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**MIGRANT LABOUR CRISES IN INDIA- THE EXODUS OF MIGRANT WORKERS VS. THE INDIAN LABOUR CODE**

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- Arnold Stanley<sup>1</sup>

### **I. Abstract**

The devastation which the Covid-19 pandemic brought on the migrant labourers after the lockdown was imposed in March 2020 has resulted in the loss of not only wages but also life and property. Even though the Parliament of India has revised the labour codes to provide relief to migrant labourers in the country, contrarily they have hardened the blow of the pandemic and weakened the protection and liability of the government which will mostly exacerbate the economic consequences of the pandemic increasing the vulnerability of the migrant workers in the country and the time to come. In this context the paper analyses the Occupational Safety, Health and Working Conditions Act 2020 and its impact on the migrant labourers in the country. I have also suggested recommendations which the government could adopt for better implementation of the act. As such the migrant labourers under the new revised rules of the Labour Code have been dealt a heavy hand of injustice with regard to their protection and security. The migrant labourers who form the backbone of the Indian economy and the informal sector must be protected.

Keywords- Migrant, Labourers, Pandemic, Code, Injustice.

### **II. Introduction**

The Indian government a day before the lockdown which had been implemented on March 24, 2020 told the Parliament that "**it is not feasible to keep record/data of migrant labour workforce**", as migrant workers are constantly on the move for employment opportunities.<sup>2</sup>

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<sup>2</sup>C. F. McQuaid et al., *The impact of COVID-19 on TB: A review of the data*, 25 INT. J. TUBERC. LUNG DIS. 436–446 (2021), <https://scroll.in/article/973402/labour-codes-are-protections-for-migrant-workers-migrating-too> (last visited Feb 10, 2022).

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Between the months of March and May, migrant workers without jobs, food or transport started going back home. The mass exodus of migrant workers in the numbers of nearly 11.4 million workers, resulted in round 971 non covid deaths and 96 workers who died on trains while travelling back home. In 1979 India had enacted the Inter-State migrant workmenact (ISWM) to provide protection to migrant workers. It applied to all establishments employing five or more interstate workers which was not implemented. It was then subsumed under the Occupational, Safety, Health and Working Conditions Code 2020<sup>3</sup>. Another legislation introduced was the Building and Workers Construction Act 1996, which requires state governments to form state welfare boards to implement welfare schemes for workers. Ultimately the government response in the implementation and working of these two acts and further legislations for the benefit of the workers was a half- hearted attempt to pacify and reduce the burden of public accountability of the government

### **III. The Indian Government and the Labour Code- Is it State apathy or inadequate implementation?**

The Occupational Safety, Health and Working Conditions Act 2020 which was subsumed by the Inter- State Migrant Workmen Act 1979, was the need of the hour for addressing the complex issues faced by the migrant workers.<sup>4</sup> The state had however clearly displayed its apathy by stating that it had no data on migrant worker deaths. And a close analysis of the Chapter XI, Part II of the OSHWC Act is completely silent about the migrants who move within state borders and take into account the plight of inter-state workers. A 2011 census on internal migration shows that 88.6 % of the data collected involves nearly 39.6 crore Indians migrating within state borders.<sup>5</sup> India has around 94 percent of workers in the unorganized sector which where the legislative reforms in the OSHWC act may come at the cost of the workers' rights and protections in the future. The Indian Labour Code had entrenched the concept of informalisation in a economy where it already exists through the concept of "fixed employment" by providing contract labour as the common rule. India has an estimated 4 crore internal migrant workers in the informal sector where this there is a lack of regulation

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<sup>3</sup>THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 NO. 37 OF 2020, .

<sup>4</sup>How Labour Codes act against migrant workers | The Indian Express, , <https://indianexpress.com/article/opinion/columns/how-labour-codes-act-against-migrant-workers-7436551/> (last visited Feb 10, 2022).

<sup>5</sup>Labour rights and standards of migrant workers - iPleaders, , <https://blog.iplayers.in/labour-rights-and-standards-of-migrant-workers/> (last visited Feb 10, 2022).

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and existence of structural instability. The ISMA being subsumed by the OSHWC Act has consolidated and modified nearly 13 laws pertaining to the Factories Act 1948 and the Building and Other Construction Workers Act 1996 and also brings the Contract Labour Act under its purview.<sup>6</sup>

The changes made to the OSHWC Act has presented various challenges in the area of implementation. One of the most harmful changes is the contraction of the net inclusion of migrant workers in its fore. As the ISMA was applicable to establishments which employs 5 or more workers, the chapter on inter- state migrants “applies to establishments that employ 10 or more workers”.<sup>7</sup> According to the 2016 Economic Census the establishments that employ 10 or more workers accounts for only 1.66 % of the total establishments in the non-agricultural sector. Due to this increased ceiling majority of the establishments are left out of government regulation. Similarly, as the Contract Labour Act was applicable to establishments which employ 20 or more workers, the Chapter on Contract Labour now only applies to 50 or more workers. As a consequence, a large number of workers will not be entitled to legal protection and thereby vulnerable to exploitation.

The other pertinent issues under the Labour Code is the definition of migrant workers. The OSHWC code eliminates the word contractor and includes the phrase workers who are to be employed directly by their respective employers in the desired state of work. The Code has also introduced the income criterion for the definition of migrant workers by exclusion of those who earn more than 18,000 rupees from the scope of protection.<sup>8</sup> This distinction based on migrant workers incomes is unjustified and clearly misses the mark of protection of inter-state workers. The OSHWC Code also removed the obligation of the contractors to pay the inter-state migrant workers a “displacement allowance”. Displacement allowance forms an integral part of the income of the inter-state migrant workers and its removal from the Labour Code has resulted in the loss of legislative protection that was guaranteed to them by law.<sup>9</sup>

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<sup>6</sup>Labour codes: Are protections for migrant workers migrating too?, , <https://scroll.in/article/973402/labour-codes-are-protections-for-migrant-workers-migrating-too> (last visited Feb 10, 2022).

<sup>7</sup>India’s new labour codes fail migrant workers whose vulnerability was highlighted by lockdown crisis, , <https://scroll.in/article/974137/indias-new-labour-codes-fail-migrant-workers-whose-vulnerability-was-highlighted-by-lockdown-crisis> (last visited Feb 10, 2022).

<sup>8</sup>Praveen Jha & Manish Kumar, *Labour in India and the COVID-19 Pandemic*, 68 INDIAN ECON. J. 417–437 (2020), <https://blog.ipleaders.in/labour-rights-and-standards-of-migrant-workers/> (last visited Feb 10, 2022).

<sup>9</sup>A Year After Exodus, No Reliable Data Or Policy On Migrant Workers, , <https://www.indiaspend.com/governance/migrant-workers-no-reliable-data-or-policy-737499> (last visited Feb 10, 2022).

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The OSHWC Code has also eliminated the principle of administrative law that required the core policy positions to be reflected in the parent and not delegated legislations. Under the OSHWC and ISMA Bill the contractor obligation towards the migrant labourers was clearly defined. By this the workers could make claims under the Code if the contractors did not provide them mandatory statutory facilities and amenities. However, under the new revised OSHWC Code the contractor's duty towards their workers are left to be prescribed by rules thereby allowing states to dilute if not completely do away with it to ensure the "ease of business". This clearly shows that the new revised labour codes have either clearly neglected the plight of the migrant workers or have been revised to further state interests under the benefit of migrant workers. This kind of apathy of the state towards the migrant workers is clearly appalling as here this act is not just negligence but sheer callousness towards their plight during the pandemic.

#### **IV. Is the revised Labour Code against the interests of the migrant workers or an act of furthering state interest?**

The wage structures existent in states and the employer-employee relationships integral to the structure of the economy and its growth is required for the proper implementation of the Labour Code as well furtherance of State interests. One could argue that the revised Labour Code is used to further but evidently the latter. Over the last few months during the second wave of the pandemic many states such as Uttar Pradesh, Rajasthan and Gujarat has suspended most of the labour laws for the "ease of doing business". For example, under the Code of Social Security the maternity benefits are applicable only to the registered factories and establishments. As a consequence, the workers in the unorganized sector, working in small worksites and units under the specific industry are excluded from the benefits and have to rely on schemes such as the Vandana Yojna which provide Rs. 5000 but no protection from dismissals and provisions for paid leave for workers.<sup>10</sup>

During the pandemic the labour code and policies were ineffective as even the migrant workers existence was criminalized and were brutally disregarded when it came to their rights. The revised Labour law code further strengthens the blow against them this time even

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<sup>10</sup>McQuaid et al., *supra* note 1.

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removing any form of governmental protection for them.<sup>11</sup> At the start of the century, nearly 73% of the manufacturing organized sector in India was informal and subsequently increased to 77% in 2018.<sup>12</sup> India has also witnessed a decline in agricultural growth which was matched with the sluggish rate of formal employment. However, in recent years if carefully observed it was only that informal employment and the unorganized sector and has grown predominantly under the horizon of the labour law. Subsequently under the public distribution system ration mobility between states will necessitate a high level of commitment and cooperation from state governments, the federal government, and the migrants themselves. To make this work, migrant data must be as complete, accurate, and up-to-date as humanly possible. Instead due to problem of over-centralization that has become a characteristic of our federalism in recent years, a predisposition towards the respect for others opinions, distinctive requirements based on accurate data and challenges of each state will be required. The new laws also include measures such as the establishment of a social security fund, toll-free call centres, and helplines.<sup>13</sup> While the principles and ideals underlying the migrant worker rules are positive, it needs to be seen if the codes are effective.

The labour code did not afford any protection to the migrant workers under the formal and informal sector of the Indian economy. As such the Parliamentary Standing Committee on Labour had proposed anew chapter to be included in the the OSHWC Bill to relate to the health, safety and welfare of the migrant workers. Under the Factories Act they were working hours were restricted to eight hours a day<sup>14</sup>. This moves miles away from the labour laws that were under legislative control to governmental discretion. And the current code on social security which was also revised has various lacunas. The Building and Other Construction Workers Act, for example, establishes a “construction worker welfare fund”. The fund is funded by a cess on employers and is collected and controlled by the state government. However, numerous critics have raised concerns about the lack of clarity regarding the inter-state portability of this fund's benefits. Many construction workers are migrant labourers who frequently move from one state to another in order to work for their contractors and complete

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<sup>11</sup>INTER-STATE MIGRANT WORKMEN | Chief Labour Commissioner, , <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen> (last visited Feb 10, 2022).

<sup>12</sup>Labour migration data, , <https://www.migrationdataportal.org/themes/labour-migration> (last visited Feb 10, 2022).

<sup>13</sup>Why India's Legal and Labour System Needs to be Reconfigured to Really Help Migrant Workers, , <https://thewire.in/labour/india-labour-legal-system-migrant-workers> (last visited Feb 10, 2022).

<sup>14</sup>Abdoulaye Diop et al., *Welfare Index of Migrant Workers in the Gulf: the Case of Qatar*, 58 INT. MIGR. 140–153 (2020).

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their projects. This necessitates the mobility of benefits. However, this is one of several areas where the Code is silent about and refuses to state any provision pertaining to their protection and safety.<sup>15</sup>

## V. The Way Forward

The simplification of labour laws by clubbing other into four or five complex one is not a great solution which is clearly evident. As the new codes have been discussed above there are some recommendations for the migrant worker welfare that can be implemented for their benefit such as :

a) Bihar has implemented a unique migration tracking system at the grass-root level (panchayat level) which tracks and registers the migrant workers and notifies all details such as their identity, point of contact, destination details and the purpose of migration.<sup>16</sup> The registrations of the migrant workers are done with the help of the community vigilance committee and also with the coordination with the panchayat raj institutions and also labour departments officers at the district level. As such the OSHWC can consider this kind of a collaborative mechanism for better implementation of the Labour Code.<sup>17</sup>

b) The Code on social security also does not mention any social security schemes for the benefit of migrant workers in the unorganized sector. It would be helpful to include both the nature and mode of implementation of the social security scheme to be given to the migrant workers to better guide the implementation of the schemes.<sup>18</sup>

c) The better implementation of the legal provisions regarding the registration, protection and furtherance of the welfare of the migrant workers can be better improved. This process of codification of the migrant workers through the provisions of the labour codes must be addressed to stimulate implementation, capitalize technology for better data collection on migrant workers statistics and ensure accountability of the government regarding the

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<sup>15</sup>Social protection, not just legal protection: Migrant laborers in the Gulf, <https://www.brookings.edu/research/social-protection-not-just-legal-protection-migrant-laborers-in-the-gulf/> , (last visited Feb 10, 2022).

<sup>16</sup>How Labour Codes act against migrant workers | The Indian Express, *supra* note 3.

<sup>17</sup>McQuaid et al., *supra* note 1.

<sup>18</sup>*Id.*

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implementation of the schemes and the provision of the labour codes subject to the parliamentary scrutiny.<sup>19</sup>

d) All migrant workers and informal workers in the unorganized sector must be covered under universal and well-funded portable schemes. Their employers must be held accountable for their ill treatment of their employees. Provisions must be made for the same. Labour laws must be followed strictly, and remedies must also be introduced for the violation and loss which occur due to the improper enforcement of labour laws.<sup>20</sup>

e) Labour law policy reforms should ensure the growth of infrastructure and additional resources required of the migrant labourers involved in different industries across the country. Employment schemes both urban and rural must be introduced for them for financial support in times of crisis.<sup>21</sup> These measures though comprehensive can be implemented and adopted for the better implementation of the revised rules of the Labour Code as they would serve the purpose of not just the migrant labourers benefit but also their interest in the future.

## VI. Conclusion

The Labour Code and policy reforms of the government have failed during the pandemic which shows the critical implementation at various sectors and structures under the Labour industry was not done comprehensively showcasing the vulnerability of the migrant labour industry on a large scale. It has clearly spotlighted that the government must not ignore the plight of the migrant workers who account for nearly 77% of the informal sector. Despite their attempts, most states have been unsuccessful in managing migrant labour mobility and effectively vetting them. It is astonishing to note that, despite the existence of a profusion of national and international legislation and labour standards, there is still a significant gap between workers' basic human rights and the legal framework that governs their rights. Because migrant workers' social condition is already precarious, policymakers must take a realistic approach to protecting their rights. The Covid-19 outbreak highlighted the government of India's disaster management policy's serious shortcomings.

Trade unions and activists have repeatedly called for the adoption of a rights-based strategy for employees, the universalization of social security, and the correction of labour law flaws,

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<sup>19</sup>How Labour Codes act against migrant workers | The Indian Express, *supra* note 3.

<sup>20</sup>India's new labour codes fail migrant workers whose vulnerability was highlighted by lockdown crisis, *supra* note 6.

<sup>21</sup>Diop et al., *supra* note 13.

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particularly those in the ISMA. Therefore, it is vital that the government listens to these voices, fulfils its constitutional obligations as a welfare state, and ensures the protection of working-class rights so that the humanitarian disaster we saw in 2020, and are now witnessing a replay of, does not occur again.



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