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## **PANDEMIC STUDIES UNIT**

**CHANGING POLICY LANDSCAPE FOR PROTECTION OF MIGRANT  
WORKERS IN INDIA**



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## POLICY BRIEF

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### CHANGING POLICY LANDSCAPE FOR PROTECTION OF MIGRANT WORKERS IN INDIA

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PANDEMIC STUDIES UNIT



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## INTRODUCTION

The global deregulation of labour processes, a notable feature of the 21<sup>st</sup> century, has influenced intra-regional and inter-regional migration. In India, Census 2011 calculated the total number of internal migrants in India, both inter-state and intra-state, at 13.9 crore people for 2001-11. The Economic Survey of India 2017 estimated inter-state migration at around 90 lakh people annually from 2011 to 2016 (Ministry of Finance, 2017). The 2020 Covid-19 lockdown-induced migrant crisis in India put pressure on source and destination states for migration, with out-migration labour intensive states bearing the brunt of reverse migration. Inter-state migrants fill roles that are informal and dangerous, and low paying (Aajeevika Bureau, 2011). Their status as migrants is precarious due to their poor financial position and lack of social capital (Bhagat, 2018). There have been a high number of cases of human trafficking where the victim was travelling for livelihood or economic reasons. Many inter-state migrant workers also fall into bondage when they take advances from contractors or employers and then have to work exclusively at their worksites to pay off their debts (Nayak, 2018).

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred to as ISMW Act) is the sole legislation at the central level that addresses the concerns of ISMW. The Act was seen as a step to end the exploitative practices of contractors and middle-men, and provide protection to migrants (Menon, 2011). At present in India there are four distinct labour codes – on wages, occupational safety and health (OSH), social security and industrial relations. These codes emerged from the amalgamation of 29 labour legislations. This brief highlights the shortfall of different codes in ensuring protection to migrant workers, and implications of the revised provisions for the target population.

### *Defining Migrant Worker across the Codes*

The whole process of harmonisation and rationalisation of labour legislation is a constructive step because of the wide diversity of central labour laws. The definition of ‘inter-state migrant worker’ has changed to become more inclusive and wider in the Occupational Safety, Health and Working Conditions Code, 2020 (hereafter to be referred to as OSH Code).

The ‘migrant worker’ is now a subset category within the ‘contract labour’ category, and its definition has increased the scope of workers falling under the purview of the legislations. Unlike the ISMW Act that only recognised the workers who migrate with a licensed contractor, the new definition also includes workers who are migrating out of choice, or without licensed contractors. All three codes define ISMW as part of contract labour, but an issue which now has arisen is the fact that the Code on Wages (enacted in 2019) has omitted the exclusive definition of ‘migrant worker’ from its purview. This discrepancy needs to be rectified through an amendment in the Code on Wages, which effectively excludes inter-state migrant workers in its present form.

### *Reducing Applicability*

#### *Asserting Informality and Exclusion*

The ISMWA is wider in vision and covers the establishments that employ five or more inter-state migrant workers (Section 1, ISMW Act). But the OSH Code is applicable only to establishments employing more than ten such workers (Section 45(1), OSH Code). Due to this change in the applicability clause, many medium and small-scale enterprises and industries (such as brick kilns, construction sites, textile units, and so forth) which employ a limited number (less than 10) of migrant workers will now be exempt from the Code.

In the face of the burgeoning inter-state migrant population which moves exclusively for the purpose of earning a livelihood, the response of the state can be said to be exclusionary in nature as it has reduced the coverage (of establishments) that will fall under the ambit of this regulating policy mechanism. According to the Sixth Economic Census (2016), only 1.6% of non-agricultural establishments employ more than 10 workers, indicating that the whole of OSH Code will be applicable to only these particular establishments (Sundar, 2020). (Note that this condition is about all kind of workers in an establishment and not just migrant workers.) One can only imagine the meagre number of establishments that employ not just 10 workers, but 10 *migrant workers*, which will obviously be a miniscule fraction of the number of establishments employing 10 workers (of any category). The remaining (approx. 99%) establishments are in any case excluded from the purview of the Code.

What is achieved by excluding establishments which employ less than ten migrant workers from the purview of the Code? This appears to be a calculated move to ensure that most of the

unorganized sector remains unorganised with minimal regulation mechanisms and to further informalize the working migrant population. Such half-hearted conceptualisations and definitions will only lead to more exclusion instead of inclusion.

### *Invisible Contractors and Licensing Mechanism*

The contractor is a person who supplies contract labour to establishments as a human resource. Only the workers migrating with a licensed contractor happen to fall under the purview of ISMWA, although the revised version of the Code acknowledges migrant workers who are directly recruited by the employer even if he/she is a self-migrating worker. Due to cumbersome procedures for attaining a license, a majority of contractors do not bother applying for one. As per official data, most of the states have very few licenced contractors, with some states even stating that there are no contractors in their state, a highly improbable claim. This is the key reason why the government has negligible statistical data on migrant worker population, and subsequently, on the deaths of migrant workers, a matter that raised a hue and cry in the media recently<sup>‡</sup>. The invisibility of contractors in the official statistics gets reflected on the migrant workers data, as a recent response by Central Labour Commissioner (CLS) to an RTI showed. It was stated that only 33,776 workers were registered in India under ISMWA in 2019-20<sup>§</sup>.

Moreover, the heads under which details are required from contractors with respect to workers have been reduced. The Act requires contractors to furnish details such as terms and conditions of the agreement under which the workers will be recruited, the wages payable, hours of work, fixation of wages and other essential amenities. The Code only states that *'the licence shall specify the number of such contract labour who can be engaged and the amount of security to be deposited by the contractor'*. All the other details are not required to be shown in the license. In fact, even if the contractor is unable to fulfil the requisite details, the revised Code has added a new provision of providing *'work specific license'*, which completely throws open the scope of anyone becoming the contractor for the respective work specific order. This clause, in essence, does away with the need for having a stringent licencing mechanism, as now anyone can apply and receive a temporary licence based on work order, with no need to provide even basic details like terms of employment between a

<sup>‡</sup> The Hindu, September 14, 2020. *Govt. has no data of migrant workers' death, loss of job.*

<https://www.thehindu.com/news/national/govt-has-no-data-of-migrant-workers-death-loss-of-job/article32600637.ece>

<sup>§</sup> The Hindu, September 15, 2020. *Less than 34,000 inter-State migrant workers in 2019-20, says government.*

<https://www.thehindu.com/news/national/other-states/less-than-34000-inter-state-migrant-workers-in-2019-20-says-government/article32611360.ece>

worker-contractor-employer. This ensures that there is zero scope of enforceability because there is no obligation on contractor's part. It thereby weakening the regulation mechanism.

One side of the argument is that the simplification of these conditions will encourage more contractors to apply for licence and thereby increase the numbers of workers falling under the ambit of this regulating mechanism. On the other hand, civil society organisations that work with migrant labourers fear that it will lead to a lack of accountability on the part of the contractor as there is no fixed mechanism to assess the agreement between the contractor and the worker beyond what is printed in the license.

### *Dilution of the Accountability Tool*

Under the Section 12(1)(b) and 12(2) of ISMW Act, the contractor was supposed to provide the worker with a passbook in Hindi or English or any other regional language. This contained many important details such as name and place of establishment of employment, period of employment, rates of wages, etc. The OSH Code does not require any such passbook to be issued. This provision is necessary for ISMW welfare and its removal can be detrimental to migrant workers, increasing their vulnerability and the scope for exploitation.

The passbook can be used to check the misappropriation of wages of migrant workers. It can help in the recovery of unpaid wages from the employers. The passbook helps workers in bargaining over their rights and entitlements, especially in claiming wages. The removal of the clause mandating the passbook will lead to dilution of accountability on behalf of the contractor. This will only increase the scope for exploitation of workers by the contractor as there will be no record/evidence of the contractor's claims of providing work at the destination site.

It is generally noticed that the proper use of the passbook isn't actively adhered to in practice, and a labour diary is used to keep a record of attendance as an unofficial practice. Usually, this is facilitated by the intervention of civil society organisations who use the labour diary rather than the passbook to claim wages in case of disputes, or while presenting the data to labour department officials. The usage of the labour diary is a standard practice in most cases, and the passbook is used only minimally. Another major limitation here is that the passbook is given only by the contractor who is obliged by law (ISMW Act) to do so. There are only a handful of contractors,

for reasons highlighted in this article, leading to fewer ISMWs who fall under the purview of the Code, and therefore, there is less adherence to the passbook rule. Despite this implementation level gap, the usage of the labour diary highlights that this mechanism can be used as an essential tool for bargaining by the workers and needs to be accounted in the policy mechanisms. A recent speech by the Labour minister in the 2021 Budget also indicates that NITI Aayog is drafting a policy to address migrant workers that has inclusion of the passbook as a necessary document to be provided by contractor/employer to the ISMW. This strengthens the argument that the issuance of a passbook is necessary to keep accountability provisions intact. Instead of dropping the passbook provisions altogether, better implementation mechanisms must be devised to improve its usage,

### *Inspection Mechanism*

Previously, under the Act, the inspector had the power to examine any person employed at a site to determine whether he/she is an ISMW. This is absent from the OSH code and therefore removes one more layer of protection for the worker. It can lead to the worker being excluded from the protective ambit of the inspector's activities, thus increasing scope for employer exploitation. The labour officials interpret this as a weakening of their powers and duty to inspect, and fear that removing this power will limit their ability to examine any ISMW.

The efficacy of the inspection mechanism had been declining for the past few decades, with inspection rate of factories declining from 63.05 % (of the proportion of registered factories that have been inspected) in 1986 to 17.88 % in 2008 (Sundar K. , 2020). Prof. K.R. Shyam Sundar argues that the government is trying to do away with procedural guidelines suggested by the ILO on regulating and inspecting the establishments, and pushing towards relaxation of responsibility to provide safe working conditions in the name of simplifying labour laws (Sundar K. R., 2014). The codification of labour laws was directed to enhance the entrepreneurial space and promote business environment by easing regulation, amongst which easing simplification of returns was one of the key motivations (Labour Bureau, 2014).

It is true that the rate of inspections has fallen in the recent period and there are almost 8-10 states that have passed legislative amendments to enhance self-certification thereby easing the inspection mechanism. Even so, inspections are an important protection mechanism for workers, though

corruption in the compliance process is a hindrance to its original objective. Self-certification as a policy allows for leniency in inspections, which is now even more evident with the labour inspector's role changed to 'labour inspector-cum-facilitator (ICF)'. It is not just a change in the nomenclature of the designation, but also in the nature of duties and powers of the labour inspector who is now a mere 'facilitator'. His role to keep a check on violations (and accordingly prosecute) has been minimised to an advisory role, where he/she will be advising the workers and employers to come down to a mutual agreement. Given the pre-existing unequal relationship between the employer and workers, the removal of protectionist policies in the regulation of establishments, will help strengthen the position of labour in this capital-labour relationship.

### *Safe Migration: Registration of ISMW at Panchayat*

The ISMW Act required the contractor to give details of the worker to the labour department, but this requirement has been done away with in the new OSH Code. Neither the ISMW Act, nor the OSH code mentions the registration of migrant workers at the level of the Panchayat Raj Institutions (PRI). For a clearer picture on how this has been done, let us look at those sections that were beneficial for migrants under the old Act, and which have now been dropped.

*Furnishing of Return by Contractor to Home and Destination State* - Under Section 12(1)(a) of the ISMW, the Contractor was duty-bound to furnish particulars of the ISMW recruited in the Home state, and also in the Destination State within 15 days of the date of recruitment. This provision is not in the Code.

*Furnishing Details on Cessation of Employment* - If any ISMW ceases to be an employee of an establishment, under Section 12(1)(c) the contractor had to furnish a return to both Home & Destination State. The Code does not mandate the submission of such returns.

Furnishing details of workers at the appropriate authority office, both at source and destination states, is extremely beneficial to keep a track of migrant workers. It ensures faster compensation (in case of injury or death), helps in tracing workers held in hostage/bondage situations, and ensures easier portability of welfare entitlements for workers. The removal of this procedure in the OSH Code could be partially rectified if a system of panchayat level registration of migrant workers was to be incorporated in the Code.



Registration at the Panchayat level does take place officially through state schemes, as in Jharkhand\*\* and Odisha††, and in other states with the help of civil society organisations. It is imperative that these be made part of best practices to be adopted at the national level. This recommendation had been made to the Parliamentary Labour Standing Committee also, but the revised draft did not incorporate the recommendation. However, with the pandemic showing up the folly of not keeping a track of migrant workers, the government will now integrate panchayat level registration of workers according to the NITI Aayog's forthcoming policy on migrant workers.

### *Too Little, Too Late*

The Parliamentary Standing Committee on Labour had recommended that the government enact a special section on migrant workers in the revised version of the Code. While the addition of certain provisions such as portability of entitlements (access to PDS) is a welcome step to ensure welfare of workers, it is doubtful if any of these provisions will have real time relevance.

The labour laws actually need to take an accurate measure of the actual magnitude of migrant workers, contractors and establishments under its purview. It can be done only by revising the applicability provisions to include the majority of establishments that employ less than 10 migrant workers. The Code attempts to dilute certain provisions that can hold the contractor or the employer accountable and this can lead to an enhanced scope for exploitation of workers, both during employment and in the migration process. This has serious implications for trafficking and bondage, especially in those regions of rural India that are dens of labour bondage.

At a time where the government should act as a protector and benefactor, it chooses to divest itself of these responsibilities and leave the fate of these workers to the mercy of the market which treats them more like chattel than the backbone of our urban economies. With the pandemic laying bare the suffering of inter-state migrants and increasing the precariousness of life for workers and

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\*\* Jharkhand govt. had enacted a scheme of Red and Green identity cards for migrants with insurance coverage incentives that helps with financial assistance in case of any casualty (including permanent disability) and also maintains track of migrant worker population.

†† See Report of the Working Group on Migration (2017), Ministry of Housing and Urban Poverty Alleviation for examples of Odisha and other similar initiatives on worker's panchayat registration and tracking.

their families, the push by the Government of India to boost employment and ‘ease of doing business’ through whittling away the protections of inter-state migrant workers may be far more detrimental than expected.

### *Post-Lockdown Developments*

It is pertinent that in the past there was little or no exercise of political will by the Union Government on the enforcement or even legislation that oversaw the working conditions, social security, and welfare of inter-state migrant workers since 1979, which was the year of the enactment of the sole central legislation focusing on migrant workers. The pandemic and its devastating impact on migrant workers and their families across the country has seemingly caused the central government to finally begin getting state governments to enact schemes beneficial to migrants. The Centre recently required state governments to implement the “One Nation One Ration Card” Scheme as a pre-condition for gaining permission to borrow from the open market<sup>‡</sup>. This is a clear indication of the Centre exercising political will and directing states to undertake measures which would directly bring welfare to migrant communities.

The Labour Minister has said in the 2021 Budget session that a sub-group has been constituted by NITI Aayog to prepare a national action plan for migrant workers<sup>§§</sup>. This is surely an outcome of the intense criticisms from all fronts of the government’s poor handling of migrant worker crisis during the lockdown. The draft policy (still under process) appears to be formulated on a ‘rights-based approach’ and attempts to ensure portability of even voting rights, let alone welfare benefits. It also attempts to build upon the shortfall of existing legislations, including both ISMWA (earlier) and OSH Code (recent) in addressing the concerns of the migrant workers. As to how far and deep the new policy shall reach, we will only know when the first draft is released into the public domain. Similarly, the Labour Ministry has also announced<sup>\*\*\*</sup> the launch of a software application to conduct an ‘All India Survey on Migrant Workers’ that shall complement the Labour Ministry’s initiatives of database creation of migrant workers<sup>††</sup>.

‡ Economic Times. February 14, 2021. *Punjab 13th state to complete One Nation One Ration Card reform.*

<https://government.economictimes.indiatimes.com/news/digital-india/punjab-13th-state-to-complete-one-nation-one-ration-card-reform/80899491>

§§ PIB Press Release. February 10, 2021. *National Commission for Migrant Labour.*

<https://pib.gov.in/PressReleasePage.aspx?PRID=1696812>

\*\*\* Business Today. February 17, 2021. *Labour Minister Santosh Kumar Gangwar to launch software for five 'All India' surveys.*

<https://www.businesstoday.in/current/economy-politics/labour-minister-santosh-kumar-gangwar-to-launch-software-for-five-all-india-surveys/story/431544.html>

†† PIB Press Release. February 10, 2021. *Registration of Migrant Workers.*

All these recent developments signify a positive step for the empowerment of migrant workers and signify a better understanding of migration processes, but it also follows a crisis-led decision-making practice which is dominant in Indian public policy sphere. Unless the new measures move beyond the narrow limit and scope of the existing legislations (ISMWA and OSH Code), it will have minimal impact on the working conditions of migrant workers. By taken measures towards the political inclusion of migrant workers into electoral politics, such policies and its benefits might well reach them. We believe that a progressive and farsighted policy approach for the protection of this highly vulnerable section of India's working population will alone provide a foundation for economic growth.

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