# The Legal Framework on Decent Work in India

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The Sustainable Development Goals (SDGs) are a comprehensive plan of action for 'People, Planet, Prosperity, Peace and Partnership' that aim to achieve a "better and more sustainable future for all by 2030". The 17 goals and 169 targets are all interconnected and require an integrated, multi-stakeholder approach to effectively address the slew of global challenges we face.

A central tenet of the SDGs is the principle of "Leave No One Behind" (LNOB) and reaching the "Furthest Behind First"- the recognition that there are some communities/people that get left behind in the development agenda, and underscoring the importance of reaching them first to achieve Agenda 2030. This key principle of LNOB becomes ever more relevant with the advent of COVID-19, which has spiraled from a health crisis to a socio-economic one, exacerbating existing vulnerabilities and creating new ones with even more people now at the risk of being left behind.

## Decent work as a human right:

Goal 8 of the SDGs aims to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.' It forms a strong base to work towards and strengthen the achievement of the other goals. However, economic growth that is not cognizant of the needs of the most vulnerable sections of society is inherently unfair and unequal. Thus, the fulcrum of this goal lies in achieving decent work for all.

The International Labour Organization (ILO) defines decent work as that which "involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all."

The ILO Decent Work Agenda focuses on four key pillars [1]:

1. Rights at work- Four labour rights based on ILO standards, i.e., freedom of association and right of collective bargaining; elimination of forced or compulsory labour; abolition of child labour; and elimination of discrimination in employment.
2. Fostering employment- Establishing national policy goals and strategies to achieve full employment and appropriate pay for work as a key means of poverty reduction.
3. Social protection- Establishing national policies for the prevention of work-related injuries and illnesses, prevention of oppressive working conditions, such as overly long work hours. It also requires paid holidays and protection in the form of social security for sickness, old age, disability, unemployment, pregnancy and other conditions that may limit the ability to work.
4. Social dialogue- Support tripartite consultation, negotiation, and agreements between workers and their employers at every level of society, from the workplace up to national level consultations, as a means to include worker voice and resolve conflicts peacefully.

Further, the Universal Declaration of Human Rights (UDHR) recognizes specifically that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". Some specific rights detailed under the UDHR include- the rights to equal pay for equal work, to just and favourable remuneration adequate for human dignity, to social protection, to rest and leisure, to limitations on work hours, to holidays with pay, and to join and form trade unions. Decent work thus forms a key component of the right to live with dignity.

India being signatory to the core human rights covenants, the Indian Constitution lays the foundation for the state to work towards achieving decent work for all. The Fundamental Rights, under Articles 23 and 24, prohibit trafficking, forced labour and employment of children in hazardous occupations. Further, the Directive Principles of State Policy- which are fundamental in the social and economic governance of the country- provide for the right to work with a living wage, equal pay for equal work and just and humane conditions of work. Taking forward from the direction laid by the Constitution, successive governments have enacted labour and work-related legislations.

## Decent work in India:

Despite the Constitutional and legislative guarantees of decent work, India continues to grapple with high levels of vulnerable employment.[1] Instances of forced labour, child labour and trafficking remain prevalent. There is a high degree of informalisation of labour coupled with poor working conditions, low and irregular wages, high levels of job insecurity and absence of employment benefits.

The labour force participation rate in India (for all ages) stood at 37.5% in 2018-19, of which 52% are self-employed and nearly a quarter are engaged as casual workers. Further, 68.2% of those employed in the non-agricultural sector are engaged in informal employment. There is also a high degree of informalisation in formal employment, with 69.5% of regular wage/salaried (RWS) workers having no written job contract, 54% not eligible for paid leave, and 52% not eligible for any social security benefits. [1]

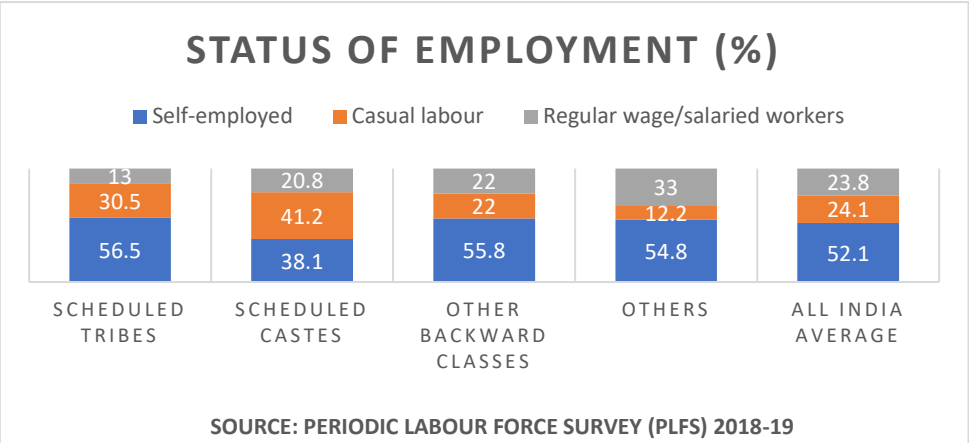
The vulnerability of work is further accentuated by the average earnings of a majority of the population. As per the Periodic Labour Force Survey (PLFS) 2018-19, 42.2% of RWS earned less than Rs. 9750 per month (approximately Rs. 375 per day) which is the proposed national-level minimum wage as per an expert committee formed by the Government of India.[2] The numbers become even more pronounced when we look at self-employed and casual workers, of whom 58% and 92.5% respectively reported earning less than the minimum wage. [1]

The inequity in the labour market is highlighted by the fact that it is predominantly workers belonging to vulnerable communities who are disproportionately represented in all forms of vulnerable employment and are at a greater risk of having their rights violated.

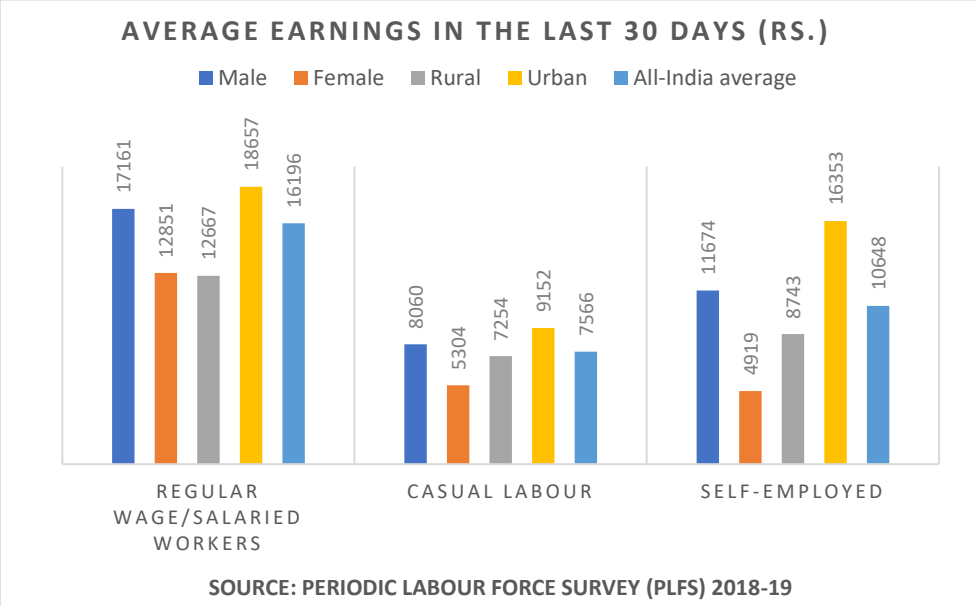
As is evident from Figure 1.1, the share of Scheduled Tribes and Scheduled Castes in RWS work is much less compared to Others (non-SC, ST and OBC). 87% of STs, 79% of SCs and 78% of OBCs are either self-employed or casual workers. The status of employment is a key determinant of the average earnings of workers (Figure 1.2). A stark disparity is visible in the earnings of RWS workers vis-à-vis those who are self-employed or engaged as casual labour. However, even within these employment categories, there is a clear gender and rural/urban divide, with men and urban workers earning significantly higher than women and rural workers employed in the same category.

[1] Vulnerable employment, as defined by ILO, is characterized by inadequate earnings, low productivity and difficult conditions of work that undermine workers' fundamental rights.

[2] *Expert monthly committee recommends Rs. 9,750 monthly national minimum wage,* The Indian Express, February 15, 2019- https://indianexpress.com/article/business/expert-committee-recommends-rs-9750-monthly-national-minimum-wage-5584848/




SOURCE: PERIODIC LABOUR FORCE SURVEY (PLFS) 2018-19




SOURCE: PERIODIC LABOUR FORCE SURVEY (PLFS) 2018-19

As is evident from the aforementioned data, vulnerable communities remain left behind when it comes to engaging in decent work. The following section will look at the scope, objective, impact and shortcomings of some of the legislations that are in place to encourage productive employment and decent work, particularly for vulnerable communities in India. The legislations have been broadly categorised under Prohibitive, Promotive and Protective, however, the difficulty in segregating these legislations into neat categories is acknowledged as there is a considerable overlap in their intended objectives.

## Prohibitive Legislations:

**1. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013-**

A manual scavenger is defined as any person who is engaged or employed by an individual or a local authority for manually cleaning, carrying, disposing of, human waste from an insanitary latrine, open drain, pit, or railway track. The practice is driven by caste, class and income divides, and it is predominantly members of the Dalit community who are engaged as manual scavengers.

In 1993, a concrete legal stance against manual scavenging took place with the enactment of The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. In 1994, a statutory body- the National Commission for Safai Karamcharis (NCSK)- was constituted under the same Act. The NSCK submitted its first report in 2000 highlighting the major gaps in

the on-ground implementation of the 1993 Act. In 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act was passed.

Falling under the Ministry of Social Justice and Empowerment, the main objectives of the Act are to assure the right to live with dignity as enshrined in our Constitution, as well as to correct the historical injustice and indignity suffered by the manual scavengers in a highly unfair caste system. The Act makes the offense of manual scavenging cognizable and non-bailable, with a punishment of imprisonment up to 1 year, or a fine of Rs. 50,000 or both.

The Act also makes states responsible for identifying and rehabilitating manual scavengers. The state is to provide them with ready-built houses, financial assistance, training and loans for taking up alternate occupations on a sustainable basis.

However, despite repeated legislations since Independence to ban manual scavenging, the practice continues unabated. As per a National Survey covering 18 states, 48,345 manual scavengers have been identified up to January 31, 2020.[3] Official data shared till 2019 shows that in the last 10 years, 631 sanitation workers have died while cleaning sewers and septic tanks, with 115 deaths in 2019 itself.[4] However, the Safai Karamchari Andolan claims that the number of deaths are significantly underreported, pegging them at 1760. A study by Rashtriya Garima Abhiyan highlighted that between 1992 and 2018, First Information Reports (FIRs) were filed in only 35% of cases with no trials or prosecutions. Further, cash compensation was awarded to only 31% of the affected families, while none received any alternative jobs or rehabilitation as guaranteed by the Act.

The Progress Report on the implementation of the Self Employment Scheme for Rehabilitation of Manual Scavengers (SRMS) till November 30, 2020 shows that of the total identified 57396 eligible manual scavengers, all have received the one-time cash assistance. The SRMS also offers a credit-linked back-ended capital subsidy of Rs. 325,000 in addition to a concessional loan for undertaking self-employment ventures to each identified manual scavenger and their dependents. However, a mere 1124 received that benefit. Further, skill development training was imparted to only 12,676 of the beneficiaries.

The 2020-21 budget allocation for SRMS was Rs. 110 crores, of which no money had been released by the Centre till September 15, 2020 (as per data provided by the Ministry of Social Justice and Empowerment). Additionally, the implementing agency- National Safai Karamcharis Finance and Development Corporation- had Rs. 11.8 crore from earlier funds which remained unutilized.[5]

The government introduced the Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020 in the monsoon session of the Parliament. The Bill proposes to completely mechanise sewer cleaning and provide better protection at work and compensation in case of accidents. It aims to make the manual scavenging act more stringent by increasing both the imprisonment term and the fine amount. Further, it aims to modernise existing sewage systems and address the problem of non-sewered areas; put in place faecal sludge and septage management systems for mechanised cleaning of septic tanks; and set up sanitation response units with help lines. However, it fails to focus on the exploitation of manual scavengers and the denial of their human rights. Further, it is completely silent on the issue of caste, and the continuing historical injustice perpetuated on a specific community. Sanitation

[3] Lok Sabha Unstarred Question No. 1607, February 11, 2020- http://164.100.24.220/loksabhaquestions/annex/173/AU1607.pdf

[4] *At least 631 people died cleaning sewers, septic tanks in last 10 yrs: NCSK,* Business Standard, September 20, 2020- https://www.business-standard.com/article/current-affairs/at-least-631-people-died-cleaning-sewers-septic-tanks-in-last-10-yrs-ncsk-120092000247_1.html

[5] *No funds released for rehabilitation of manual scavengers, earlier funds unutilized: Govt,* The New Indian Express, September 21, 2021- https://www.newindianexpress.com/nation/2020/sep/21/no-funds-released-for-rehabilitation-of-manual-scavengers-earlier-funds-unutilized-govt-2199858.html

workers also constitute frontline workers in the fight against the COVID-19 pandemic, however, they have been compelled to do the same without adequate protective gear, training or remuneration. The Amendment Bill also failed to address these issues, despite being introduced during the pandemic.

**2. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018-**

Human trafficking is prohibited under Article 23 of the Indian Constitution. Apart from that, there are several legislations in place that deal with specific forms of trafficking such as the Immoral Traffic (Prevention) Act, 1986 (ITPA) which covers trafficking for sexual exploitation, and the Bonded Labour System (Abolition) Act, 1976 which criminalizes any system of debt bondage. In 2018, the Ministry of Women and Child Development introduced the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 which intends to serve as a comprehensive law to deal with all cases of trafficking.

The Bill defines trafficking to mean: (i) recruitment, (ii) transportation, (iii) harbouring, (iv) transfer, or (v) receipt of a person for exploitation, by using certain means such as the use of threat, force, abduction, fraud, deception, abuse of power or through inducement. It further classifies certain purposes of trafficking as 'aggravated' forms of trafficking. These include trafficking for forced labour, child bearing, begging, or inducing early sexual maturity. Aggravated forms of trafficking attract a higher punishment.

The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units are to be established to rescue victims and investigate cases of trafficking. Protection Homes at the central and state levels are to provide shelter, food, counselling and medical services to victims. Further, Rehabilitation Homes are to be maintained in each district to provide long-term rehabilitation to the victims.

The anti-trafficking committees are also to undertake certain measures for the protection and prevention of vulnerable persons from being trafficked. These include facilitating implementation of livelihood and educational programmes for vulnerable communities, facilitating implementation of various government programmes and schemes for prevention of trafficking, and developing law and order framework to ensure prevention of trafficking.

While the Bill aims to provide a comprehensive law to deal with all cases of trafficking, it continues to retain all existing laws on trafficking with their specific enforcement mechanisms and penalties for offenses. The creation of a parallel legal framework may end up creating confusion as to which procedure is to apply in such instances of trafficking. Further, the creation of additional committees and institutions would excessively increase bureaucratisation, resulting in institutional delays and indecision.

Victim immunity is an important clause to ensure that victims of trafficking are not punished for committing crimes under the coercion of the trafficker. However, a key issue with the Bill is that victim immunity is provided only in cases of serious offences, i.e., those punishable with a minimum of 10 years of imprisonment. Even in such cases, protection from prosecution is available only where the victim can show that they committed the offence under coercion/compulsion/threat and were subjected to a reasonable apprehension of being killed or subjected to grievous hurt or injury to themselves or another person who they are interested in. Such a high threshold defeats the purpose of providing immunity.

The issue of human trafficking cannot be isolated from the socio-economic realities of migration and labour. However, the Bill neither seeks to highlight the need for awareness-raising to facilitate safer channels of migration nor does it consider the trafficked persons as workers who have rights. Additionally, the Bill only pays lip service to the issue of bonded labour or forced labour, thus essentially keeping them out of the ambit of the Bill.

With its predominant focus on sexual exploitation, many of its provisions can be related to those found in the ITPA, which conflates the issue of trafficking with "morality" (as is seen in the very title of the legislation). By assuming that no woman would enter sex work of her own volition, it infantilizes adult women and ends up criminalizing all sex workers. Further, the raid and rescue strategy to address trafficking of women and girls results in large-scale human rights violations of voluntary sex workers, and further increases their socio-economic vulnerability.

**3. The Child Labour (Prohibition and Regulation) Amendment Act, 2016-**

The ILO defines child labour as "work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development." The Constitution of India, under Article 24, prohibits the employment of children in factories, mines or any other hazardous occupations. Further, Article 21(A) mandates free and compulsory education for all children between 6-14 years of age. The Directive Principles of State Policy also prescribe a fundamental duty to all parents or guardians of children to provide opportunities for education to their children between 6-14 years of age.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016- under the Ministry of Labour and Employment- provides for complete prohibition of work or employment of children below 14 years of age in any occupation, and prohibition of adolescents in the age group of 14 to 18 years in hazardous occupations and processes. However, two exemptions are allowed by the law-

i. Children are allowed to help in their family or family enterprise(s) provided that such enterprise is not involved in hazardous processes and the work is carried out after school hours or during vacations.
ii. Children are allowed to work in the audio-visual entertainment industry including advertisement, films, television serials or any such other entertainment or sports activities except circus subject to compliance with prescribed conditions and adoption of safety measures, and the work does not affect the school education of the child.

Any offence committed under the Act is a cognizable offence, and the 2016 amendment significantly enhanced the punishment for employing a child to imprisonment between 6 months-2 years and/or a fine between Rs. 20,000-50,000. In case the employer continues with child labour after being punished once, the Act specifies further imprisonment of 1-3 years. However, parents who force their children to engage in child labour would be let off with a warning for a first offence, and for a second offence with a fine of up to Rs. 10,000.

The Act also mandates employers to take specific steps to ensure the highest standards of safety and care in case of adolescent employees, as well as inform a Government-appointed official of the nature of employment and work done by the establishment.

While the 2016 Amendment aims to take a significant step towards the eradication of child labour, the various socio-economic complexities involved in the issue of child labour make it a persisting reality in India. As per Census 2011, 10.1 million children (5-14 years of age) were engaged as child labourers, while over 22 million children (between 15-18 years) were working.

A key critique of the 2016 Amendment is the exception allowing children to help in their family or family enterprise(s). Such an exception has the possibility of resulting in the exploitation of children in industries where activities are outsourced to home-based units. Prohibited activities may occur in the guise of "permitted exceptions", increasing the vulnerability of child workers. Additionally, with family or community members being the predominant perpetrators in most cases of child trafficking, the instances of trafficking may increase under the guise of family and family enterprise.

Though the amended Act states that children may only work in family or family enterprises 'after school hours', no authority or mechanism has been put in place to ensure that such permitted activities are not hindering the education of children.

With close to 35% of working children in India between 5-14 years of age belonging to vulnerable communities, allowing children to work in family enterprises may perpetuate occupation-based status quo, binding children to traditional family occupations and maintaining the socio-economic imbalance in the country.

While the amendment aimed at aligning itself to the Right to Education Act, allowing children above 14 years to work may result in increased dropouts of children who were unable to complete their elementary education.

The 2016 amendment is further criticised for restricting the list of hazardous occupations to mines, explosives and hazardous processes as defined under the Factories Act, 1948. However, given that the Factories Act is applicable only to young persons and adults, the amendment fails to recognize the specific development and protection needs of children. Further, the restricted list of hazardous occupations makes children vulnerable to abuse and exploitation in the unregulated informal sector.

With domestic work no longer categorised as a hazardous occupation, and the gendered distribution of work, the amendment makes girls of all ages vulnerable to work as domestic labour in the guise of helping their mothers. It may also further perpetuate trafficking of girls for domestic labour.

With COVID-19 worsening socio-economic inequalities in India, children are the worst impacted. With closure of schools, instances of child labour have increased significantly. Children from poor families have been compelled to work as cheap labour to supplement the dwindling family income. Further, the weakening of labour laws in a few states to boost the economy by allowing enterprises to extend a factory workers daily shift from 8 to 12 hours per day may increase the demand for cheap adolescent labour, putting them at an additional risk of abuse and exploitation.

**4. The Bonded Labour System (Abolition) Act, 1976-**

Bonded labour is a facet of poverty and inequality that reinforces the inequitable social relations between labourers and employers in the informal sector. It is a system of forced, or partly forced labour caused by a debt or by social custom or obligation, under which a debtor loses freedom of movement, and/or freedom to look for alternative employment, and /or is subjected to a reduction in wages and/or to product prices less than the minimum or market rates.

Falling under the Ministry of Labour and Employment, the Bonded Labour System (Abolition) Act, 1976 prohibits, criminalises and extinguishes any system of debt bondage, whether by agreement, custom or contract. It aims to ensure that every bonded labourer is discharged from any obligation to provide such labour and the obligation to repay any bonded labour is extinguished. It provides further safeguards such that the property of bonded labourers is free of mortgage, charge, lien or other encumbrances and is restored to their possession, a bonded labourer is not evicted from a homestead or other property they were occupying as part of the consideration of labour, and no creditor may accept payment against an extinguished debt. The Act prescribes a penalty of up to 3 years of imprisonment and a fine of Rs. 2000 to anyone who compels a person to render bonded labour.

However, it is shameful that even after 44 years since the implementation of the Act, the system of debt bondage continues to thrive. Bonded labour is deeply entrenched in the socio-economic structure of India, an exploitative practice reinforced through years of coercion and custom. Members of marginalized communities, such as the scheduled castes, scheduled tribes, religious

minorities, refugees and migrant workers are disproportionately represented in forced labour.[6] The socio-economic vulnerability of these communities, coupled with limited opportunities for them to be able to escape the cycle of exploitation, renders them particularly vulnerable to different forms of debt bondage.

A key reason for the persistence of bonded labour is the denial of its existence. Since the situation of a bonded labourer appears similar to that of a poor labourer, where most workers are not even paid the minimum wage, the crime of bonded labour is not easy to identify and distinguish from other forms of more common labour exploitation. Further, in several cases, rescued labourers are not given 'Release Certificates' which documents proof of being in bondage under the Act. The lack of documented proof disentitles them from receiving government welfare assistance and also increases their vulnerability to re-bondage.

The prosecution rate for these crimes remains extremely low. However, as per the Act, financial assistance to victims is provided only after conviction. As per the 2019 Crime in India report, of the 1368 cases requiring investigation, only 800 were charge sheeted, with a pendency percentage of almost 28%. Further, there were only 33 convictions out of 1971 cases, with 1891 cases pending trial. Given that 68.5% of those cases were pending trial for more than a year, access to justice for victims of bonded labour remains out of reach. [2]

**5. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013-**

In 1997, the Supreme Court of India set out the "*Vishakha* Guidelines" mandating employers to take actionable steps to protect female employees from sexual harassment in the workplace. In 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted to protect women working in both formal and informal sectors.

The legislation defines sexual harassment as physical contact and advances, or demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of sexual nature. Any of these, whether direct or implied, constitute sexual harassment under the law.

The Act also mandates every employer to constitute an Internal Committee (IC) at each office with 10 or more employees. In offices with fewer than 10 employees, or in instances where the complaint is against the employer, or for women working in the informal sector, the state government's district officer or collector is required to form a Local Committee (LC) in each district. The government also bears responsibility for developing training and educational materials, organizing awareness programmes, monitoring the implementation of the law, and maintaining data on the number of cases of sexual harassment filed and resolved in the workplace.

However, from lewd comments to overt demands for sexual favours, sexual harassment remains pervasive. Most women choose not to report instances of sexual harassment due to fear of stigma, retaliation, and lack of confidence in the complaint mechanism. An additional fear is that families would prohibit them from going out to work if such instances arose. Further, many organizations fail to comply with the law and members of the IC do not understand the process or their role adequately. While companies may form ICs, many of them merely exist on paper and are not actually compliant with the law. The working environment is such that complaints are trivialized and there is character assassination of complainants (as seen in the #Metoo movement), deterring more women from speaking up. Further, the law allows the employer to take action

[6] Labour Exploitation- India. https://accountabilityhub.org/country/india/#:~:text=These%20workers%20often%20pay%20exorbitant,varying%20degrees%20of%20deception%20and

against the woman complainant if the complaint is classified as 'false' or 'malicious', a provision that can be leveraged by the employer to harass the complainant.

On the other hand, women working in the informal sector, who constitute the majority of working women in India, have normalized workplace harassment due to poverty and job insecurity. There is also limited awareness of what constitutes sexual harassment and their legal rights. The lack of awareness is also in part due to laxity on the part of the administration to establish well-functioning LCs. A 2018 study by Martha Farrell Foundation and Society for Participatory Research in Asia found that of 655 districts, many had failed to establish committees, or constitute them in line with the legal provisions. Where committees existed, they faced a lack of infrastructure and resources and committee members had limited awareness regarding their roles and responsibilities. Additionally, despite 7 years since the enactment of the law, the government is yet to provide any information on the status and effectiveness of LCs in dealing with instances of sexual harassment in the informal sector. The failure of the redressal mechanisms directly contributes to the continuing cases of sexual harassment in the informal workplace.

## Promotive Legislations:

**1. Mahatma Gandhi National Rural Employment Guarantee Act, 2005-**

MGNREGA, the largest employment guarantee programme in the world, was enacted in 2005. Falling under the Ministry of Rural Development, it guarantees the right to work by providing 100 days of wage employment to rural households. Moreover, it provides a time-bound guarantee of 15 days within which work must be provided, failing which an unemployment allowance must be given. Taking into account issues of transparency and accountability, the Act has provisions for proactive disclosure through wall writings, Citizen Information Boards, Management Information Systems (MIS) and social audits conducted by Gram Sabhas to enable community monitoring of implementation.

In order to facilitate decentralised planning, it mandates that Gram Sabhas must recommend the works that are to be undertaken under MGNREGA, and at least 50% of the works must be executed by them. Thus, Panchayati Raj Institutions are primarily responsible for planning, implementing and monitoring the projects that are undertaken.

A key objective of the Act is to ensure social protection for the most vulnerable people living in rural areas by providing them employment opportunities, ensuring livelihood security for the poor through the creation of durable assets, and aiding the empowerment of marginalized communities, especially women, Scheduled Castes (SCs) and Scheduled Tribes (STs).

The Act prescribes that at least one-third of all workers must be women, and guarantees equal wages for men and women, thus facilitating rural women's economic empowerment. With provision of childcare facilities such as creches mandatory at worksites, the Act aims to reduce barriers to women's economic participation. As per the MGNREGA dashboard, women constitute more than 50% of the total workforce employed under the Act.

While the Act itself constitutes a landmark legislation, the implementation leaves much to be desired. A major problem is that of low wage rates. MGNREGA wages are currently around Rs. 200 a day, which is much less than the proposed national level minimum wage as well as market wage rates for the same kind of work. In October 2020, MGNREGA wages of at least 17 major states were much less than the state minimum wage.[7]

There continues to be inordinate delay in the payment of wages, with each financial year opening with a huge amount of pending wage arrears. After arrears are paid, too little is left to meet the

[7] *Why MGNREGA wages are so low,* The Print, October 12, 2020- https://theprint.in/opinion/why-mnrega-wages-are-so-low/520982/

demand for the current fiscal, leading to a continuous cycle of pending wage payments. Accessing payments becomes an additional hurdle, with a 2020 report by LibTech India highlighting that workers spend more than a third of their weekly MGNREGA wages in just withdrawing them. Further, an estimated 40% of surveyed workers were forced to make multiple trips to Customer Service Points and Business Correspondents due to biometric failures. Many workers would also have to spend up to four hours to access their wages from banks.

Most states do not pay the legally mandated unemployment allowance when work is not received within 15 days of demand. The non-issuance of dated receipts of demanded work prevents workers from claiming an unemployment allowance.

In contrast to the mandated demand-based job guarantee, the on-ground implementation is mostly supply-driven and contractor-led, with people receiving work only when the supervisor or local contractor provides them as such. In 2020-21, around 794 lakh households demanded employment under MGNREGA, however only around 691 lakh households received employment.[8] Additionally, the average days of employment provided per household is a meagre 44.38, a far cry from the legal guarantee of 100 days. Further, of the total person days generated, the percentage of SC and ST person days remains extremely low (at 20% and 18% respectively).

## Protective Legislations:

In an effort to simplify and modernise labour regulation in India, the central government enacted four labour codes which would subsume 29 existing labour legislations within their ambit. The idea was to consolidate labour laws for the sake of transparency and uniformity in definitions and approach, thus allowing for greater coverage of workers.

However, a major critique of the Labour Codes is the lack of consultation with representatives of workers or state governments while drafting them. Almost none of the suggestions of workers unions have been meaningfully incorporated in the Codes. The Codes have been criticised as having less to do with labour welfare and more to do with facilitating ease of business. Further, the consolidation of existing laws has not necessarily resulted in uniform definitions across the Codes, providing scope for confusion and violation.

**1. Code on Industrial Relations-**

The Code on Industrial Relations encompasses features of three erstwhile laws- the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947. Expanding the definition of 'workers', it includes all persons employed in skilled, or unskilled manual, technical, operational and clerical capacity, workers employed through contractors, and supervisory staff drawing up to Rs. 18,000 a month as salary. It further expands the definition of 'inter-state migrants' to include self-employed workers from another state, as well as of 'platform workers' to additional categories of services or activities as may be notified by the government.

The Code also introduces fixed-term employment, thus giving employers the flexibility to hire workers based on requirement through a written contract. Fixed term employees are to be treated on par with permanent workers vis-à-vis hours of work, wages, allowances, and other benefits.

Differing from the 2019 Bill which applied to units with 100 employees or more, the 2020 Code states that any establishment employing 300 or more workers must prepare standing orders on the matters related to: (i) classification of workers, (ii) manner of informing workers about work hours, holidays, pay days, and wage rates, (iii) termination of employment, and (iv) grievance redressal mechanisms for workers. It further confers on the "appropriate government' the power

[8] MGNREGA MIS Progress Report, 2020-21.

to exempt, with or without conditions, any industrial establishment or class of industrial establishments from all or any of the provisions of the Code if satisfied that adequate provisions exist to fulfil its objectives.

The Code prohibits strikes and lock-outs without prior notice in all industrial establishments. It mandates that no unit shall go on strike in breach of contract without giving 60 days prior notice, or within 14 days of giving such a notice, or before expiry of any date given in the notice for the strike. Further, no strikes are permitted during any conciliation proceedings, or within seven days of conclusion of such proceedings, or during proceedings before an industrial tribunal or 60 days after their conclusion or during arbitration. It also imposes similar restrictions on the employer for announcing lock-outs. While the Industrial Disputes Act, 1947 had placed such restrictions on strikes only for public utility services, the 2020 Code extends it to all establishments.

One major issue with the Industrial Relations Code is the institutionalisation of "fixed-term contracts" as a tenure of employment. Workers employed as fixed-term employees (FTE) can be fired without notice, creating instability and job insecurity. Further, FTE does not guarantee the right to receive wages in lieu of notice prior to termination of services. Neither are they entitled to retrenchment compensation or freedom of association.

The biggest issue with the Code, however, is that it has amended the threshold for preparing Standing Orders from 100 workers to 300. This excludes a large number of enterprises with less than 300 workers where permission is not needed before laying off or retrenching workers, furthering their job insecurity. The Code also states that industrial establishments employing fewer than 50 workers or those engaged in "seasonal employment" or intermittent work will not be required to pay compensation for retrenchment, thus excluding a large number of workers from employment protection.

The Code has also made union formation difficult and placed many restrictions on the right of workers to go on strike. It has also specified that only a union with support of 51% or more of the workforce on the muster roll of an establishment can be regarded as the sole negotiating agent. Unions have objected to this clause saying that it will result in the monopoly of a single union at the negotiating table which is in direct contradiction to the ILO conventions on collective bargaining.

The Code also abolishes district labour courts and provides for a single industrial dispute tribunal in each state, making grievance redressal cumbersome for workers. Further, it places a limit of 3 years for the resolution of disputes, which unions claim is unrealistic.

**2. Code on Social Security-**

The Code on Social Security subsumes nine laws relating to social security, retirement and employee benefits- the Employees Compensation Act, 1923; the Employees State Insurance Act, 1948; the Employees Provident Fund and Miscellaneous Provisions Act, 1952; the Employees Exchange (Compulsory Notification of Vacancies) Act, 1959; the Maternity Benefit Act, 1961; the Payment of Gratuity Act, 1972; the Cine Workers Welfare Fund Act, 1981; the Building and Other Construction Workers (BOCW) Cess Act, 1996; and the Unorganized Workers' Social Security Act, 2008.

The Code has enhanced the coverage of social security to workers in the unorganized sector, fixed term employees, gig workers[9], platform workers and inter-state migrant workers apart from contract employees. It mandates the central government to set up social security funds for

[9] A person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationships.

unorganized workers, gig workers and platform workers. Further, state governments are also to set up and administer separate social security funds for unorganized workers.

The Code has also provided some uniformity in determining wages for the purpose of social security benefits. Specific exclusions with ceilings have been provided for, discouraging inappropriate structuring of salaries to minimise social security benefits.

The Code states that Provident Fund (PF) is applicable to all establishments with 20 or more employees as opposed to certain scheduled establishments. Further, Employee State Insurance (ESI), Gratuity and Maternity Benefit are applicable to all establishments with 10 or more employees and establishments carrying out hazardous activities. While gratuity is still payable to all employees having completed at least 5 years of continuous service with the company, the Code also allows payment of gratuity on a pro-rata basis to fixed-term employees. Additionally, it clarifies that common creche facilities may be adopted by establishments with 50 or more employees. The BOCW now additionally excludes works employing less than 10 workers or residential construction work of up to Rs. 50 lakhs. The Code allows for voluntary adoption of the provisions where establishments do not meet the prescribed thresholds for PF and ESI.

In order to create a national database for workers in the unorganized sector, registration of all these workers would be done on an online portal on the basis of Self-Certification and Aadhar.

The Code requires the National and State Social Security Boards to create specific schemes providing benefits such as life and disability cover, health and maternity benefits, old age protection, education, and discretionary benefits to workers in the unorganized sector, gig workers and platform workers. These schemes may be funded through a combination of contributors from the central, state governments and aggregators[10]. The aggregator's contribution would be at a rate notified by the government and falling between 1-2% of the annual turnover of the aggregators.

Unfortunately, the Code does not emphasise social security as a right, nor does it make reference to its provision as stipulated by the Constitution. Further, the Code actually ends up excluding a large section of workers on the basis of the stipulated thresholds. For instance, under the Code only those sites with 10 or more BOCW would be covered. Additionally, "personal residential construction work"- which forms a large component of daily wage work- is excluded. Further, PF is only applicable to those enterprises with 20 or more workers, excluding millions of small firms from its ambit.

There is no provision for portability of social security for inter-state migrant workers, nor is there any consideration for unemployment protection for unorganised workers- particularly important in times of recession.

Historically marginalized groups find no explicit mention in the Code. There is no framework to include SC/ST/OBC and female representatives on the Board of Trustees of the Employees' Provident Fund Organisation. Maternity benefits have not been universalised either. Further, domestic workers find no mention in the Code.

**3. Code on Wages-**

The Code on Wages subsumes four laws- the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. The main

[10] An aggregator is a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider. Nine categories of aggregators were identified by the Code including ride sharing services, food and grocery delivery services, content and media services, and e-marketplaces.

objective of the Code is to universally regulate the provisions for minimum wages and to ensure a well-timed payment of minimum wages for all workers in India.

The Code is applicable to all employees in both the organised and unorganised sector. It designates the central government to make wage-related decisions for employment in railways, mines, oil fields, while the state governments are to make decisions for all other employment sectors.

The Draft Rules lay down the criteria for fixing the minimum wage rate per day for employees, which include- three adult consumption units per households; daily intake of 2700 calories per consumption unit; 10% expenditure on rent; 20% expenditure on fuel, electricity and miscellaneous items; and 25% expenditure on education, medical requirements and contingencies.

The Central government will fix a floor wage, taking into account the living standards of workers. Different floor wages may be set for different geographical areas. The minimum wages decided by the central and state governments must be higher than the floor wage. In case the existing minimum wages are higher than the floor wage, they cannot be reduced.

A normal working day is to comprise of eight hours of work with an aggregate rest period of one hour. The work day inclusive of rest intervals should not spread over more than 12 hours on any day. However, the spread over may be increased to 16 hours in certain cases where the employment is intermittent, or when the employee is engaged in an unforeseen emergency. Further, employees must be given a day of rest every week. If an employee works on the stipulated day of rest, then they should be given a substituted rest day. Additionally, if working on a rest day, the employee is to be paid at overtime rates, and for substituted rest days at normal rates.

However, there is a possibility of employers taking advantage of such an expanded window of 12 hours and reduce three shifts to two shifts. Given the labour market imbalances in India, the 12-hour rule may end up detaining workers unnecessarily and provide scope for rampant misuse. Further, considering 26 working days in a month disregards the right of workers to paid holidays once a week.

Minimum wages, while already guaranteed, are most often denied in the informal sector. The calculation of minimum wages in the Code seems to be far removed from the realities of a worker's life. The size of a working-class family is taken as 4 members with 3 adult consumption units- counting the earning member as 1 unit, the spouse as 0.8 and 2 children as 0.6 units each. However, the reality is that a standard family size exceeds 3 consumption units, even if we exclude the elderly and other dependents. The calculation also goes against the standard size of 5 family members as laid down in the National Food Security Act. The requirement of 2700 calories per day per consumption unit also focuses solely on calorie requirement, ignoring nutritional requirements. The calculation of house rent as 10% also turns a blind eye to the realities of workers living in cities, where calculation of rent by this method will not get them even a basic housing provision.

Domestic work, other home-based work as part of Self-Help Groups and scheme-based work (such as Anganwadi or ASHA workers) are excluded from the definition of workplaces. With women predominantly employed in these sectors, they are excluded from the definition of "workers" under the Code, hence, not eligible to avail the benefits of the same.

**4. Code on Occupational Safety, Health and Working Conditions-**

The Code on Occupational Safety, Health and Working Conditions ("OSH Code") subsumes 13 major labour laws, including the Factories Act, 1948; the Mines Act, 1952; the Contract Labour (Regulation and Abolition) Act, 1970; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, etc.

The Code applies to all establishments, factories, motor transport undertakings, newspaper establishments, audio-visual productions, BOCW, or plantations employing 10 or more workers. The minimum threshold, however, is not applicable in case of mines, ports, docks and establishments engaged in hazardous or life-threatening activities.

Factories, mines and establishments hiring contract labour or BOCW are required to electronically intimate commencement and/or cessation of operations within 30 days, as well as certify payment of dues to workers employed and ensure premises being free of hazardous chemicals and substances. Employers are also expected to conduct, free of cost, an annual medical examination by a qualified medical practitioner within 120 days of commencement of each calendar year for every worker/employee aged 45 years and above. The Code also mandates certain establishments to constitute Safety Committees consisting of representatives of employers and workers, and appoint Safety Officers.

There is a provision for payment of overtime wages with respect to work undertaken in excess of the prescribed working hours. Further, there is also a 125-hour ceiling on the total overtime hours per quarter.

Women are entitled to be employed in all establishments for all types of work. However, in case they are required to work in hazardous or dangerous occupations, the government may require the employer to provide adequate safeguards prior to employment.

The Code also provides for certain benefits for inter-state migrant workers, including the option to avail the benefits of the public distribution system either in the native state or state of employment and availability of benefits under the BOCW cess fund in the state of employment.

The OSH Code ends up excluding many branches of economic activities, particularly, the agricultural sector employed the bulk of India's working population. Further, it also does not have any provisions for intra-state migrant workers, whose vulnerabilities are as acute as that of inter-state migrant workers. The Code also does not contain any provisions for equal treatment for contract labour who perform work of a similar nature as that of permanent workers in the same establishment.

In terms of providing safe employment to women, the OSH Code states that adequate safeguards must be taken by employers before allowing women to work at all hours. However, it does not lay down any safeguards nor does it provide for any harsh penalties for violations. Further, the notion of "working with consent" does not necessarily hold true for a majority of women for whom working is not a choice, but a matter of survival.

The OSH Code stipulates setting up of safety committees in establishments with 250 or more employees. However, this excludes 90% of enterprises from the ambit of such committees. Further, where the Code is applicable, the penalty clauses are not that stringent as the employer can be criminally prosecuted only for repeated offences.

## Harsh realities, enduring vulnerabilities:

The historical and social deprivations faced by vulnerable communities in India tend to get replicated in the labour market as well. Vulnerable communities are predominantly engaged in the informal sector and disproportionately represented in vulnerable forms of employment.

Though there are a multitude of legislations in place to protect workers and promote decent work, they tend to fall short of their objectives. From implementation gaps to glaring loopholes in the legislations themselves, the exclusion of vulnerable communities from the decent work agenda pushes India further from achieving the SDGs.

The COVID-19 crisis accentuated this exclusion even more, with large-scale job losses, loss of incomes and increasing poverty and vulnerability. Over 90% of India's working population- engaged in the informal, unorganised sector- was left to fend for itself. Inadequate awareness generation among workers on their rights and lack of sensitization of employers results in failure of legislations meant to protect workers. As seen during the pandemic and resulting lockdown, though employers were mandated to pay wages, there was a blatant disregard of the same. The absence of an institutional support mechanism, particularly for those engaged in the informal sector, results in decent work remaining out of reach for an overwhelming majority of the Indian population.

The tendency to dilute and relax labour legislations in order to boost the economy (as was seen in nine major states of India in 2020) [11] highlights the skewed government focus on economic growth over decent work. However, in accordance with India's commitments to achieve the SDGs, the Government of India needs to re-examine the employment sector from the lens of decent work. Using a participatory, multi-stakeholder approach, the existing legislations and their on-ground implementation must be revisited.

Keeping this in mind, a report on 'Decent Work and Marginalized Communities in India' analyses primary data collected as part of the 100 Hotspots Study and reviews the condition of labourers, particularly from the lens of SDG 8. The report provides a glimpse of the reality and status of work among the identified vulnerable communities, as well as a way forward with key recommendations to promote decent work among the same. In order to effectively counter the labour market inequality and glaring decent work deficit in India, concrete efforts must be taken to reach the furthest behind first and truly build forward better to achieve Agenda 2030 for all.

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