occupational hazards (Ministry of Labour 2009).⁷

The law sparsely reaches out to them for more than one reason: the workers are apprehensive about job loss and do not speak; the government machinery is too thinly spread; the knowledge levels of workers are low/nil due to lack of education (Box 2), and other such reasons. The key problem is the excess supply of unskilled/uneducated workers.

2. Migrant Workers

There are a total of about 65 million inter-state migrants, and 33% of these migrants are workers. By conservative estimates, 30% of the workers are casual workers. (Kundu I, 2020) Another estimate, made in the Economic Survey of 2017, suggests that the magnitude of inter-state migration was close to nine million annually between 2011 and 2016. Yet other estimates, after including short-term circular migrants, show that there were about 140 million inter-state migrant workers in India in 2020 (Sharma, 2017).⁸ This includes nearly 60 million short-term circular migrants, who are left out from the census and other surveys (Srivastava, 2020). The Population Census of 2011 shows that Uttar Pradesh and Bihar are two states that accounted for almost 36% of total migrants (Mishra M. et al., 2021).

In one stream of migrants, increased numbers of workers—mainly unskilled and low or semi-skilled from the eastern states travel to other states and locales for work. They become vulnerable for want of knowledge of the local language, low options to go back, and no political support if they face adversities. Most do not resort to the law, lest they risk losing their jobs. They are almost all in the unorganised segments. Another stream (of migrant workers) like nurses, machine operators, truck drivers and cleaners, auto/domestic-drivers, skilled domestic workers, private sector helpers (clerks and peons), free-lance typists, cooks, gig and platform workers, and the like, has emerged in the recent decades. Many of them face problems of low incomes, gender violence, cheating, caste discrimination, language barriers, etc. They are also segregated if not discriminated against. The status of these workers is colloidal: some are organised, some unionised, some regular informal, and some completely unorganised.

Are all migrant workers protected by the law, like the Contract Labour Act, the Inter-State Migrant Workmen Act, etc.? The answer is both yes and no. In a few work sites such as large construction sites or government construction buildings/roads, workers registered as migrant workers are protected in terms of the number of days of work, wages, type of work, occupational safety, health benefits, etc. However, workers in agriculture or on small-scale construction sites are often not registered (as migrant or contract workers), either at the source or the destination. In agriculture, most migrants work within

the same district, which rules out any contract condition or registration.

Further, for workers in other migrant stream such as that of nurses, truck drivers, etc., there is no specific law: they are governed by the general laws of the land if they face issues. However, being migrants, some face overt discrimination from several population groups since the Indian populace is not sufficiently homogeneous to accommodate all. Workers from the Northeast and the South, workers from other religions, and workers from specific castes are labelled differently in some places. The discrimination also stems from a scramble for jobs: these workers are efficient and compliant competitors to the locals. There is a law to contend with caste issues but not with other issues.

Finally, inquiries from the field suggest that labour inspectors visit sites where workers are deployed only when they receive complaints, not otherwise. These are seldom received.

B. The State of Unorganised and Distressed Sector Workers : Select Cases

1. Brick Kiln Workers⁹

It is estimated that the number of brick-making units in India is upwards of 125,000, employing an estimated 10-23 million workers. Up to 68% of the 4.4 million to 5.2 million brick kiln workers in South Asia are estimated to

Box 2: Educational Levels of Workers

The table below presents data on the distribution of workers by their educational attainment. The modal frequency is at the unlettered workers, and workers having secondary or more education are about 36%.

Education status	2018-2019	% Distribution (vertical) 2018-19
(1)	(2)	(3)
Unlettered	111.3	24.3
Below primary	27.2	5.9
Primary	63.6	13.9
Middle	97.6	21.3
Secondary	55.6	12.1
Hr Sec	47.1	10.3
Graduate+	55.9	12.2
Total	458.2	100.0

be working in bonded, forced, or other similar labour conditions (Antislavery International Volunteers for Social Justice (2017). A survey of brick kilns in Punjab found that 53% of workers of all ages were reported to have taken a cash advance and worked on the brick kilns to pay it back.¹⁰

One of the studies (quoted in footnote 10) surveying some 3,000 workers in Punjab, UP, and Chhattisgarh in 2016, found that workers were hired as **whole families** where men, women, and children worked as a unit, and the wages were worked out on piece-rate basis (in a family, men were paid the most, then women, and children were paid the least in the imputation). In cases where advance payments were made, setting wages (and other payments) below the prevailing minimum wage was a norm. Poor living and working conditions were also observed. Up to 96% of the families had been found to be indebted to employers and their wages were deducted against the debt. The working hours often exceeded 12-14 hours per day in the summers though somewhat less in the winters.

It was also found that the inter-state migrant workers were more vulnerable compared to locals.

Women are exposed to physically demanding tasks without safety equipment, including during pregnancy, leading to significant risks to their babies and their own health. They are also vulnerable to violence, abuse, and sexual harassment (Kara, S., 2014).

Protections that the BOCW Act of 1996, the Inter-State Migrant Workmen Act of 1979, or the Sexual Harassment Act of 2013 provide, like regulated working hours, registering of workers with the local authorities, complaint cells, and so on, are found absent in many cases. The state authorities maintain that they register workers hailing from the same province (e.g., for those from Tamil Nadu, for purposes of provident fund, complaints, etc., under the BOCW Act) but not those from outside (e.g., Bihar, Orissa, etc.) (IHD, 2019). Also, as stated in Box 3, if workers themselves lend themselves to working in less than decent conditions since they desperately need cash, there is little that the law can do.

Box 3: Undesired forms of Labour Engagement

Bondage and Forced Labour

Debt bondage exists in agriculture, construction, stone quarries, brick kilns, beedi factories, carpet-weaving, and mining activities, and it prevails also through payment of advance at wage rates lower than the prevalent market rates. The Global Slavery Index estimates that on any given day, as of 2016, there were nearly eight million people living in modern slavery in India. The Ministry of Labour and Employment, Government of India finds that there were over 300,000 bonded labourers in India as recently as 2020. The highest numbers are believed to exist in Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Orissa, Tamil Nadu, and Uttar Pradesh. A majority of them are poor Dalits.

The law is unable to find a solution to this problem since the victims themselves go to the moneylenders seeking loans which they can only pay through pledging their labour. Successive governments have taken initiatives to have private loans written off and free the workers, but the problem of lack of livelihoods keeps driving the poor back towards indebtedness. The culprit is not the law enforcement agency but lack of opportunities, compounded by excessive (and unskilled) population.

Child Labour

According to the Census of India 2011, the number of child workers was 10.1 million: 5.6 million boys and 4.5 million girls. The obvious reasons for this are caste-based traditions, poverty, high fertility, and poor schooling facilities, among others. Child workers are still seen in agriculture, traditional industries, mining, and a range of low-end services. At times when both parents are migrant workers, the children de facto become workers, reports the Global Slavery Index Report. This Index further reports the worst forms of child labour in the Northeast.

The law is unable to reach out to stop child labour other than to advise or coerce employers. However, the pressure on the parents to earn money is high and they compel children to work.

Sources: Acharya and Naranjo (2019), Pg. 126-138; Keerthana R. Sheno and Girija Anil Saveetha (2018); Puja Mondal (2021), pg. 10; Glocal Research (Hyderabad) and India Committee of the Netherlands (Utrecht) (2015), pages. 181-214; and Picherit, David (2017)

2. Garment Industry Workers

The garment industry employs about 400,000 workers on a regular basis and an additional 500,000 seasonally. Most workers are women and teenage girls.¹¹ An ILO study reports that “four-fifths of workers have to work more hours per day or days per week than were initially agreed upon when they were recruited, either occasionally or frequently. Hence, there is evidence of deception in the recruitment process (ILO, 2015).” Further, in this study, fewer than four out of 10 workers had received a written employment contract, and less than half of them fully or partially understood its contents. The average working hours were reported at 8-10 hours per day. Most current workers, however, are registered with one or the other social-security schemes such as the Employees’ State Insurance (ESI) and Employees’ Provident Fund (EPF) and half have on-site health care facilities.

To a large extent, garments in India are produced in small-scale or micro units. They, therefore, often escape scrutiny by the labour law authorities since the laws are defined for or reach out only to the relatively larger units.

3. Beedi Workers

The beedi industry in India employs an estimated five million workers, around 76-90% of whom are women.¹² These workers undertake beedi rolling at relatively low wages as the work is to an extent home-based, and can be done without the time constraints of a factory environment. However, this implies that the working hours could extend to more hours than those stipulated by law. This industry is a classic case of the organised sector employing unorganised labour. For example, among the employers are big brands such as Mangalore Ganesh Beedi Works and Bharat Beedi Works in Karnataka; Shyam Tobacco, Ceejay Tobacco, and Pataka Beedis in West Bengal; Ceejay Tobacco and Sable Waghire in Maharashtra and Gujarat; and Prabhudas Beedis in Madhya Pradesh and Gujarat. The industry in Karnataka had refused to pay the mandated wages for decades, taking the fight all the way up to the Supreme Court in 2007. In Madhya Pradesh, a review was made only as late as in 2014 after decades of stagnation in wages. In 2014, the minimum wage was revised to Rs. 92 per 1,000 beedis, but this was linked to a minimum production, which is in contravention to the intent and premise of the Minimum Wages Act of 1948. The same studies stated that in West Bengal, the notified wage was about Rs. 190 per 1,000 beedis but workers were paid approximately 2/3rd of this (Rs. 126 per 1,000 beedis). No benefits other than provident fund were agreed upon. In Maharashtra, the statutory rate was

Rs. 210 per 1,000 beedis, but workers got only Rs. 140. Negotiations between unions and managements happen only after strikes and agitation; there is no automatic increase linked to inflation (ILO, 2015; Puri, 2020).

4. Construction Workers

The construction sector is estimated to employ 44 million workers, becoming the second largest employer in India in 2017. Many construction workers are migrants from other states of India.

The labour hiring process is often controlled by intermediaries known as “labour contractors,” who fetch workers from their catchment areas, inside and outside the state. Wages are determined both on time-rate and on piece-rate basis; there is no uniformity across locations, sites, and cities. On large infrastructure projects, at least the locally prevalent minimum wages are paid. However, there are cases where workers pay the labour contractors commissions for getting jobs, reducing the net quantity of monies that they receive (violating the Minimum Wages Act, 1948). At times, payments are made late (violating the Payment of Wages Act, 1936) (Narang A., 2019; IHD, 2019; Ashok S and N Thomas, 2014).

There is a bias towards engaging more male workers and also paying them more compared to female workers; a reflection of the extant labour markets. This violates the Equal Remuneration Act of 1976.

While regulations and safety (safety equipment, first aid kit, drinking water, etc.) have been seen in large construction sites, these are generally absent in smaller sites. Also, benefits such as medical benefits, paid leave, and accident insurance offered to workers in these projects are few and uneven, which is in contravention to the BOCW Act, 1996 (Chapter 7 on Safety) and the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952.

As per recent reports, not even 40% of eligible workers are registered under the Migrant Workers’ Act 1979 or any other. The BOCW Act too is somewhat restrictive: it applies to employers engaging 10 or more workers, and for enrolment under the Act, a worker should have worked for at least 90 days regularly. Not all workers satisfy these conditions.

5. Indian Workers in the Gulf Countries

Workers recruited for work in the Gulf countries, in some cases, pay large recruitment fees. At times, they become vulnerable and face issues such as contract

substitution, withholding of documents, non-payment or withholding of wages, and exhausting working hours, all in contravention of the Contract Labour Act of 1970. The workers are reported to be subjected to varying degrees of deception and coercion. In select cases, this amounts to human trafficking. Indian laws do not apply to other countries but decent work is a universal agenda and there are international conventions that protect these workers (Ansari, 2021).

C. Wages of Low-end Workers

Note: The Supreme Court of India has ruled that giving wages to workers below the limits set by the Minimum Wages Act would amount to forced labour.¹³

The offices of the Labour Commissionerate in each state fix the minimum wage for each type of task and region (for a state and major city) periodically. While fixing the wages, the authorities consider the paying capacity, prices of essential commodities, productivity, and local conditions.

There were an estimated 111 million casual and other unskilled or partly skilled labourers in India (about a fifth are women) as per the PLFS, 2019. To a notable extent they belong to the Dalit, backward, and tribal social groups, who are among the more deprived sections of society (i.e., land- or asset-less and possessing little human capital).

Tables 1 and 2 present data on the wages of male and female workers in different (unskilled and semi-skilled) occupations in rural areas and select urban centres. Table 3 shows wage rates by social groups. Figure 1 presents data on state-specific variations in wages of rural unskilled and semi-skilled workers for 14 major states. Finally, Table 4 shows data on hourly earnings by occupation and gender.

These data suggest at least seven traits:

1. Overall, the wage rates paid for unskilled and semi-skilled jobs are a little lower, similar to, or slightly higher than the minimum wage, i.e., near subsistence. This pattern holds across farming and non-farming occupations, in both rural areas and select cities (Tables 1 and 2). Does this border on violating the Minimum Wages Act 1948?
2. Wages arbitrarily vary across different occupations that are fungible between each other: like between ploughing and sowing versus harvesting, as shown in Table 1. Shouldn't equal wages for the same or similar work apply?
3. Only five out of the 14 major states paid minimum wages or higher wages in rural areas in 2019 (Figure 1). This is again not in consonance with the Minimum Wages Act of 1948.
4. Female workers invariably fetch lower wages compared to male workers in both unskilled and semi-skilled jobs. Part of the reason could be the

Table 1: Rural Wages of Unskilled and Semi-skilled Workers in India in 2019 (Rs. per day)

	Male	Female
(1)	(2)	(3)
Ploughing	304.7	250.2
Sowing	303.7	251.7
Harvesting	252.4	222.9
Horticulture	283.8	230.5
Animal Husbandry	374.7	195.9
General Agricultural Labour	282.9	224.3
Masonry	391.0	354.2
Beedi Making	206.0	156.5
General Non-farm Work	295.0	218.5
Minimum Wage	Rs. 250 to 410, depending on the state	

Source: Indian Labour Journal Vol 61, No. 3 (2020)

Table 2: Wages for Unskilled and Semi-skilled Workers in India (2019), Select Cities

	Monthly salary (Rs.)	Daily wage imputed for 26 days (Rs.)	Minimum specified monthly wage (Rs.)	Ratio of actual paid wage to Minimum wage (%)
(1)	(2)	(3)	(4)	(5) = (4)/(2)
Ahmedabad	7,824.3	300.9	8,637	90.6
Mumbai	10,408.6	400.3	10,113	102.9
Bangalore	10,669.7	410.4	11,733	90.9
Chennai	11,704.5	450.2	11,243	104.1
Calcutta	9,128.1	351.1	8,779	104.0
Kanpur	9,908.4	381.1	8,756	113.2

Source: Same as Table 1

Table 3: Wage Rates by Social Group (Rs. per day)

	2004–05	2011–12	2017–18
(1)	(2)	(3)	(4)
Male			
Scheduled Tribe	83	122	234
Scheduled Caste	100	150	NA
Other Backward Caste	107	158	NA
Others	103	152	283
Female			
ST	60	97	231
SC	65	106	NA
OBC	63	105	NA
Others	64	100	266

Sources: NSS Rounds 61 and 68, and PLFS 2017-18

Table 4: Hourly Earnings by Occupations – All Areas and Workers in India in 2019

	Male (Rs. per Hour)	Female (Rs. per Hour)	Ratio of female earnings to male earnings (%)
(1)	(2)	(3)	(4)
Legislators	133	181	136.1
Professionals	124	98	79.0
Technical and associated persons	98	70	71.4
Clerks	79	68	86.1
Services, shop attendants	46	32	69.6
Agriculture and fish workers	38	27	71.1
Crafts workers	46	28	60.9
Plant and machinery workers	47	33	70.2
Elementary occupations	36	25	69.4
ALL	55	45	81.8

Source: Government of India (2021), pg. 107

productivity component (men are better equipped to perform heavy manual work), but the wage difference in activities in horticulture, animal husbandry, beedi-making, etc., exhibit gender-wage discrimination (Table 1). Violation in Equal Remuneration Act 1976?

5. There is wage discrimination by social groups: SC and ST groups get less (Table 3). It is often voiced that the STs live in areas where the wages are generally depressed, but lower wages paid to SC workers—who are scattered across the country—is inexplicable.¹⁴
6. Across broad occupations, only among legislators do female workers show relatively higher earnings; but then, their earnings are not market-determined. In all other occupations, female workers earn less (Table 4). This is not in consonance with the Equal Remuneration Act of 1976.
7. Regarding the data in Table 4, interviews with employers and government officials suggest that women are found at the lower end of the same job grouping, i.e., women would be lower-division clerks compared to men who would be upper-division clerks; they would be in lower-skill professions compared to men; or they would be stuck in dead-end jobs such as being secretaries. It was also suggested that women take breaks for attending to reproductive activities,

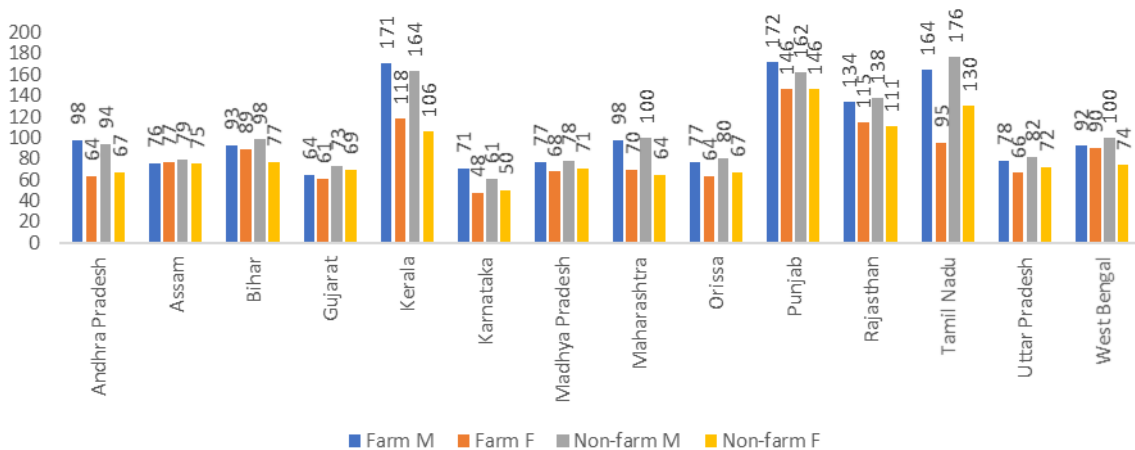
due to which they lose seniority and therefore, earn less. Whatever the reason, there is occupational wage disparity and it requires flagging.

D. Summary

Close to 90% of workers are unorganised, of whom, the particularly vulnerable ones are those who are migrants and those engaged in specific/traditional industries. The more unorganised the industry (e.g., brick-making, small-scale construction, or beedi-rolling), the worse-off are the workers. Employment in many cases is for very short periods or even day-to-day, and wages are at the minimum or near minimum. A few of the workers are also bonded by debt. Child labour persists. Most workers at the lower end of the labour market earn a wage rate not too different from the set minimum.

The law can do little since the legal machinery is too small (only some 6,000 inspectors in a country of almost 500 million workers). At the heart of the problem are issues of unemployability and low earnings of a large number of unskilled workers (thus indebtedness), and a high TFR (in the yesteryears and also today). Population explosion lies at the core of the problem of excess labour supply and low productivity.

Figure 1: Rural Wages Rs/day (unskilled/semi-skilled) – Select States (2019)



Note: M and F refer to male and female.

Source: Same as Table 1.

Sector 4: COVID-19 and its Impact

India began lockdowns to control the spread of COVID-19 on 23 March 2020. This was initially one of the strictest nationwide lockdowns, which was eased in phases throughout the next year, only to be reimposed during the second wave of the disease. Migrant workers, casual workers, domestic workers, construction workers, and many in the unskilled and semi-skilled category of work were adversely impacted, principally in urban areas. Seen in terms of the Decent Work Paradigm, the impact of the COVID-19 pandemic requires to be looked into in terms of how workers, especially vulnerable workers, were affected by the closure of industries or other economic and non-economic activities (Mishra M. et. al, 2021; Agarwal B., 2021). Some evidence could be seen in Box 4.

Did wages fall? Not much evidence is available regarding this, but some interviews suggest that while wages did not fall, the number of days of work fell drastically. The Centre for Monitoring Indian Economy (CMIE) reports that in February 2021, employment was down by seven million compared to the employment level in February 2020, and the average household incomes fell by 12%. Again, in April 2021, CMIE reports that unemployment had risen to 8% of the labour force, and in April 2021 alone (when the second wave of COVID19 hit), more than 7 million people lost their jobs.

To allow economic activities to resume, some states such as Uttar Pradesh, Madhya Pradesh, Gujarat, Rajasthan,

Box 4: Some findings on how workers were affected because of COVID-19

1. A study conducted by the Stranded Workers Action Network (SWAN) on 11,159 migrant workers (in Maharashtra, Karnataka, and Uttar Pradesh), found that 89% of migrant workers did not get their wages during the 21 days of the nationwide lockdown. It also reported food insecurity and virtually no cash at hand with the migrant workers on their journey back home. SWAN estimates that "...about 120 million people have been affected by the livelihood crisis and there has been only partial compliance with the government directive to pay wages without deduction and not demand rent." In yet other cases, the labour contractors vanished without paying the workers, once the lockdown was announced.
2. A survey of industrial belts in Delhi indicated that a vast majority of the workers in these residential areas (91% of the men) were completely out of work in March-April 2020 (the survey was conducted in May 2020). Around 85% of the respondents employed before the lockdown did not earn any income from their main occupation, while over half (53%) of those who were employed before 24 March 2020 did not receive their full salary for the month of March.
3. Yet another study with female domestic workers in Delhi showed that in March 2020, some 68% of them did not receive wages.

Many people were not welcome back into their states and villages owing to them being possible disease carriers, and faced caste discrimination or discrimination based on religion or race. They, thus, faced difficulties in eking a livelihood for themselves and their families.

Sources: SWAN (2020) at, <https://www.thehindubusinessline.com/news/why-migrant-workers-are-protesting-no-money-to-buy-essentials-limited-access-to-cooked-food/article31352912.ece> (The Stranded Workers Action Network (SWAN) is a group of volunteers who have conducted surveys and helped migrants at the early months of the pandemic); Afridi F and A Dhillon (2020); and Mishra M, R Singh, R Hembram and U Garai (2021). See also, "How has Covid-19 crisis affected the urban poor- Findings from a phone survey – I", at <https://www.ideasforindia.in>; and Ghose et al. 2020 .

Haryana, Uttarakhand, and Himachal Pradesh relaxed certain aspects of the *existing labour laws* for factories and establishments engaged in manufacturing processes for a period of three years, subject to the fulfilment of certain conditions.¹⁵

These state governments passed orders such as extending the maximum hours of work in a day from 8 to 12 and in a week from 48 to 60, suspended the Minimum Wage Act and also deferred the different Industrial Dispute Acts. However, the judiciary struck down such orders due to their illegality and argued, "...Pandemic cannot be a reason to do away with the requirements of the law that provide dignity and rights to the workers, and the entire burden of economic slowdown cannot be forced on the workers alone".

Summary

A Pew Research Centre Study estimates that the poverty rate in India may have fallen from 340 million in 2011 to 78 million in 2019, and if there had been no pandemic, the numbers would have further fallen to 59 million. However, the pandemic seems to have pushed the figure up to 134 million (Kochhar,2021). CMIE finds that some 230 million might have fallen below the poverty line. None of this augurs well for the paradigm of decent work. Further, seen in terms of labour laws, almost none of the laws mentioned in Section 2 seem to have been followed (e.g., migrant labour laws, contract labour laws, BOCW, others).

Sector 5:

Approaches to Promote Labour Standards: The Way Forward

To rise up to the issues facing the economy, a paradigm shift is required in terms of having a strong industrial policy, an effective human capital development policy, and a very robust population policy. These aspects, not being the main topic of discussion here, are discussed in another paper in this series.

A. Implementing the Law

Issues

As seen earlier, almost 90% of the workers are in the unorganised sectors while most laws pertain to the organised sectors. Most migrant workers are engaged in short-term unskilled jobs and are not de facto covered by the law. There are laws that protect migrant workers but both their wordings and the labour market conditions make it difficult to effectively cover all workers.

There is the Central Labour Commissionerate and State Labour Commissioners, each having offices in the state capitals and offices at the district level. They have independent domains and responsibilities. However, firstly, both the centre and state labour Commissionerate Offices are grossly under-staffed (3-4 persons per office; 5-6 thousand inspectors across the country), and have

few, if any, transport facilities for rapidly attending to field issues. Second, there are no information feedback systems about the status of labour deployed at different sites. Interviews with some half a dozen officials across as many states suggested that they operated *against complaints made*, and these complaints almost always came from workers in large industrial establishments (e.g., establishments that fall under the Factories Act, 1948 or similar Acts that pertain to large establishments).

Workers on construction sites and other small sites stated that they were neither acquainted with the law nor did they know whom to complain to. Also, it appears impractical to take matters to labour or civil courts when the labour contracts are for very short periods, the workers are either individuals or in very small groups, or the cash amounts involved are small. Keeping their jobs is paramount and losing them is a major fear (IHD, 2019).

The other problem is regarding many migrant workers not getting registered under any of the Acts: The Inter-State Migrant Workmen Act, the Contract Labour Act, or the BOCW Act. Such registrations, maintained by officials in the destination locations, should have been done in the “source” states: e.g., if workers come from Bihar, they should be registered in Bihar. The Contract

Box 5: The Backdrop

More than seven decades ago, Sir Arthur Lewis had postulated that in labour-surplus countries, it is possible to shift (unskilled) workers from low productivity sectors to higher ones and keep wages low until all the surplus labour is soaked up. The underlying assumption here was that at some time in the coming years, the (unskilled) labour supply will exhaust itself and wages would rise (and all that follows with it, like skill formation, organisation of workers, collective bargaining, moving up the value chain, the TFR stabilising, etc.). This has been witnessed in East Asia and to an extent in Southeast Asia since the 1970s and 1980s. But what if the surplus labour *never* exhausts? This is currently the Indian situation: the population has grown four times since the 1950s and the TFR is still >2.1; there was/is relatively less effort to promote labour intensive industries; there is hardly a movement up the value chain; there is weak skill formation, and so on.

India has to think beyond implementing laws alone and seriously examine the development process where population issues are prominent.

Act, Migrant Workmen Act, or any other law also has its own limitations: they cannot be easily invoked in cases where several labour contractors supply workers, each in small numbers; or when individual workers are deployed from roadside locations.

In many cases, labour contractors offer advances to labourers to work on sites for a season or for a few weeks or months. In such cases, the employer, *de facto*, is the labour contractor and not the owner of the site where workers are engaged, and there is little room for any law agency to intervene. There is another side to the story as well: workers prefer it this way since they can solve their issues, if any, among “knowns” (the labour contractor is their acquaintance and is known in their village) and not alien lawyers and impersonal officials/courts.

Finally, as stated earlier, in some rural locations, the caste-system still works to subordinate certain caste and tribal groups.

What can be done?

1. Almost all construction activity, even on a small-scale, is carried out with the permission of some government authority such as a municipal office or panchayat. These local authorities can keep a tab on the different sites where work is initiated or is being conducted. It would be useful to mandate such local authorities for inspections of worksites and take necessary action for ensuring that at least the minimum requirements are met in terms of payment of wages in full, occupational safety, human working conditions (including having drinking water and first aid kit on site), security of women at work, hours of work, no child labour deployment, and so on.
2. Laws and regulations regarding migration need special attention. In this regard, the physical movement of workers requires to be monitored to know *who goes where for work*. This is best done through information gathered from the “source,” where migrant workers are required to register at the panchayat office. This database should be live and centralised to track the movement of workers. Such a database will also help extend social security benefits to migrant workers.
3. The government needs to attend to the conditions of work in select industries such as brick kilns, carpet-weaving, small-scale construction, tea gardens, artisanal mining, and the like for checking on malpractices emerging from tradition or compulsion. Of special concern is occupational safety, especially in hazardous industries that operate at a small scale in the unorganised sectors.
4. The engagement of whole families for undertaking piece-rate work, where men, women, and children all get employed, should be discouraged. A law needs to be enacted for this.
5. Written contracts for engaging workers and making payments is a useful practice to follow.
6. Laws need to be reframed in a manner that unlawful treatment or exploitation of *any worker* (not just those who work in groups of, say, 10 workers or more, and having worked for, say, 90 days or more) is attended to.
7. The different laws governing labour need to have jurisdiction beyond a state. All workers need to be protected by the same laws across the country, and for enforcing this, all identification cards need to be honoured across all states (i.e., no geographic jurisdictions). The recognition of ration cards nationally is one step in this direction but more is required.
8. The Labour Commissionerate officials in more than one state have stated that there is a need to beef-up their staff strength, resources, information technology facilities, travel facilities, etc. There are 44 central laws and about 100 state laws with regard to labour but the sanctioned number of labour inspectors is only about 6,000. Among the measures that can be taken is the provision of vehicles for reaching sub-district levels, networking with panchayats for information on labour situation and movement, etc. (Mehrotra S and K Sarkar, 2021). Decentralisation of penal powers is also an option.

A few steps that could help workers achieve decent work within the existing welfare programmes are listed in Table 5.

B. Managing Emergencies such as COVID-19

In situations like the COVID-19 pandemic and the subsequent sudden shutdown of the economy, emergency disaster management rules take precedence rather than the laws governing labour (e.g., the Contract Labour Act, the Inter-State Migrant Workmen Act, etc.). However, the responsibilities of key personnel like labour contractors, employers, etc. do not go away. In March-April 2020 as well as April-May 2021—the first and second waves of the COVID-19 pandemic—there was panic among the migrants, indifference among the labour contractors and employers, and unpreparedness on the part of the administration. This was avoidable.

As the COVID-19 disease threatens to enter its third phase, some lessons need to be heeded:

1. For those who wish to stay behind in major cities, food security, income support, and housing are fundamental. Here, labour contractors and/or employers must be made to pay the workers through persuasion, campaigns, and other means. In some states, the governments are ensuring this but it needs better coordination and equity.
2. For those who wish to go back, again, food security and income support, in addition to transport are the primary requirements. Once again, in some states the

Table 5: Some key suggestions for raising the benefits in the unorganised sector workers

Issues	Policy Suggestions
Several extant welfare schemes are contributory, and unorganised sector workers <u>find it difficult to contribute to them</u> in times of job loss/adversities.	When workers lose jobs, the government could pay both its own share and the workers' share to the fund.
Many labour welfare schemes for workers are based <u>on dated data</u> collected 5-10 years (e.g., Socioeconomic Caste Census, 2011).	There is need to collect data and maintain a "live" database on workers by skill, in the unorganised sector. Creating an integrated database of workers will help in optimal provisioning of benefits and also streamline the identification of potential beneficiaries.
Unorganised sector workers are <u>low in literacy</u> and not aware of documentation in regard to the schemes.	Make the documentation procedure simple and assist those who are less educated through campaigns or special drives with the help of workers' organisations, NGOs and other local level organisations.
A large proportion of the workers in <u>the unorganised sectors are self-employed</u> and also footloose, making any targeting difficult.	Welfare schemes should be made so as to include own account workers, including those footloose.
There is <u>no legal binding on</u> employers to provide social security to unorganised sector workers.	The state should encourage enterprises or establishments and take appropriate actions to enforce social security for all workers. Robust Monitoring and Evaluation (M&E) can ensure compliance with labour legislations.
There is already <u>large unemployment</u> and underemployment. COVID-19 has made it worse.	The government should introduce urban employment guarantee schemes (like MGNREGA).
The wage or <u>income level in the unorganised sectors is at times time lower than the minimum wage</u> . As COVID-19 has adversely impacted different sectors of the economy, it has severely affected the livelihoods of workers.	A number of small employers in the unorganised sectors cannot afford to pay higher wages. Measures need to be taken to protect the workers and small employers through policies of enhanced income security, health security and educational development of children and youth.
A large proportion of the workforce in unorganised sectors <u>suffers from poor working conditions</u> , including the lack of proper rest rooms and medical facilities, harassment, non-redress of grievances, etc.	There is need for proper monitoring of such working conditions. Further, some provision from the government such as free quality health services and also linking workers with existing welfare schemes can help workers in smaller enterprises to survive.
The <u>outreach of various government welfare schemes</u> related to livelihood promotion and other relevant schemes is <u>low</u> .	Lack of awareness among workers and lack of proactive effort on the part the government machinery at the local levels are the main reasons. Therefore, awareness campaigns and participation of other stakeholders at local levels should be ensured.
The new labour codes have <u>little clarity regarding the implementation of schemes for the informal sector workers</u> , e.g., gig workers and platform workers.	There is need for greater clarity with regard to benefits for different types of workers and also the responsibilities of the state and central governments.

governments are ensuring this but there is immense scope for improvement.

The use of information channels, especially e-channels (e.g., television, mobile phone, etc.), is paramount. Here, telephone helplines could also be meaningful. Further, close coordination between the state and central governments, trade unions, NGOs, and civil society, especially to register unregistered workers under one or another Act could be taken up as a priority. Workers' rights must be upheld and their dignity must not be compromised. Finally, this is the time to initiate compiling a live digital database which the recently launched e-shram portal intends to do by capturing data of all the unorganised workers of the country.

C. Long-term – Managing population, governance, etc.

For sustained improvement in labour and work conditions, both the demand for workers and restricting excess supply of workers are essential. A tighter labour market is thus a prerequisite for sustaining labour standards. Laws can facilitate and better enable the whole process of enforcing labour standards, but they cannot replace the forces of demand and supply.

Maintaining labour standards requires greater employment of workers in higher productivity jobs, more skilled workers, and finite size of the labour force, now and in the times to come. This requires skills development, developing labour-intensive industries, and population control. These are essential to reducing labour redundancy and for promoting decent work.

1. The government has programmes for skill development but a large part of the training and skill formation has been farmed out to the private sector. The quality of training in many of the private institutions

is poor, a point explicitly articulated by employers. Elsewhere, we have argued that the education/skill sector requires to be fully managed by governmental agencies at this stage since only a few industrial and business houses are able to maintain standards. That point is being reiterated here to ensure high quality skill formation.

2. India has no active industrial policy. There is a need to have an active industrial policy, especially for promoting labour intensive industries in the decentralised sectors, so as to provide maximum employment.
3. India achieved a TFR at replacement levels only in 2019. This means that the population will not stabilise until another 20-30 years. Population stabilisation was achieved in most East Asian and other newly industrialising countries some 25-30 years ago. As industries and services become robotised and increasingly capital and skill intensive, the need to control the population is real. A bill on population control was introduced in the Indian Parliament in 2019, but there is hesitancy. This needs to be overcome.

Summary

Labour standards in a labour-surplus agrarian economy could be achieved and sustained only if the economy grows in a way that soaks up surplus labour, there is an improved investment in human capital, and there are severe population control measures put in place. In the shorter term, better implementation of laws through greater decentralisation and improved M&E can help. In the event of emergencies like the COVID-19 outbreak, the different institutions of disaster management and labour require working together rather than in isolation.

Section 6: Conclusion

This paper presents a sketch of the labour situation in India in the backdrop of the labour laws concerning the fundamental tenets governing labour. It initially examines the legal framework and then presents a panoramic view of the status of labour.

Almost 90% of the workers in India are in the unorganised sectors while most laws pertain to the organised sectors. Further, some 30 million workers are migrant workers, a majority of whom are engaged in short-term unskilled jobs, generally not covered by any law. There are laws that protect migrant workers but both their wording and the labour market conditions make it difficult to effectively cover all workers. There is labour bondage to a small extent and it continues not because of legal gaps but because poor workers offer to work for employers for stipulated periods (at low wages) because they perpetually borrow

money and the only way they can pay back is through pledging their labour. Child labour also persists because of poverty. Workers who face the most precarious work conditions are agricultural labourers, brick kiln workers, construction workers, beedi workers, carpet workers, and tea garden workers, among some others. The need to bring about decent work conditions for them cannot be underscored more.

Labour conditions can be improved on a sustained basis if the economy grows in a manner that rapidly absorbs labour, there is increased investment in human capital, and effective population control measures are put in place. In the immediate future, better implementation of laws through greater decentralisation and improved M&E may help.

Appendix 1: The New Labour Codes

The Wage Code

1. The Payment of Wages Act 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act 1965
4. The Equal Remuneration Act, 1976

The Industrial Relations Code

1. The Trade Unions Act, 1926
2. The Industrial Employment (Standing orders) Act, 1946
3. The Industrial Disputes Act, 1947

The OSH Code

1. The Factories Act, 1948
2. The Plantations Labour Act, 1951
3. The Mines Act, 1952
4. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
5. The Working Journalists (Fixation of Rates of Wages) Act, 1958
6. The Motor Transport Workers Act, 1961
7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
8. The Contract Labour (Regulation and Abolition) Act, 1970
9. The Sales Promotion Employees (Conditions of Service) Act, 1976
10. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
11. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
12. The Dock Workers (Safety, Health and Welfare) Act, 1986
13. The Building and Other Construction Workers (Employment and Conditions of Service) Act, 1996

The Social Security Code

1. The Employees' Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
5. The Maternity Benefit Act, 1961
6. The Payment of Gratuity Act, 1972
7. The Cine-Workers Welfare Fund Act, 1981
8. The Building and Other Construction Workers Welfare Cess Act, 1996
9. The Unorganised Workers' Social Security Act, 2008

Appendix 2: Some Major Labour Laws

1. The Workman Compensation Act, 1923
2. The Payment of Gratuity Act, 1972
3. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (since amended)
4. The Maternity Benefit Act, 1961
5. The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013:
6. The Contract Labour (Regulation & Abolition) Act, 1970
7. The Minimum Wage Act, 1948
8. The Payment of Wages Act, 1936
9. The Equal Remuneration Act, 1976
10. The Payment of Bonus Act, 1965
11. The Industrial Disputes Act, 1947
12. The Industrial Employment (Standing Order) Act, 1946
13. The Trade Unions Act, 1926
14. The Child Labour (Prohibition & Regulation) Act, 1986
15. The Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service) Act, 1979
16. The Building and Other Construction Works (Regulation of Employment and Conditions of Service) Act, 1996 and the Cess Act of 1996
17. The Factories Act, 1948
18. The Weekly Holidays Act, 1942
19. The Bonded Labour System (Abolition) Act, 1976
20. The Employer's Liability Act, 1938
21. The Personal Injuries (Compensation Insurance) Act, 1963

Endnotes

- ¹ <https://www.statista.com/statistics/263771/gross-domestic-product-gdp-in-india/>; India GDP, 1980-2020 - knoema.com; India; India - Statistics & Facts | Statista (accessed on 22 July, 2021)
- ² <https://www.undp.org/sustainable-development-goals> (accessed on 18 July, 2021)
- ³ <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (accessed on 14 July, 2021)
- ⁴ <https://www.gktoday.in/gk/article-23-24-of-constitution-of-india-and-rights-against-exploitation/#:~:text=Article%2023%20%26%2024%20of%20Indian%20Constitution%20deal,forced%20labor%20in%20which%20no%20remuneration%20was%20paid.> (Accessed on 30 July, 2021)
- ⁵ The Vision Papers written in the 1950s say this. In those days there was not recognition of the difference between the unorganised sector and the unorganised labour. Hence, there was no debate on this matter.
- ⁶ <https://www.quora.com/What-is-the-total-number-of-government-employees-in-India-including-both-state-and-central-government> (accessed on 21 July, 2021)
- ⁷ <http://labour.nic.in/annrep/files2k1/lab8.pdf> (accessed on 24 July, 2021)
- ⁸ <https://securitypraxis.eu/the-double-tragedy-circular-migration-in-india-during-pandemic-times/>(accessed on 18 July, 2021)
- ⁹ A moving account could be seen in, (139) Documentary: Invisible chains - bonded labour in India's brick kilns <https://www.youtube.com/watch?v=T85g2lRjA1w> (accessed on 16 July, 2021)
- ¹⁰ <https://www.thebrooke.org/sites/default/files/Downloads/Brick%20by%20Brick%20report.pdf> (accessed on 22 July, 2021)
- ¹¹ Source: <https://www.indianmirror.com/indian-industries/garment.html> (accessed on 22 July, 2021)
- ¹² <https://tnlabour.in/women-workers>
- ¹³ <https://lawcorner.in/bonded-labour-system-abolition-act-1976-critical-analysis/> (accessed on 29 July, 2021)
- ¹⁴ India has no explicit law against wage discrimination based on caste, but Article 17 in the Constitution upholds the principle of non-discrimination. See, <https://knowledge.leglobal.org/anti-discrimination-laws-in-india/> (accessed on 23 July, 2021)
- ¹⁵ <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>(accessed on 22 July, 2021)
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