The *Anti* – Labour Codes

Capitalizing a Disaster

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS (PUDR)

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INTRODUCTION: EASE OF DOING BUSINESS

The year 2020-2021 is going to leave some very damaging short-term and long-term legacies for rural and urban workers in India. The most immediately devastating legacies will be the varied physical and economic consequences of the ongoing COVID-19 pandemic. One of the more long-term but also lethal legacies, which will particularly impact the working poor, are two sets of laws that were finally hurriedly pushed through in the delayed Parliament Session in September 2020 –the Farm Laws and the Labour Codes. While the Farm Laws, which impact farmers as well as agricultural workers, have led to massive ongoing protests and captured some public attention, the Labour Codes were passed with relatively less public protest or sustained opposition, though workers' organisations have opposed them. Yet, these Codes carry grave implications for all categories of non-farm workers in the country, and imply the most major change in the regime of labour laws of since Independence.

On 19 September 2020 three of the Labour Codes – the Industrial Relations Code, the Code on Social Security, the Occupational Health, Safety and Working Conditions Code – were introduced in the Parliament. They were passed on 22-23 September and received Presidential assent on 28 September 2020. Together, the four codes consolidate 29 previous legislations relating to labour and industry (*Table 1: New Labour Codes and the laws they subsume*). The Parliament had already passed the Code on Wages in the monsoon session of 2019. The Rules of the Code on Wages 2019 were framed, finalized and notified on 7 July 2020, with a 45-day notice for objections and suggestions. On 18 December 2020 three provisions of the Code on Wages 2019 were implemented. The Draft Rules (Central) of the three other Labour Codes were partially framed on 29 October 2020 (of the Code on Industrial Relations), on 13 November 2020 (of the Code on Social Security), and on 19 November 2020 (of the Code on Occupational Safety, Health and Working Conditions). Various rules under the different Codes are being notified by the Central and State Governments over the last few months.

The passing of the four Labour Codes was preceded by about 6 years of planning and drafting, and implementation of parallel executive measures towards industry, labour and development.

The policy agenda of the state was clearly laid out in the '98 Point Action Plan for States' on 'Ease of Doing Business,' finalized by the Central Government in December 2014. This was preceded by the 'Make-in-India' programme launched on 25 September 2014. Other programmes like 'Skill India' (15 July 2015), and 'Digital India' (1 July 2015) had also been announced when on 20 July 2015, at the 46th session of the Indian Labour Conference, Prime Minister Narendra Modi emphasized the need to ensure 'Ease of Doing Business' while announcing the need to change labour laws. The central premise of the reform programmes was that India's many labour laws and their protection of labour rights were a hindrance to 'Doing Business', and deregulation and 'rationalisation' of these laws was a crucial objective. It was

this policy thrust that pushed India from the 143rd position on World Bank's 'Doing Business' index in 2014 to the 63rd in 2019 and 2020.

These initial announcements were followed by the Business Reform Action Plans (BRAP) from 2016 onwards brought out by the Department of Industrial Policy and Promotion. While some of the recommendations of these plans pertained to environment, such as ease of granting environmental clearances, a large number of them directly impacted the lives of workers and working conditions adversely, and have been incorporated into the Labour Codes. These include measures like doing away with mandatory physical on-site inspection of factories to check compliance with labour laws. Thus, owners were allowed to 'self-certify,' or get 'third-party' certification online. Other instances of recommendations that affect workers include online registration/ auto-renewal of factory licences for 10 years at a time, or granting online licences to contractors for employing contract workers – all without actually physically verifying the compliance record of the employer/contractor for labour laws.

These policy recommendations began to be implemented by various state governments through notifications and government orders especially from 2015-16 onwards. Particularly, in the course of the pandemic year, between March 2020 and June 2021 – even as the first lockdown was followed by 'unlockdowns' of the economy and again, recently, by 'lockdown' (during the surge of the pandemic in April-May 2021), what has remained unchanged is the Indian state's unswerving commitment to promoting Ease of Business. This has been evident in the actions (and inaction) of the state following the first lockdown till the present. The central and state governments sought to help business – by re-starting production, and enabling owners/managements to secure profits and labour by temporarily suspending the existing protection of labour laws on workers, by means of government orders and notifications that severely restricted workers' rights.

Over the last 6 years or so therefore, the plight of labour on the ground was already becoming increasingly vulnerable and uneasy, in inverse proportion to growing 'Ease of Business.' The Labour Codes were scripted in this context, to further the same agenda. The present report focuses on the new Labour Codes which are due to be officially fully implemented after all the states draft rules under the Codes. However, as the report will show, many aspects of the Codes have been already put into place surreptitiously across states. Discussing the context of *de facto* non-compliance with earlier labour laws, the escalating precarity of workers prior to the enactment of new Labour Codes, and the content of these Codes, the report will draw attention to the irony of this grid of new 'labour' laws that disempower rather than protect labour rights.

Table 1: New Labour Codes and the laws they subsume

No.	New Codes	Laws Subsumed
1.	The Code on Wages, 2019	1. Payment of Wages Act, 1936 2. Minimum Wages Act, 1948 3. Payment of Bonus Act, 1965 4. Equal Remuneration Act, 1976
2.	The Industrial Relations Code, 2020	1. The Industrial Disputes Act, 1947 2. The Trade Unions Act, 1926 3. The Industrial Employment (Standing Orders) Act, 1946
3.	The Code on Social Security, 2020	1. The Employees' Compensation Act, 1923 2. The Employees' State Insurance Act, 1948 3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 5. The Maternity Benefit Act, 1961 6. The Payment of Gratuity Act, 1972 7. The Cine-Workers Welfare Fund Act, 1981 8. The Building and Other Construction Workers' Welfare Cess Act, 1996 9. The Unorganised Workers Social Security Act, 2008
4.	The Occupational Safety, Health and Working Conditions Code, 2020	1. The Factories Act, 1948 2. The Mines Act, 1952 3. The Dock Workers (Safety, Health and Welfare) Act, 1986 4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 5. The Plantations Labour Act, 1951 6. The Contract Labour (Regulation and Abolition) Act,

		1970 7. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 8. The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955 9. The Working Journalist (Fixation of rates of wages) Act, 1958 10. The Motor Transport Workers Act, 1961 11. Sales Promotion Employees (Condition of Service) Act, 1976 12. The Beedi and Cigar Workers (Conditions of Employment)Act, 1966 13. The Cine Workers and Cinema Theatre Workers Act, 1981

I. THE PRE-PANDEMIC REALITY OF LABOUR

The implementation of 'Ease of Business' and the Business Reform Action Plans had direct adverse consequences for workers over the last few years before the new Labour Codes were enacted. PUDR reports and statements based on fact-finding investigations into workers' issues in Delhi-NCR over about the last 6 years illustrate this. These include investigations into garment, electronics and automobile manufacturing units (LG Electronics, Vivo, SPM Autocomp, OMAX autos, Hipad technology, Udyog Vihar garment manufacturing hub etc.), accidents at construction sites and factory fires at industrial hubs, among others.

Work Conditions, Wages and Overtime

i. Long hours and increasing work-pressure

Workers across sectors faced the problems worsening work conditions, increase in working hours and low wages, directly connected to increased production targets and profits for companies. We found that at the garment manufacturing hub, at Udyog Vihar in Gurgaon, linked to the global value chain (*Tailor-Made Lives*, PUDR report, May 2015), or at the Foundry Section of SPM Autocomp a major supplier of auto parts to Maruti (*Accidents, Death,*

Repression and Unionisation in SPM Autocomp, PUDR report, Nov. 2017), shifts continued for well over 12 hours. In one of the units of smart phone producer Vivo which was set up post-2014, the reality of 'Make in India' was that workers had to work all 30 days a month to get their wages, and face termination upon not meeting punishing targets such as assembling 160 phones per hour (*Harassment of Workers at Vivo India Pvt. Ltd.*, PUDR statement, investigation, Aug. 2017). In older electronics companies like LG Electronics (*Life's Not Good*, PUDR, Sep. 2016) work-pressure and hours of work had increased. Very short breaks for meals, penalization for even going to the toilet, harassment by supervisors were common.

ii. Unjust wages and 'compulsory' overtime

Another problem workers faced was that of unjust and inadequate wages. In Omax Autos (making motorbike parts) workers were sacked because they demanded the minimum wage revised in Jul. 2016 (*Omax Autos Ltd Workers' Struggle*, PUDR Fact-sheet, investigation, Apr. 2017). PUDR found that the most skilled workers Udyog Vihar garment industry were being paid about Rs. 8800 monthly. Vivo workers got monthly wages of Rs. 9200 (Rs. 7100 after PF deductions), with further deductions for any leave taken. While these were technically the minimum wages, they were insufficient to meet living needs, and doing overtime work had become the norm across Delhi/NCR. In Udyog Vihar workers did upto 3-4 hours overtime work daily. At times overtime was even enforced by the company (as in Vivo, for a time). Double-rate wage mandated for overtime in law was rarely given anywhere, in clear violation of the Factories Act 1948.

Lack of Job Security

i. Contractual work

Another common feature revealed by PUDR investigations was the extensive use of contract labour in the NCR especially in recent years. In smartphone assembly units (Vivo or Hipad Technology India Private Limited (*'Manufacturing Despair: Labour violations in a Chinese Phone Manufacturing Unit- Hipad Technology India'*, PUDR report, Dec. 2018), the entire workforce was procured through contractors. In Udyog Vihar garment units, 95% to 99% workers were contractually employed. In LG Electronics, 1150 of the 2000 workers were contractually employed, even though many of them had been working there for decades. Contract workers in many units did the same work, had same skills, experience as regular workers but were paid lower wages and did not get appointment letters or increments from the main company. Larger units like LG, Vivo, Hipad and others recruited migrants from ITIs in distant states as a policy to ensure a more pliant workforce.

Many contract and casual workers in different sectors are migrants who could not afford to bring their families to the city. They lived in cramped quarters with others for which they paid

heavy rents. The workers living on factory premises in order to save on rent and travel costs was common. Their dependence on the employers is therefore greater, and in the context of rampant violations of safety laws their lives are at risk, as PUDR investigations into incidents of fires in 2019 in MSMEs in industrial zones of Bawana and Narela (See Annexure 4 – *Fact-findings into fires in two factories in 2019*) and also in illegal units in Anaj Mandi, Moti Nagar revealed (2019).

ii. Arbitrary Terminations

Intensely market dependent employment has grown under 'Make in India' initiative especially in sectors like mobile phone or garment production, linked to the global value-chains and dependent on demand in national/international markets. Workers in Delhi/NCR have been facing summary terminations citing lack of demand – as found by PUDR at Vivo and Hipad, where hundreds of workers were abruptly terminated after they had reported for work one day. Omax Autos sacked 700 workers on the same pretext. In creating permanent insecurity for workers these companies have been violating various clauses of the Contract Labour (Regulation and Abolition) Act, 1970 and the Factories Act 1948, among other labour laws. Two workers at Omax attempted suicide shortly after termination, indicating lack of alternative employment and economic inability to sustain themselves.

Lack of Safety

Several workplace accidents leading to deaths or injuries to workers in organised and unorganised units were investigated by PUDR. Two accidents on a construction site of Ahluwalia Contracts at AIIMS (*Life and Death at AIIMS: A Report on Construction Accidents and the Course of Justice*, PUDR report, Sep. 2016), the accidental death of a worker at SPM Autocomp, apart from routine accidents in the unit (2017) were the result of criminal neglect by owners, and of increased work pressure.

In 2019, PUDR investigated several incidents of factory fires in both authorised MSME units in designated industrial zones of Bawana, Narela, and illegal ones (e.g. in Anaj Mandi). Surprisingly there was little difference in safety conditions between them. In Narela a migrant worker, Bablu Mahto (28) who was sleeping in the basement was killed and 8 others injured when a fire out at night in a plastic and rubber chappals unit in February 2019 due to sparking in an exhaust fan. An FIR was filed and the factory sealed. The owner got bail within a month and production restarted (see Annexure 4 – *Fact-findings into fires in two factories in 2019*). In December 2019, 43 migrant workers including women and children died in a fire at an illegal tailoring unit in Anaj Mandi where cloth bags, rucksacks and other items for various companies were stitched. Many were injured. They could not escape as they were sleeping inside the factory and the door was locked from outside. According to firemen even in industrial zones at

Bawana and Narela, a large number of factories don't have mandatory No Objection Certificates (NOCs) from Fire Department. None of these units had had factory inspections.

In all these incidents, factory owners, managements were guilty of flouting various laws - including Workmen's Breach of Contract Act, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (in the case of the AIIMS accident) apart from others like the Factories Act and Contract Workers Act which also protected workers' rights to a safety at their workplaces.

Struggles towards Unionisation

PUDR investigations show that workers in several units across industrial sectors have been trying, consistently over the last few years, to collectively organise themselves as the only way to make managements and state accountable – by raising the issues of non-implementation of labour laws, low wages, brutal working conditions, accidents etc. Attacks by companies on workers' struggles to form trade unions have also occasioned PUDR interventions. At SPM Autocomp for instance, workers with the support of all permanent employees were seeking to register their union and wrote to the Labour Commissioner seeking protection from termination, threat and intimidation which they were facing from the management in the process. At LG Electronics, workers were still struggling to form and register a union in 2016 and 2018 though the factory had been established nearly two decades earlier.

In these instances though struggles during this period were unsuccessful, workers were able to come together on common issues and engage in collective bargaining. But in sectors like the garment industry in Udyog Vihar, or in construction work or casual labour in the Narela or Anaj Mandi units, or in Vivo or Hipad, workers were unable to organise themselves to struggle for their rights.

Workers were, in all these instances, struggling for the rights guaranteed to them under Trade Union Act 1926 and Industrial Disputes Act 1947 among others. By attempting to crush these struggles, managements and state Labour Departments were violating these laws, taking away legitimate labour rights.

Role of State Institutions

i. Labour Department

In all these issues highlighted above the role of Labour Inspectors, Labour Departments, Labour Courts, and other related institutions in ensuring redressal of these multiple violations of workers' rights and ensuring implementation of labour laws was crucial. But as these PUDR

investigations revealed their repeated failure in actually doing this, in case after case, was spectacular.

At LG Electronics, when after a long struggle, workers were successful in getting their Union registered, the Registrar (Trade Union), Government of NCT of Delhi promptly cancelled it in response to the management's application, in violation of the Trades Union Act. When Omax Auto Workers Union approached the Labour Commissioners in Gurgaon and Chandigarh to intervene in the mass termination of workers in 2017 the ALC failed to even meet them despite their protesting outside for weeks. The Labour Department likewise failed to intervene the in Vivo, Hipad, Udyog Vihar incidents etc. In the Anaj Mandi fire the Labour Department shrugged off all accountability on account of the unit's illegal status, even though the existence of the units was well known.

Absence of inspections by Labour Departments, was another common feature – and in the case of repeated accidents and fires this was fatal. It appears that site inspections have not been required for renewal of factory licences (as per Business Reform Action Plan 2016, and policy measures in its wake). Inspections concerning safety may be conducted only after complaints either from workers, trade unions or other factory owners. Given the evidence in PUDR investigations, where factory owners even in authorised industrial zones regularly violated safety norms, and workers were all contractual/casual, completely dependent on owners, in no position to form unions – such complaints were unlikely.

ii. Police

Police interventions in workers' issues have been consistently one-sided, as PUDR investigations revealed. At SPM when workers demanded that management intervene after the death of a worker, the police lodged an FIR against workers which specifically named SPM union leaders and hundreds of unknown others, for trespassing and vandalism. In Vivo, Hipad and elsewhere police invariably acted against workers in worker-management conflict and as in SPM, did not charge managements for their multiple violations – criminal negligence, not providing safe working conditions, or terminating workers arbitrarily among others. In cases where management personnel *were* charged, police bias was evident – as in Udyog Vihar where workers protested, pelted stones etc. after management goons of assaulted a worker brutally - police filed minor bailable charges against management and non-bailable ones against workers who were jailed and denied bail. In FIRs in industrial accidents and fires, police used sections of negligent conduct with respect to fire or combustible material; causing death by negligence not amounting to culpable homicide etc., which carry lighter punishments, and bring easy bail.

The accounts presented above reveal that workers were already reeling under growing insecurity of employment, increasing gap between incomes and costs of living, the denial of basic protections and rights available under labour laws – which were all features of the

'normal' context of labour in the last six years. The wider context was even bleaker, and the variation even within the sectors covered in PUDR reports was great – the plight of construction workers, for instance (See Annexure 1: *Construction Workers: Continuing Precarity*) or the garment workers in Gurgaon was significantly worse than others – but all categories of workers were dispossessed of their rights under labour laws in practice.

II. CAPITALIZING THE DISASTER: 'TEMPORARY' EMERGENCY REFORMS

It was in the context of the functioning of these policies towards labour that the COVID- 19 pandemic hit the country, and the central government declared an abrupt lockdown on 24 March 2020 at 4 hours' notice. Between March and May 2020, vast numbers of migrant workers had in sheer desperation walked hundreds of miles to their native places, simply because they ran out of work, food, housing and money because of the economic lockdown. Estimated figures of those compelled to migrate, destabilised by lockdown and un-lockdown in the first three months varied between 2.2 crores to 3 crores, i.e., almost about one fifth of the urban workforce. While the maximum number of urban workers who migrated and (as an estimate shows) those whose livelihood was severely impacted by the COVID-linked lockdowns were the 'self-employed' (petty vendors, rickshaw pullers etc. – 87% of these workers), or those 'casually' employed (in different sectors, including prominently construction – 82% of such workers) it is estimated that 77% of regular salaried workers were also severely impacted.

Many died on highways and along railway tracks of starvation and financial distress or in accidents among other non-pandemic reasons. Those who survived, and could not or did not migrate, stood in lines to get food for themselves and families, distributed by private donors, facing uncertainty, humiliation and police harassment routinely. Many had to do this for months, battling loss of work and hunger. This crisis starkly exposed the condition of the majority of workers in India, who had been pushed to living on the edge for some years under highly precarious living conditions (See Annexure 2: *Looking the Other Way: State Measures of Assistance in Pandemic in 2020*).

Right from end of April 2020, various states ushered in several allegedly temporary reforms primarily through gazette notifications and orders, and some ordinances. The applicability of these ranged from three months to three years. The declared intention of these 'temporary' reforms was to tide over the emergency situation brought on by the pandemic in order to help and promote business – entirely in line with pre-pandemic state policy.

These executive measures notifications were broadly of the following types: those suspending labour laws, extending working hours, and those ensuring ease of compliance for

businesses (See Annexure 3: *State's 'package' for Workers?: A Sampling of Pandemic-time Government Orders, Notifications, Ordinances, Acts that impact Labour*).

Measures suspending labour laws

On 6 and 7 May 2020, even as the migrant workers crisis was in the headlines, the Gujarat, Madhya Pradesh and UP governments passed Ordinances announcing that they will exempt new industrial units from compliance with most labour laws. Industry was supposed to uphold only their minimum obligations towards payment of wages, maintaining safety, and compensation for accidents. These exemptions were given to employers in the case of new workers employed, and new factories.

- **Gujarat:** Exemption for compliance with labour laws for 1200 days (over 3 years). Speedy land allocation and governmental clearances for setting up new industries. Suspension of the Industrial Disputes Act (which also guaranteed workers' rights to form unions, demand their rights), dismantling of Contract Labour (Regulation and Abolition) Act and worker welfare schemes, and rules pertaining to work conditions. Clauses included proposals like same wages for overtime and regular work (instead of double wages for overtime as in existing law).
- **Madhya Pradesh:** Exemption for compliance with labour laws for 1000 days (over 2 and a half years). Exemption of new manufacturing units from all but some provisions in the Factories Act, 1948. Extension of working hours to 12, and assurance to companies of online compliance for safety requirements. New companies could 'keep labourers in service as per their convenience' – in other words, hire and fire.
- **Uttar Pradesh:** Exemption for compliance with labour laws for 3 years. Suspension of even the Minimum Wages Act and Workmen's Compensation Act (which the Gujarat government retained).

The suspension of basic laws under these Ordinances (The Minimum Wages Act, The Equal Remuneration Act, The Factories Act, the Industrial Disputes Act, The Industrial Employment (Standing Orders) Act, Maternity Benefit Acts, and Trade Unions Act among others) meant that the states openly absolved themselves of all responsibility to guarantee a minimum wage, or safe work conditions, or doing away with contract labour. Workers' political rights to collectively organise to demand rights were also taken away.

These Ordinances were sent for Presidential approval in May 2020. They evoked outrage from labour unions including those associated with the BJP, and did not become law. Yet they were important as they indicated clearly the direction of the changes that the state and central governments were intent on bringing.

Many of these changes were however implemented in piecemeal fashion through other government orders, notifications etc. in the course of 2020-21. While a few of these were lifted after some months, others remain in force at present.

Notifications that extended working hours

In the immediate aftermath of the pandemic lockdown in April and May 2020, several states brought in notifications to extend working hours from 8 hours per day and 48 hours per week, to 10-12 hours a day and 60- 72 hours a week. These notifications in some cases lasted to August 2020.

While a few states (like Rajasthan, Uttar Pradesh and Karnataka), were forced to withdraw them because they were challenged in court, in other states and Union Territories they remained in place (eg. Dadra, Nagar Haveli, Gujarat and Himachal Pradesh) or were renewed and extended till late 2020. Exemption from restriction on working hours were also extended for 3 more months in the case of certain categories of workers in specific sectors, e.g., Assam Tea Factory Workers (up to November 2020).

In some instances such as Madhya Pradesh, a shortage of labour due to exodus of migrants was given as the reason behind increase in working hours, and therefore existing workers would have to work longer hours to make up for the deficit. UP on the other hand, used the logic that the vast number of returnee unemployed migrants needed jobs and exemptions from labour regulations were needed to attract business investment in new units. The effect of both arguments on workers' rights was the same.

Fresh notifications were issued in early May 2021 by states like Himachal Pradesh and Maharashtra during the second wave of the pandemic exempting factories from the rules about working hours, weekly leave and rest for workers. Working hours were extended to 12 hours a day and 72 hours a week. The notifications were valid for 3 months (Himachal Pradesh) and till 30 June 2021 (Maharashtra). Uttarakhand exempted factories producing essential commodities and pharmaceuticals from these rules, allowing 12-hour work days in view of the public emergency. This notification was valid for 2 months (till 25 July 2021).

There is no concern for the safety of workers (the Maharashtra notification alone makes the wearing of mask compulsory), no concern about how they would reach the factories, and the effect of these long hours of work and overtime on their health. Physical inspections have already been done away with, and in case factory owners violate provisions in these notifications, it is unlikely that they will be prosecuted.

Notifications/Ordinances raising 'thresholds of applicability' and ensuring easier 'compliance'

A number of states have issued notifications/Ordinances raising the 'threshold of applicability' for various labour laws in the wake of the pandemic and the impact of the lockdown. Unlike the notifications about working hours or the Ordinances suspending all labour laws, these notifications include several Ordinances, Government Orders and Notifications that were either for long duration (3 or 5 years) or with no time limitation. All of these reflected provisions and mechanisms that were either already there in the BRAPs or changes that were part of the Labour Codes. The following notifications can be included in this category:

- Several states (like Assam, Goa, Gujarat, Haryana, Himachal Pradesh, Punjab) have through Ordinances mostly issued between June and August 2020 exempted owners of power-driven units with less than 20 workers, compared to 10 workers under the Factories Act, and non-power units with less than 40 workers compared to 20 workers from the need to comply with various labour laws.
- The notifications have doubled the previous limits specified even in the Labour Codes of 2019. In their amendments to the Factory Act, states like Haryana and Gujarat also allowed for 'compounding' of certain offences by factory owners of even larger units who default and do not abide by labour laws – i.e., instead of imprisonment or similar stipulated punishment, they can be punished by fines only. The offences that can be compounded include not informing workers of safety provisions, providing toilets, drinking water etc.
- Some states (like Bihar, Gujarat, Himachal Pradesh, Punjab) through Ordinances passed in July-August 2020, have exempted owners of units from abiding by clauses of the **Industrial Disputes Act.** These have been modified so that owners/companies do not need to officially inform, take permission from appropriate government before retrenching up to 300 workers. This raises the previous limit (specified in the ID Act and also the draft 2019 Labour Code) of 100 workers by three times.
- States (like Bihar, Goa, Gujarat, Punjab, Tripura etc.) through Ordinances and Acts passed between May and October 2020 also granted exemption to owners/managers etc. from abiding by the **Contract Labour (Regulation) Act.** This meant that if an owner of a unit employed 50 or more contract workers, only then would the workers be covered by the protection of the Contract Labour Act. Under the law thus far and also in the 2019 Labour Code, this figure was 20 workers.
- Several states and Union territories (e.g., Telangana, Puducherry, Chandigarh, Goa, and Meghalaya among others) specifically passed notifications granting exemption to companies/factory owners from physical inspection of factories/units, and provided for

online filing of compliance reports etc., i.e., self-certification even under the Building and Other Construction Workers Act.

- States like Karnataka and Himachal Pradesh introduced the term ‘fixed term workmen’ through notifications, indicating workers employed for a fixed period, not entitled to any notice for termination of service upon completion of contract.

These instances illustrate how even before the Labour Codes were enacted by Parliament, several states had already introduced the same measures through executive action as emergency measures to restart the economy. This pattern continued until even after the Codes were enacted in September 2020 but before the Rules are framed and formally implemented. Policies have been informally and practically operationalized even as the country grappled with the pandemic, and the medical, social and economic crises related to it.

III. THE LABOUR CODES 2019-20

The official date set for the full implementation of all the four Labour Codes had previously been set as 1 April 2021. While the Central Rules of all the Codes have reportedly now been framed, only some states have framed and notified their rules. It is expected that the official implementation of these Codes will be somewhat delayed. However, as indicated in the previous chapter, many key clauses of the Codes are operational in practice in different states, through executive orders and notifications implemented throughout the pandemic period. Even so, before we slide fully under the regime of these new Labour Codes, it is crucial that we understand their content and implications clearly.

The stated objective of the government in bringing the new Labour Codes was to simplify and rationalize the multiple labour laws. But on the scrutiny of these Codes no such simplification or rationalization is found. What they have done is simply compiled the provisions of the earlier laws in these four Codes and mostly copied with some important omissions.

A close comparison of the latest Labour Codes (passed in 2020, after the pandemic-related lockdown and the crisis of survival faced by workers) with the original Codes tabled in Parliament in 2019 reveals that the process of removing pro-worker provisions has been carried further in many ways. These include raising of the thresholds of applicability, i.e. the size of units, and workforce size, to which the Labour Codes apply (thus removing the protection of labour laws from the vast majority of workers who work in smaller units; exempting managements/owners of many more units from ‘the burden’ of implementing labour laws). They also involve introduction of obfuscating language that will have an effect on compliance. Significant omissions in the 2020 Codes include some crucial pro-worker clauses and points of pre-existing laws. The government machinery has sought to hide these omissions by highlighting certain clauses that have been included. These, it claims will extend the protections

of labour laws to more workers. A closer discussion of the clauses of each of the Codes, and examination of their context and consequences will reveal the truth.

Some of the implications, scope and problems of the four Labour Codes are presented below. In particular, we examine how the provisions of the new Codes further dilute and curtail the rights of workers. Importantly, in the case of all these Codes, despite the massive changes they are bringing about in India's labour laws, were pushed through rapidly, with very little public scrutiny or consultation, by-passing procedure blatantly. This was even truer in the case of the 2020 Labour Codes, that were passed in the first (delayed) Parliament session after the pandemic's first wave (See *Box: By-passing procedure: Passing of Labour Codes*).

***Box:* Bypassing democracy or How the Labour Codes became Law**

In 2019, the Ministry of Labour and Employment introduced four Bills, to consolidate existing legislations pertaining to Wages, Industrial relations, Social security and Occupational Safety and Health. While the Wage Code which had been introduced earlier in 2017 was passed soon after, the other three Bills were referred to Parliamentary Standing Committees. Reference to these Standing Committees is important as it relates to the level of scrutiny and detailed engagement that members of Parliament are able to bring to the proposed laws. They also provide an opportunity for inputs to their elected members by the concerned public and domain experts, as well as for bringing about multi-party consensus especially on legislations that will have far-reaching impact. Traditionally, most labour laws are also a result of tripartite consultations between the government, and representatives of employers and employees. Several Central Trade Unions in a joint statement have pointed out how the government has not convened the highest tripartite labour policy decision making body, the 'Indian Labour Conference,' for a single time in the past 5 years.

While the government claims that it accepted 174 of the 233 recommendations placed by the Standing Committee, worker unions have argued that this was not so. With the onset of the COVID-19 pandemic in March 2020, parliamentary proceedings were suspended. When the House re-opened in September 2020, the government reintroduced the three Codes along with other controversial legislations like the Farm laws. It was then seen that the new bills were substantially different from the 2019 versions which had been submitted for scrutiny. Following the hasty pushing through of the farm bills on 20 September, 2020, without making allowance for proper debate or division of votes, the Opposition unanimously boycotted parliamentary proceedings for the remaining session. In the absence of any members of the Opposition being present, the three labour codes were also passed on 23 September, 2020. This meant that none of the amendments moved by Oppositions MPs was considered nor any substantive debate held on the new codes.

Labour is on the Concurrent List, giving both central and state governments the power to legislate, resulting in more than 100 state labour laws. Most labour laws have been enacted on the basis of tripartite consultation or on the basis of reports of committees which have heard representatives of both management and workers. Ironically, there has been absolutely no consultation even with state governments while drafting the new Codes.

Despite strong opposition, the 'Labour Code on Wages' was passed in 2019, while three others, on 'Occupational Safety, Health and Working Conditions', 'Social Security' and 'Industrial Relations,' were tabled yesterday after several rounds of revisions. While the Union Government claims to have responded to demands

by worker unions, almost no suggestions have been meaningfully incorporated into the current versions of these Codes.

I

The Code on Wages 2019

The Code on Wages was passed in August 2019. It replaced four existing laws that regulated wage and remuneration in all types of employment relations. However, by taking away key protections prevalent in previous labour laws, the new Code on Wages has the following negative implications.

1) **Arbitrary criteria for fixing wages:** The Code on Wages has done away with established criteria for determining minimum wages. The Supreme Court has repeatedly stated that minimum wages should be determined by need-based criteria that extend beyond basic physical needs. This should include specific nutrition requirements (defined in calories), clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure. In 1992 case of *Workmen Represented by Secretary* v. *Management of Reptakos Brett*, the Supreme Court laid down the following six criteria for minimum wage determination:

   i) 3 consumption units for one earner;
   ii) Minimum food requirements of 2700 calories per average Indian adult;
   iii) Clothing requirements of 72 yards per annum per family;
   iv) Rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme;
   v) Fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total Minimum Wages;
   vi) Children, education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 percent of the total minimum wage.

   The Code on Wages, 2019 leaves these out and lays down that minimum wage rates shall be fixed for time-rated work and piece-rated work and the wage period can be by the hour, by the day or by the month. It gives considerable discretionary powers to the "the appropriate Government" i.e. the executive authorities at the site, to "take into account the skill required, the arduousness of the work, geographical location of the place of work and other factors as may be prescribed" to determine wages. Even though the states are required to take into account cost of living calculated from 'time to time,' the specific meaning of this this provision is unclear, and evidently, such revision is not mandatory. This clearly violates the criteria for fixing minimum wage standards established by the Supreme Court.

Arbitrary wage reductions are also made possible under the Code which permits employers to deduct wages based upon the performance of an employee which may deem to be unsatisfactory, and to "recover losses". In the absence of any due process to be followed before making such deductions, this provision opens the door to employers for making arbitrary, vindictive deductions from the workers.

2) **Measures likely to lead to repression of wages**: The Code stipulates a national floor level minimum wage with legislative protection. The national floor wage proposed in 2019 is Rs 178 per day which translates to Rs. 4628 per month for a 26 day month. This figure is significantly lower than Rs 375 per day recommended by a committee of experts appointed by the Ministry of Labour and Employment in January 2019. As per the Code, state governments are the appropriate governments to fix the minimum wages in the states, with the proviso that it cannot be lower than the floor wage. By setting the floor wage at a very low rate, this is likely to lead to a 'race to the bottom' with states competing with each other to lower minimum wage rates as a way to attract capital.

   Another key measure in the Code which has an impact on wage levels is the removal of Schedules of Employment categorizing skilled, semi-skilled and unskilled labour. This has been projected as a way to increase applicability of minimum wage provisions and extension of protections to those workers who are not listed in the Schedule (for example, domestic workers appear in the Schedule in only 13 states, hence the rule of minimum wages is not applicable to them). However, this will have a negative impact on the semi-skilled and skilled workers who were entitled to higher wages under the Schedule. Minimum wages fixed may be based on those paid to the lowest remunerated workers and again lead to repressed wages.

   There is also lack of clarity about whether the standardised minimum wage would apply across industries. If so, the setting of minimum wage by states could bring down wages in sectors which were previously higher paying as per the Schedule.

3) **Exclusion of categories of workers:** Under the Code, the definition of 'employee' no longer includes the category of "out-workers", which consists of those who work out of their homes or other premises not under the control and management of the employer. This sits at stark variance with the purported object of the Code to "widen the scope of minimum wages to all workers". While provisions pertaining to maintenance of registers and records of payments did not explicitly preclude coverage of domestic workers, the Code statutorily sanctions such exclusion. It does so by defining "domestic purpose" to mean a "purpose exclusively relating to the home or family affairs of the employer" and providing that an employer who employs "not more than five persons for agricultural or domestic purpose" need not maintain a register containing details of such persons.

The Code further expressly exempts a loose category termed "Government Establishments" from being required to comply with the stipulations set out in the Chapter on Payment of Wages. These pertain, among other things, to the time limit for payment of wages and permissible deductions from wages. This is in contrast with the previous Payment of Wages Act 1936, which restricted such exemption to an "establishment owned by the Central Government".

4) **Working hours and overtime:** Under the Code on Wages 2019, the government can fix the number of hours of work, which shall constitute a normal working day. But the following category of workers can be excluded: (a) employees engaged in any emergency which could not have been foreseen or prevented; (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; (c) employees whose employment is essentially intermittent; (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces. This means that the existing definition of overtime of work beyond 9 hours per day and 48 hours per week is being sought to be done away with. By removing a clear definition of overtime and allowing complementary and intermittent work to exceed normal hours, the Code on Wages opens the door to compulsory overtime without extra payment.

5) **Concessions to Employers with respect to Payment of Bonus:** The provision of exemption of new establishments from paying bonus (already there in the Payment of Bonus Act, 1965), has been further expanded in the Code on Wages, 2019 using an ambiguous language for defining new establishments. Now the definition includes "trial running of any factory" and "prospecting stage of any mine." Accordingly, under the Code, not only are new establishments exempt from providing bonuses, but existing establishments can also escape liability by being on "trials runs" or at "prospective stages" in order to gain exemption from paying bonuses to their employees. There is no time limit for these "trial runs" or "prospective stages."

   The Code further undermines transparency by prohibiting authorities from disclosing balance sheets without the express permission of the employer. Under the earlier labour laws, workers and unions had the right to inspect these. Here the presumption is that statements and particulars submitted by corporations and companies are accurate without requiring proof of accuracy. Unions/ Workers will have to approach the Tribunal/Arbitrator for any clarification who must be satisfied that such clarification is necessary. Even then, 'the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.'

6) **Dilution of enforcement mechanisms:** The Code on Wages 2019 allows the "appropriate government" to appoint "an officer not below the rank of a Gazetted Officer", to "hear and determine the claims which arise under the provisions of the Code." This is a significant

relaxation from the earlier requirement of appointing an officer who is either a Labour Commissioner or a state government officer not below the rank of a Labour Commissioner" or any other officer "with experience as a Judge of a Civil Court or as a Stipendiary Magistrate", for hearing workers' claims.

Compliance mechanisms are further weakened in the Code, which allows a Gazetted Officer, appointed by a notification of the appropriate government, to "compound an offence", i.e. not prosecute employers guilty of non-compliance with labour laws, and instead impose a fine/monetary penalty on them. The Code permits several offences not punishable with imprisonment to be settled thus, even after the initiation of prosecution. It also mandates that such Officer can exercise discretion "subject to the direction, control and supervision of the appropriate government".

Further, the new Code replaces Labour Inspectors with 'Labour Inspectors-cum-Facilitators' who are now explicitly authorized to take on a conciliatory role in relation to strict compliance with statutory provisions: Labour Inspector-cum-Facilitators are permitted to "advice employers and workers [about] the most effective means of complying with the provisions of [the] Code subject to the instructions and guidelines issued by the appropriate government from time to time".

The Code affords discretion to the appropriate government to "lay down an inspection scheme" providing for "generation of a web-based inspection and calling for information relating to inspection electronically". Such an option to self-certify carries with it the risk of the Labour Inspector-cum-Facilitators taking at face value documentation furnished by the employer, entirely dispensing with the need for physically inspecting premises and seeking information from workers.

The area jurisdiction of the Labour Inspector-cum-Facilitator has been rendered dangerously uncertain, as the appropriate government can confer jurisdiction on such Inspector through both "randomized selection" and by issuing "instructions and guidelines" from "time to time", assigning particular establishments to the Inspector. Where earlier laws contained a clause empowering Labour Inspectors to "enter, at all reasonable hours", an "employer's premises or place where employees are employed or work is given out to out-workers" for the purpose of examining register or records; the present Code has omitted this critical enabling clause which allowed for surprise inspection visits for Inspectors-cum Facilitators. Now, Facilitators don't have any quasi-judicial powers like Labour Inspectors. In the name of transparency, the Code on Wages 2019 requires state inspection schedules to be made web-based inspection schedules.

In fact in this kind absence of any mechanism to ensure compliance, and the reinvention of inspectors as 'facilitators' to business, the feature of the Code on Wages that is being highlighted by the government as a very positive measure – i.e., the coverage of payment of

wages and minimum wage provisions to all employees irrespective of any wage ceiling or type of employment, that can in theory be applicable to workers in both organised and unorganised sectors – amounts to meaningless rhetoric.

7) **Dilution of penal provisions:** In the new Code, in contrast to the pre-existing laws, there is a shift from criminal liability to civil liability where employers default in matters pertaining payment of wages and bonuses. Employers violating the Code will be given the opportunity to comply with provisions of the Code or give reasons for violation prior to receiving any penalty. Those who commit offences can be acquitted if the offences are compounded.

   This replaces the earlier labour law, the *Minimum Wages Act, 1948*, under which payment of less than minimum wage is punishable with imprisonment upon the first offence. In the case of *Sanjit Roy v. State of Rajasthan* (1983), the Supreme Court observed that non-payment of minimum wages amounts to constitutionally prohibited forced labour.

   This Code (like the other new Labour Codes) reduce the scope for workers to approach the courts to contest violations of wage provisions, or other clauses, as they are required to approach only the quasi-judicial and appellate authority set up under the Code which has been given the powers of a Civil court. The membership of these authorities/committees is unspecified and it holds sole power to adjudicate on wage disputes, and its decisions cannot be subjected to review by the courts. The Code on Wages explicitly states that 'no court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or an Inspector-cum-Facilitator.' This makes it impossible for suo moto action against wage violations and disempowers workers from seeking judicial protection for their wage provisions.

II

The Industrial Relations Code 2020

Subsuming three of the most important labour legislations in India, the Industrial Relations Code 2020 has considerably reduced the role of Trade Unions, made strikes impossible and excluded maximum numbers of workers from applicability. Some of its major clauses and implications are as follows:

1) **Exclusions in definition of 'worker':** The Code defines 'employee' to include all workers from unskilled workers to supervisors etc. Elsewhere it defines 'worker' to also include different categories of workers – in both definitions however 'Apprentices' are specifically left out of the definition. Confusingly, Code further states that a person who earns above Rs. 18000 per month (or an amount which could be notified by the government) and is employed in a

'supervisory capacity' would not be treated as a worker. Someone who earns a sum just above Rs. 18000 is hardly more than any ordinary worker, and those working in supervisory capacity are included in the definition of worker in the Code. These confusions and restrictions serve to put pressure on workers earning Rs. 18000 or above.

2) **Fixed-term employment:** The Code introduces the concept of fixed term employment – a new category of contractual employment whereby workers are employed for a fixed term through a contract between workers and employers. Fixed term employment is in the interests of contract workers as it does away with contractors who take a share of workers' wages. Under the Code workers employed for fixed term will be governed by the same terms of employment regarding working hours, wages, allowances and other benefits as permanent workers for work of a similar nature. However, this form reinforces employers' power as renewal of employment is entirely in the hands of the management and fixed term workers will be more compliant in the absence of job security – and not raise issues related to wages, working conditions etc. even when their rights are violated.

3) **Discouraging the right to form associations and unionise:** Until now there was no specific provisions in the central laws with regard to the recognition of trade unions. In absence of such explicit provision, it is general practice that the management negotiates with the majority union but it doesn't exclude the other registered unions from representing the workers. This concept is based on the guidelines of 15th Indian Labour Conference of 1957 and the recommendations of the National Labour Commission headed by Justice P.B. Gajendragadkar. Accordingly, any union could with one year standing and with 15% of the membership of the establishment claim recognition; and 25% of the work force to claim recognition on industrial basis i.e. to represent workers in negotiation and bargaining with managements. Some states like Maharashtra and Kerala have made laws based on these guidelines. In fact the Kerala government has modified the minimum percentage (of workforce support for a union) to 10% (in a class of industry) for the union to claim recognition on industrial basis, and be part of negotiations.

   Under the new Code a trade union will be registered only if it has a membership of 10% of the workforce or 100 workers, whichever is less. In an establishment with more than one registered union, the new Code states that only the trade union having at least membership of 51% of the workforce will be recognized as the sole negotiating union. It is a fact that in most of the industries where multiple registered trade unions are working none of them will have 51% membership, thus they lose their recognition from the Management even if one of them has a majority, i.e. even if 49% of the workers support one union. In the case of multiple marginal unions, the negotiations will be conducted through a Negotiating Council which will also have employers' representatives. While the 2019 Bill provided that a negotiating council will be formed consisting of representatives of unions that have at least 10% of the workers as members, the 2020 Code raises this threshold to 20%.

4) **Strikes and lockouts:** Under the Industrial Relations Code (2020, and also 2019) workers are required to give a fourteen day notice before a strike, with sixty days. Similar provisions existed in the Industrial Disputes Act, 1947 only for public utility services (such as, railways and airlines etc.). The Code expands these provisions to apply to all industrial establishments (and not only public utility services as it was previously), undermining the workers' rights to strike. The Conciliation Officer has to be informed two days before the strike. The strike cannot proceed until the conciliation process is concluded. Conciliation proceedings can stretch for more than 60 days i.e., the period for which the notice is valid. This makes it next to impossible to go on strike as the management can stretch these negotiations beyond the sixty-day period forcing the workers to give a fresh notice of strike and such a process can continue endlessly. Any strike which does not abide by all these clauses is considered 'illegal under this Code.' And the Code imposes penalties of fine or imprisonment on workers who participate in or 'incite' others to participate in any such strike. The Code brings casual leave under the ambit of strikes, with mass casual leave by 50% or more workers deemed as a strike.

5) **Retrenchment:** In the new Code, managements need to apply for permission from governments only in cases of retrenchment and laying off 300 or more workers, revised up from the 100 which was there in the 2019 Code. Prior to the passing of the 2020 Code, several states e.g., Andhra Pradesh, Assam, Haryana, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh, had already, through state amendments, enhanced this threshold from 100 to 300, an anti-worker measure that the central government chose to reproduce in the 2020 Code. The 2020 Code in fact provides that the 'appropriate government' can simply by notification, raise this limit to a number higher than 300 if it wishes to.

   If the government does not respond within 60 days for permission for closure, lay-offs and retrenchment, it will be taken that permission has been granted. The government can thus render appeals and challenges by workers futile, simply through inaction. There is no accountability for such acts of omission. Thus, this Code allows more flexibility for employers to hire and fire workers at will with little intervention or monitoring by the government.

   The termination at end of fixed term employment, or non-renewal of contract will not be considered retrenchment. As per the existing laws the retrenched or laid off workers should get the preference in the reemployment as and when there is a recruitment without any time limit. But in the new Code such preference is valid only for one year.

6) **Industrial Tribunals and National Industrial Tribunals:** The Industrial Disputes Act provides for Courts of Enquiry, Labour Courts, Industrial Tribunals and National Industrial Tribunals. Under the new Code, Labour courts are done away with and now there will be only regional industrial tribunals and national industrial tribunals comprised of one judicial and one administrative member which can be approached directly by concerned parties, and National Tribunals which can be approached only through the Central Governments. However, the Code

permits the government to defer, reject or modify awards passed by Industrial Tribunals and the National Industrial Tribunal, which can lead to a conflict of interest if the Government and its functionaries are involved in or party to the dispute. It also violates the principle of separation of powers. Earlier these tribunals and Labour Courts had only judicial officers now administrative officers, members of the executive can also be made members.

7) **Exclusions of Majority workers from this Code/ Exemptions & Standing Orders:** The 2020 Code allows for the exemption of any 'new' industrial establishment or class of establishments from its provisions in 'public interest' by notification by the government. It empowers the government to notify any activity as "non-industry." Similarly, the applicability of model Standing Orders limit has been increased from 100 to 300 workers. Standing Orders essentially lay out the code of conduct for employment relations within an establishment. Thus the new Code, by raising thresholds enables many more employers to impose arbitrary service conditions on large numbers of workers. Further the appropriate Government may, by notification, exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the Standing Orders. While the 2019 Code allowed for the government to make the provisions related to Standing Orders applicable to establishments with less than 100 workers and retained these provisions even in the event when employee strength reduced below the threshold, the 2020 Code removes these provisions. An important addition in the Standing Orders is the inclusion of 'fixed term employment' without any terminal benefits including retrenchment benefits.

The Code on Industrial Relations thus allows employers to increase or decrease the workforce as per the requirement of industry, and in the process increases job insecurity amongst workers. The Code makes it next to impossible for workers to struggle for their rights.

III

The Code on Social Security 2020

The new Code on Social Security 2020 subsumes nine earlier acts. It covers workers' access to health care, and provisions for income security. While this Code has compiled previous Acts in different chapters without many obvious modifications, it raises certain crucial concerns:

1) **No concrete provisions:** While the 2019 Code mandated social security for establishments based on thresholds of size of unit etc. as in the other Codes, the new Code has removed the size threshold. This could potentially increase coverage to more workers including those in smaller establishments, the reality is likely to be otherwise, given the trajectory of state policy and the other Codes.

While the Code on Social Security 2020, proposes to set up a corpus for welfare of workers using funds allocated for Corporate Social Responsibility, it mainly focuses on notification by Central Government of various social security schemes for the benefit of workers. In the 2019 Code, notification of schemes was to be only for unorganized sector, gig and platform workers; the 2020 Code essentially brings all workers under schemes that may be notified in future. These include an Employees' Provident Fund (EPF) Scheme, an Employees' Pension Scheme (EPS), and an Employees' Deposit Linked Insurance (EDLI) Scheme which may provide for a provident fund, a pension fund, and an insurance scheme, respectively. The government may also notify: (i) an Employees' State Insurance (ESI) Scheme to provide sickness, maternity, and other benefits, (ii) gratuity to workers on completing five years of employment (or lesser than five years in certain cases such as death), (iii) maternity benefits to women employees, (iv) cess for welfare of building and construction workers, and (v) compensation to employees and dependents in the case of occupational injury or disease. Provisions that were either mandatory or very specific provisions under existing laws have now been left completely to the discretion of the central and state governments. This leaves room for governments to arbitrarily restrict coverage of substantial provisions in the name of 'public interest', 'boosting growth' and other such grounds.

In the EPF, EPS, EDLI, and ESI Schemes rate of combination of contributions from the employer and employee will now be notified from time to time by the government. Under this Code employers economic responsibility towards workers is reduced, as employers are required to contribute only 10% of the wages of each employee to the Provident Fund, instead of the 12% mandated under the previous Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Likewise under the ESI scheme, the employer's contribution has been reduced to 3.25% of the wages of the employee (compared to 4.25% previously), and the employee's contribution also reduced to 0.75% (from 1.75% previously). All these schemes can be accessed by workers only upon sharing their Aadhaar number – a violation of the SC judgment of 2017 guarding the right to privacy which had mandated that the Aadhaar number may only be made compulsory for accessing 'official' subsidies only, and be linked to the PAN number. This Code makes it a condition for accessing all Social Security measures. Significantly far from extending Social Security cover, the Code includes a clause that allows establishments to exit altogether from the Provident Fund Scheme on the basis of 'an agreement between the employer and majority of the employees to this effect.'

The Code on Social Security 2020 does not change the varied applicability thresholds for the different Social Security schemes. For example, the EPF Scheme will continue to be applicable only to establishments with 20 or more employees. The ESI Scheme will apply to certain establishments with 10 or more employees. And to all establishments which carry out hazardous or life-threatening work notified by central government as well as to gig and platform workers.

However, given the vagueness around what constitutes hazardous activity under the Occupational Safety Code, such insurance provisions are left to the discretion of concerned authorities and governments. Despite claims to ensuring social security, the Code also continues to exclude sections of workers, especially those working in small establishments from these schemes. Under these conditions, and the lack of accountability of employers with breakdown of inspections etc. under the new Labour Codes, the fact that all 740 districts would be covered under the ESIC (compared to 566 districts presently) does not indicate any assurance that workers' rights would be extended or protected.

2) **Omissions and lack of clarity:** Several omissions and lack of any clarity mark the Code.

   There are for instance, many categories of workers like agricultural workers, beedi workers and domestic workers who have not been defined, leaving it unclear whether they are covered under the provisions for unorganized or wage workers. The provision of wage ceiling can further be used to limit the coverage to any category of wage workers or employees and self-employed workers. This leaves room for exclusion of particularly marginalized sections of workers.

   Further, the duality of administration, with some schemes to be notified by Central and others by State governments, produces confusion as workers have to register themselves both with the Central and State governments for accessing different benefits.

   Any building or construction work which is below 50 lakhs or any other amount specified by the government are excluded from this Code. Many contractors, particularly subcontractors can misuse this clause and deny the benefit to the contract workers.

   While the Code proposes the setting up of a fund for reskilling workers who have been retrenched, it has not provided for unemployment allowance.

   There is a new clause allowing the central government to defer or reduce the employer's or employee's contributions under PF and ESI for period up to 3 months in the case of "pandemic, endemic or national disaster."

3) **Lowered penalties and recourse:** While the 2019 Code empowered aggrieved parties to file for a review of the order passed on disputes relating to PF and ESI, and the amounts due from employers, the provision of review has been removed in the 2020 Code. Similarly, while in the 2019 version, authorised officers could re-open any case and pass orders revising the amounts due, the final 2020 Code does not allow this. Several penalties for defaulting employers have also been reduced, such as that for obstructing an inspector from performing his duty reduced from one year to six months, and removing the imprisonment penalty for unlawfully deducting employer's contribution from employee's wages.

4) **Regarding gig and platform workers:** The inclusion of this new category of workers has been projected as one of the key positive highlights of the Social Security Code, 2020. They are

supposed to be entitled for benefits like PF, Gratuity, Insurance etc. However, the overall lack of a legal framework governing gig and platform work and the lack of institutional capacity to implement any such provisions, or any plan on how to do so, or ensure accountability for it – raise serious concerns. Another major issue is regarding establishing of the employer-employee relationship, or defining whether the employee is in fact a worker – gig/platform workers for instance may work for more than one employer or 'aggregator' and are often termed as contractors or agents, not workers. While not clarifying many of these fundamentals, the Code leaves much to the discretion of governments including determining eligibility, share of aggregator's contribution and exemptions that can be given for their contributions.

IV

The Occupational Safety, Health and Working Conditions Code 2020

This Code pertains to work and service conditions, wages, health and safety issues. Thirteen existing laws are subsumed by the Code. By bringing in 'flexibility' in matters pertaining to safety standards, and literally, the survival of workers, the Occupational Safety, Health and Working Conditions Code 2020 (OSHWC Code 2020) has very grave implications for workers' rights:

1) **Flexible thresholds of applicability, and exclusion of workers from rights to occupational safety and health:** While the earlier 2019 version of the Code introduced a uniform threshold of applicability where only units with 10 or more workers have to register and comply with safety, health and working conditions provisions, the OSHWC Code 2020 has increased this 20 workers or more in units where electric power is used and to 40 workers or more where no electric power is used (from the previous limit of 20 workers for non-power driven factories. The very definition of a 'factory' established in law is casually overturned here, with implications for workers everywhere. With the argument that smaller units need to be encouraged by reducing the burden of compliance, workers in smaller establishments are thus not covered by safety and welfare measures. This is particularly pertinent given that nearly 80% of Indian workers are employed in small economic units and a vast workforce will now not be entitled to safe workplaces.

   This is in sharp contrast to previous laws – under Motor Transport Workers' Act, compliance by employers was required if there are 5 or more workers, while for contract labour the minimum threshold was 20. Under the new Code, the threshold for motor transport workers where the number of workers who could be legally denied safety provisions has been more than doubled while the thresholds for application for contract labour has been raised to 50. Employers in power driven factories could be tempted to reduce workforce to 19 or below to be completely exempted from compliance to safety and other norms, to reduce expenditure and

accountability, making workplaces even more risky and survival precarious for workers than they already are.

2) **No specification of suitable work conditions:** The Code stipulates that it is the duty of employers to provide a safe, hazard-free working environment, but unlike the earlier Factories Act there is no general provision covering hazardous and dangerous working conditions. It states that these standards will be declared by notification by the Central government, with state governments having the power to amend wherever they are deemed to be the appropriate government for the same. For factories involved in hazardous production, maximum permissible limits of exposure to chemical and toxic substances in manufacturing processes will be prescribed by state governments. The Code only provides for the setting up of emergency standards.

   It also provides that state governments may suspend the applicability of any or all provisions of the Code in 'any new factory or class or description of new factories' if it is 'satisfied in 'public interest' that it is necessary to create more economic activities and employment opportunities; similar exemptions are also made possible in the case of 'public emergency' wherein 'any workplace or work activity or class thereof' may be exempted. This means that an even greater number of workers can be excluded, and responsibility of employers towards workers' health, safety is further reduced. The Code specifically gives state governments the power to increase or decrease the threshold of workers and gives any 'appropriate government' the power to exempt an establishment or class of establishments from any or all the provisions of this Code. This effectively means that that governments will be at liberty to put more workers at risk, deprive them of their right to occupational safety, if they so wish. They can do this entirely legally under the Code.

   The Code promises to benefit contract workers and interstate migrant workers. In case of accidents employer are required to notify specified authority of both states in the case of fatal accidents and serious bodily harm. However, again, for all these workers no standards or specifications of 'suitable' conditions are laid down.

3) **Safety Committees:** The OSHWC Code 2020 provides for setting up of Safety Committees but like many of the other provisions this too is left to the discretion of state governments, which may restrict these to certain establishments/certain classes of workers. Even for this, the thresholds are very high. Only factories that employ over 500 workers are required to set these up. In factories doing hazardous work and building and construction workers any unit employing 250 workers has to set up a safety committee while mines employing 100 workers are required to do so. Committees are to comprise representatives of employers and employees and numbers of employer representatives may not exceed the number of workers on the Committee, but the two can be equal. Given the imbalance of power between workers and managements, this is detrimental to workers' interests – equal numbers would produce a

stalemate, or otherwise undermine possibilities of workers negotiating successfully. These high thresholds of sizes of factories for Safety Committees mean that the majority of the workers in India, including many working in hazardous units, will remain completely beyond the purview of Industrial Safety Committees.

4) **Welfare and Health Facilities:** The Acts which are being subsumed by the OSHWC Code 2020 specify working, health and safety standards, which are defined by the nature of work. For example, Acts governing mines, plantations, and building workers provided for drinking water, toilets, and first aid. For beedi and cigar workers provisions for ventilation, preventing overcrowding, canteens and crèche were mandated. Provisions for housing facilities, canteens, crèches, were stipulated for plantation and construction workers under these existing Acts. In leaving standards to be decided by Central and state governments, the Code allows for arbitrariness, reduces employers' responsibility and the expense entailed in implementing these provisions.

   The Code makes provisions for various welfare facilities, health and safety standards, and work hours for workers but once again these are left to the will of particular governments. So canteens, first-aid boxes, crèches are all listed as welfare facilities that 'may' be notified by central government, as may fundamental requirements like hygienic work environment, clean drinking water, toilets and also working hours. There are thus no mandatory and binding provisions regarding welfare and health facilities or hours of work.

   In the case of contract workers, the responsibility for workers' welfare is shifted from the contractor to the employer. The Code stipulates that in case of interstate migrant workers employers must provide suitable conditions of work, medical facilities, housing, displacement and journey allowance.

   The Code waters down existing benefits and welfare activities, even when it appears not to. It does not subsume the Maternity Benefit Act, 1961, but some of provisions overlap with it. While under Act, provision of crèches in establishments employing more than 50 workers is mandatory, under the Code it is left to the will of the government. It is also stipulated that maternity benefits can only be claimed by workers if they have put in a minimum of 80 days preceding this.

5) **Work hours:** The OSHWC Code 2020 fixes the daily work-hours' limit at not more than "eight hours in a day" but also allows "appropriate governments" the flexibility to notify the "period of work". In the Rules under the Act notified by the Central Government in November 2020, for instance, while 48 hours of work per week are stipulated for each worker, the period of work is identified as spread over 12 hours a day. The Code thus allows for different work hours for different classes of establishment/ employees. Coupled with provisions of overtime and working hours under Code on Wages, the international standard of the eight-hour work day has

been summarily abandoned. The adverse effect of long hours of work on workers' health and safety is evidently not a consideration.

6) **Women Workers**: Under the previous labour laws it was prohibited to engage women workers in work in the factory after 7 pm and before 6 am. The OSHWC Code 2020 allows women to be employed – in "all establishments for all types of work" and at all hours "with their consent" subject to conditions "safety, holidays and working hours" etc. being observed. What these include is not specified, nor is it clear how compliance will be ensured, or what is the nature of women's 'consent' in view of their economic need and dependence on employment. Women's employment in operations hazardous for their health is permitted with some 'safeguards,' all unspecified and discretionary, is left to 'appropriate Government.'

7) **Defining Offences:** The OSHWC Code 2020 defines various offences and punishments some of which are already under IPC e.g. Sec 304A that is death due to negligence, the punishment for which is two years' imprisonment or a fine or both. Under the Code, an offence that leads to an employee's death is punishable with imprisonment of up to two years, or fine up to Rupees Five lakh, or both, and courts may direct that at least half the fine be given as compensation to family of the victim. The provision thus sets an upper limit of Rupees 2.5 lakhs for a worker's death, which too depends on the will of the court. Under the earlier Workmen's Compensation Act the compensation would be much greater.

   Another important and very dangerous provision in OSHWC Code 2020 is that it makes a worker accountable for industrial accidents along with the management – if a worker is found to be responsible for any accident he/she will be fined upto Rs 10000 and imprisonment. The Code also provides that when an employee is found guilty of an offence, the employer cannot be found to be guilty of the same unless proven that he failed to take reasonable measures for its prevention. Further, employers are shielded in the Code further by various limitations on the powers of Inspector-Facilitators to initiate proceedings against them, including provision of a thirty-day period within which they can show compliance with provisions which they had been violating.

8) **Dilution of provisions for contract and interstate migrant workers:** While the OSHWC Code 2020 has certain provisions for migrant workers such as the extension of PDS (Public Distribution System) benefits in both states (home state and place of employment), and insurance and provident fund benefits as available to other workers, the weak compliance mechanisms dilute them. Significantly, the OSHWC Code also establishes that the Interstate Migrant Workmen Act, which previously applied to establishments employing more than 5 workers, would now only apply to establishments with 10 or more workers. It has also removed the clause present in the 2019 draft Code that required contractors to pay a displacement allowance to interstate migrant workers at the time of their recruitment, which was equivalent to 50% of the monthly wages.

With regard to contract work, the OSHWC Code 2020 has removed some of the provisions present in the earlier 2019 draft Code which empowered governments to prohibit employment of contract labour. It has now restricted the scope of what would be considered 'core activities' where contract labour will not be allowed, and also does not define it. It further defines a list of non-core activities where the prohibition would not apply which includes sanitation workers and security services, sectors which have seen a high rate of contractual labour wherein workers face immense job insecurity and have little protection. It also lists that 'any activity of intermittent nature even if that constitutes a core activity of an establishment' can be exempted from the prohibition. Thus, the concept of regulation and abolition of contract labour has been done away with.

Another major change from the Contract Labour (Regulation and Abolition) Act is the reduced accountability of principal employers. While earlier, the principal employer had to get licence to hire contract labour, in the new Code, it is sufficient for the contractor to have the licence. There is no need to for the principal employer to physically monitor the payments to labour by the contractor, the employer is now responsible for making direct payment only when the contractor defaults.

9) **Redressal mechanisms:** Under the 13 previous health and safety laws now overwritten by the OSHWC Code, claims affecting rights of workers about wages, work hours, leave etc. could be heard by Labour Courts and Industrial Tribunals. However, the OSHWC Code 2020 bars the jurisdiction of civil courts, and does not specify that such disputes may be heard by Labour Courts and Tribunals. If a worker has any grievances against management he/she can only approach High Court. For individual affected workers whose rights to unionise are so constrained under the new Codes, seeking justice and legal redressal for violation of their rights would be very difficult.

Table 2: Cumulative impact of Labour Codes 2019-20

SUBJECT	CODES	IMPACT
WAGES	Code on Wages Industrial Relations Code	• Low minimum wage under central law, based not on need but on time-rate and piece-rate basis. • Removal of skill- and industry-based classification for minimum wages. Also exclusion of those earning more than Rs.18,000/- month in supervisory capacity from category of 'workers'. • Empowers employers to make arbitrary deductions without due process.
WORKING	Code on	• 8 hour workday with exceptions for different classes of establishments and employees, dependent on central

CONDITIONS	Wages Occupational Safety, Health and Working Conditions Code	government notification. • Removes clear definition of 'overtime'; enables compulsory overtime without extra payment. • Removes prohibition of employment of women in factories between 7pm-6am, subject to their consent. • No fixed standards for hazardous and dangerous working conditions, but to be fixed by central and state governments by notification. • Working, health and safety standards not determined by nature of work but arbitrarily through governmental discretion. • Drinking water, toilets, housing facilities, crèche, canteen etc. listed as 'welfare' facilities not to be mandatorily provided by employers but upon discretion of governments. • For interstate migrant contractual workers, employers to provide suitable working conditions, medical facilities, housing etc. • Maternity benefits available only after minimum 80 days of work.
NATURE OF EMPLOYMENT	Industrial Relations Code Occupational Safety, Health and Working Conditions Code	• Introduces "fixed term employment" as a type of contractual employment. • Notice of retrenchment to governments only in cases of lay-offs of more than 300 workers, which may be further revised by appropriate government. Deemed approval if government does not respond to notice within 60 days. • Termination of fixed term or contractual employment is not "retrenchment". • Restricted scope of 'core activities' where contract workers cannot be employed, absent definition of 'core activities'. Intermittent work of activities otherwise considered 'core' exempted from prohibition. • List of 'non-core activities' includes sanitation workers and security services.
SOCIAL SECURITY	Code on Social Security Occupational Safety, Health and Working Conditions	• Central government to notify social security schemes for workers, including those related to PF, pension, insurance, gratuity, maternity benefits, accident compensation etc. • Previously mandatory and specific provisions under law left entirely to discretion of central government. • Reduction in employer contributions to PF, insurance etc. Enables central government to further defer or

	Code	reduce employer contribution in cases of pandemic or natural disasters. • Access to benefits mandatorily linked to AADHAR, and require registration with both central and state governments. • Unclear whether agricultural, beedi and domestic workers covered, and potentially excludes workers beyond a 'wage ceiling'. • Sets up fund for reskilling retrenched workers, but no unemployment allowance. • Lack of legal framework and enforcement mechanisms for gig workers, and left to discretion of central government. • Extension of PDS in home and host states for migrant workers, insurance and PF benefits to same extent as other workers, with weak enforcement mechanisms. No displacement allowance payable.
RIGHT TO FORM ASSOCIATIONS AND UNIONS	Industrial Relations Code	• Only trade union will be registered with membership of 10% workforce or 100 workers. • Where multiple unions exist, union with 51% membership of workforce to be recognized as 'negotiating union'. • Prior 14-day notice for strike mandatory, with at least 2 day notice to Conciliation Officer. Strike cannot proceed until conciliation is over. • Fine or imprisonment for participating or 'inciting' 'illegal' strikes.
EXEMPTIONS	Code on Wages Industrial Relations Code Occupational Safety, Health and Working Conditions Code	• Exemption for "out-workers", to some extent domestic workers, and "Government Establishments" from payment of minimum wages. • Exemption for new establishments, and those undertaking "trial runs" or "prospective stages" from payment of bonus. No time limit for trial runs and prospective stages. • Establishments with less than 300 workers exempt from IR Code. Also those exempted by government through notification in 'public interest', or as 'non-industry' or even otherwise. • Establishments exempted from social security contributions in case of agreements between the employer and majority of employees, and construction sites below Rs.50 lakhs.

		• Power-based units with less than 20 workers, non-power based units with less than 40 workers, units with less than 50 contract workers exempted from safety provisions. • New factories, or any class of new factories, may be exempted from safety provisions in 'public interest' and emergencies. • Establishments with less than 10 workers exempt from provisions regarding migrant workers.
DILUTIONS IN ENFORCEMENT MECHANISMS	Code on Wages Industrial Relations Code Code on Social Security Occupational Safety, Health and Working Conditions Code	• Gazetted Officer may be appointed as 'Labour Inspector-cum-Facilitator (LIF), abolishing post of Labour Commissioner. • LIF to encourage conciliation in disputes, and do not enjoy quasi-judicial powers. Jurisdiction may be arbitrarily defined and changed by appropriate government. • Limited avenues for workers to challenge disputes related to dues, PF and ESI. • Factories with more than 500 workers, construction units with more than 250 workers and mines with more than 100 workers to set up Safety Committees at the discretion of state governments.
DILUTIONS IN EMPLOYER LIABILITY	Code on Wages Code on Social Security Occupational Safety, Health and Working Conditions Code	• Self-certification of compliance by employers. • Civil, not criminal liability, for default in payment of wages and bonuses. • LIF empowered to compound offences, even after initiation of prosecution. • Employers enjoy 30-day period to show compliance with provisions being violated to avoid liability. • Reduced penalties and sentences for employers for unlawful deductions, obstruction of public servant etc. • Offence leading to death of employee punishable with imprisonment up to 2 years and/or fine up to Rs.5 lakhs, where half the fine may be ordered by court as compensation to family of victim, reducing compensation available under earlier law. • Introduces worker liability for industrial accidents,

		with fine up to Rs.1 lakh and/ or imprisonment. Offences for which employee found liable, employer cannot be liable except for failure to take reasonable preventive measures. • Contractors, not principal employers, need license to hire contract labour. Principal employer also not required to monitor payments to workers by contractor, but only for direct payment if contractor defaults.
ACCESS TO COURTS	Code on Wages Industrial Relations Code Occupational Health, Safety and Working Conditions Code	• Bars jurisdiction of civil courts for industrial disputes. • Labour Courts replaced by Regional and National Industrial Tribunals comprising one judicial and one administrative member. Government can defer, reject or modify the awards passed by Industrial Tribunals. • Workers may approach only High Courts for grievances against employers

IV. CONCLUSION

In May 2021, the Labour Ministry of the Government of India notified draft rules under the Industrial Relations Code 2020 regarding recognition of Negotiating Union etc. in the case of industrial disputes. Citizens are invited to share 'objections and suggestions' by email within one month, notwithstanding the ongoing worst health emergency in independent India. This follows the same process as with the enactment of the Codes and notification of other orders under the law, where they have been brought into effect without democratic deliberation and consultation.

The expansion of executive powers is evident even beyond the processes of law-making, as all these Codes vest unlimited powers in the executive. Under them, the 'appropriate government' can include, exclude, relax or exempt any industry or sector from the application of these Codes either permanently or temporarily. Executive officers/administrative officers have also been given judicial powers undermining the judiciary, making legal redressal for the working class an impossible task. Thus, these Codes are against the constitutional spirit of having three arms of governance and the federal structure by giving unlimited discriminatory power to the central executive pushing aside the legislature and Judiciary.

The magnitude of the change that the Labour Codes signify needs to be understood. They signify the overturning of the entire legal framework that governs labour in India, in the name of rationalization, to bring them in line with the recent policies that have accounted for India's dizzying rise in the World Bank's 'Ease of Doing Business' index.

As this report has shown, many of these regulatory reforms had already been put in place through policies, executive orders and *de facto* non-implementation of earlier Labour laws even before the Codes were enacted. As such, the Labour Codes serve to formalize this reality of regulatory non-compliance by industries, and act as the final nail in the coffin of workers' rights under law. By removing or undermining previously recognized rights, rendering judicial and other institutions inaccessible to workers, and severely restricting rights to unionize, workers are deprived of whatever formal legal avenues existed to challenge violations through collective action. If 'Ease of Business' can only be achieved at the cost of labour, and 'flexibility' secured only by surrendering workers' basic and democratic rights, then the state's pursuit of 'Ease of Business,' culminating in the Labour Codes, should cause grave unease to all citizens.

ANNEXURE 1: Construction Workers: Continuing Precarity

Construction workers have been a particularly 'death-prone' category. This has been revealed in PUDR's previous investigations and legal interventions into construction workers' issues. In the past few years, our investigation into two consecutive accidents can serve to throw light on some of the key labour violations and problems arising from faulty implementation of laws. These features are not unique to these particular sites covered in the PUDR investigations, but common across construction sites, reported in the press and numerous other reports.

The first incident was at a construction site of Ahluwalia Contracts Ltd. inside AIIMS in 2016 killing 2 workers and injuring 3 others, where the High Court- appointed monitoring committee found Ahluwalia Contracts to be in gross violation of labour laws during construction work for Commonwealth Games in 2010. The 2016 investigation illustrated exactly how, even where laws offered some relief to construction workers, state institutions responsible for their implementation failed. In the first accident in March 2016, police filed an FIR of criminal negligence against the contractor, while excluding the Principal Employer, AIIMS. By ensuring that the investigation proceeded exceedingly slowly, the police ensured that nothing really happened to them. When compensation was sanctioned under the Workmen's Compensation Act, 1923, the Labour Department failed to inform victims' families. Compensation was

sanctioned under Building and Other Construction Workers (Regulation of Employment and Working Conditions) Act 1996 (BOCW Act) and it's Delhi Rules 2002 as an exception even though the workers were not registered under it given the fatal nature of the incident. The disbursal of compensation was held up for months as the Contractor did not supply the bank details of the workers. Finally, compensation was disbursed through the Contractor only after the victims' families signed a statement that they did not hold any one guilty for the accident.

Another PUDR report into construction workers' issues looked into working and living conditions at work-sites of Public Works Department (2017) and found that poor working conditions as much as accidents made construction workers more 'death-prone' and vulnerable. At the Rohini Sector 18/19 construction site, construction workers, all migrants, had to work every day with no leave. Here and at other PWD sites we found routine non-payment of minimum wages, irregular payment of wages, lower wage for women, uncertain and long working hours, non-payment of overtime, and, as in the case of the AIIMS workers, complete neglect of safety provisions. Many workers did not have ESI cover, or PF; in some cases, deductions were made but no numbers given to workers. Workers had no identity cards or salary slips in some sites, and no labour inspections were made.

Both investigations showed that several labour laws, like Minimum Wages Act 1948, Contract Labour Act 1970, Payment of Wages Act 1936, Workmen's Compensation Act 1923, Inter-State Migrants Act 1979, BOCW Act 1996 etc. were continuously violated in the case of construction workers. These investigations also showed little possibility or evidence of workers' unionizing under these conditions.

One of the sources for the greater precarity of construction work is that they commonly live at worksites, thus ensuring tighter control by contractors. This was evident in the case of the Ahluwalia Labour Colony where the workers at the AIIMS and other sites stayed in 2016. At the PWD sites in 2017 most workers were found to be living within worksites, in temporary huts (5 feet high in one site) with no provision for toilets, bathing or drinking water and no space for cooking. These were blatant and consistent violations of law: under BOCW Act and Delhi Rules contractors are obliged to provide proper living facilities for workers.

The construction industry in India is well-known as the second largest provider of employment after agriculture – many workers migrate from agricultural labour seasonally to do it, while others come from often other kinds of informal urban employment. The vast majority join construction as 'unskilled' workers. Almost all are in contractual or casual employment. Even though the boom in construction work has been dipping, it continues to employ a significant component of the labour-force in India. In 2018 an estimated 6.2 crores were employed in construction, which fell to about 6 crores in 2019 (CMIE), and estimated 5.1 crores in 2020 (InvestIndia).

The particular vulnerability of construction workers was further revealed during COVID lockdown in 2020, as large number of those visible walking back to their villages were those whose projects shut, because of which they lost their work and dwellings. While Delhi and other cities have attempted to provide support to construction workers hard-hit by COVID'S economic fallout, the deep faultlines in the BOCW Act and its implementation have been exposed in the process. In Delhi construction workers need register themselves every year with the Board under the BOCW Act (based on an August 2015 order), fill an elaborate form, prove that they had been employed for 90 days in the year, get certification from their employers or union and submit documentary evidence of different kinds. Only upon completing this process they are entitled to benefits like safety at workplace, pension, maternity benefits, loans and other measures of economic and social security.

Given the nature of this process it is likely that most were not registered. Registration figures in fact show an alarming decline. In Delhi, 67,823 workers were registered in 2017-18, a mere 4925 in 2018-19, and 12212 in 2019-20, a fraction of the actual workforce engaged in construction. Through concerted efforts, responding to workers' distress and the need for labour in cities as lockdowns lifted, the Delhi High Court on 5 June 2020 directed Delhi BOCW Welfare Board to register workers for benefits. Till August 2020, the Delhi government claimed to have registered nearly 70000 construction workers in 2020 in the immediate aftermath of the lockdown. When the Delhi Government stated that it had registered 5,52,843 workers by 31.3.2020 it was referring to all those registered over the years.

Perhaps some workers will be benefitted by these measures – but past experience gives little hope. It shows chronic failure of implementation by institutions even where workers registered and protected by labour laws, as in the 2016 AIIMS construction site incident. A Supreme Court order of March 2018 revealed gross failure of all state/ UT Boards to use the Cess collected under the BOCW Act for workers' benefit.

The actual imbalance of power on the construction site between the construction workers and contractor/employer remains so acute that access to even basic labour rights was already particularly difficult for workers. The state's apathy towards implementation was consistently evident. The newly passed Labour Codes, implemented by the same institutions, offer little prospect of justice for construction workers.

ANNEXURE 2: Looking the Other Way: State Measures of Assistance in Pandemic in 2020

Between 13 and 17 May 2020, as the country reeled under the pandemic the government of India announced a mammoth package of Rs. 20 lakh crores, to be released in three tranches reportedly amounting to 10% of the country's GDP. This was the so-called 'Atma Nirbhar

Bharat Abhiyan.' A substantial section of this 'package' comprised fiscal measures which already made part of the Union budget for 2020-21 in order to check the pre-existing downward economic growth, unrelated to the pandemic. While there were some measures in the package to provide some relief to struggling Medium, Small and Micro Enterprises, there was little for the workers or the urban poor. 'Welfare' schemes announced under the Abhiyan were effectively in the form of promises which would only materialize in the future. For instance, the One Nation One Ration Card Scheme for a common ration card for migrant workers promised in the second tranche of Rs. 3,500 crores for 'migrants and street vendors,' would reach full implementation only by March 2021. [*On 29 June 2021 the Supreme Court found that 4 states had not yet implemented the ONORC Scheme, and gave the deadline of 31 July for the same. It is not yet clear till date if all states have implemented the order on paper, and on the ground. It must be noted that the ONORC scheme was an older one of 2019, to ensure portability of ration card across states, and this was adopted to implement the National Food Security Act of 2013.*]

In May 2020, the Union Government also announced that it would provide free supply of food grains for those without ration cards and not covered under Food Security Act under the Atma Nirbhar programme. Implementation, including identifying beneficiaries and distribution, was left to the state governments. In mid-June 2020 the Union Ministry announced that 26 lakh people had benefitted from the scheme, a figure woefully short of the 8 crore target. In fact, according to an IMF estimate, the Indian Government's COVID response fiscal stimulus package amounted to just 6.1% of its GDP (not the publicized '10%') with direct outflows amounting to only around 1% of the GDP (direct financial outflows are recorded to be as low as 0.8% by a NOMURA Asian Insights Report).

The announcement of relief to MSMEs hard-hit by the sudden closure was a step in the right direction. Many had been forced to shut down leaving their 11 crore workers unemployed. However, the government schemes were in the form of deferment of taxes and extensions of credit – of limited use when small entrepreneurs may not have collateral. Some measures meant to protect workers were unviable from the start – e.g., order of Ministry of Home Affairs on 29 March 2020 which directed employers in shops and factories to pay workers for the lockdown period or face penalties. As the lockdown extended indefinitely, the government withdrew this order on 18 May 2020 stating that it was against employers' interests. The interests of workers, their legal entitlement to wages for the 50 days between the two MHA orders, were clearly secondary for all state institutions. The Supreme Court in an interim order on 12 June 2020 (in response to factory owners declaring their inability to pay wages) declared that no coercive action could be taken against private establishments for violating the MHA order of 29 March. It ruled that all disputes and the issue of wages should be settled through negotiations between employers and employees and facilitated by the Labour Department, in order to 'restore a congenial work atmosphere.' The apex court's views echoed those of the Government of India,

represented by the Attorney General, in a hearing on 4 June 2020: "Government of India is interested in economy restarting, industries restarting. It is for employers to negotiate with employees as to how much wage could be paid for lockdown period, we will not interfere."

ANNEXURE 3: State's 'Package' for Workers?: Some instances of Pandemic-Time Orders, Notifications, Ordinances, Acts that Impact Labour

Compiled from Gazette Notifications of different governments

DATE OF NOTIFICATION/ ORDER	GOVERNMENT/STATE/UNION TERRITORY	IMPORTANT PROVISIONS OF NOTIFICATION/ORDER
11 April 2020	Rajasthan	Extension of working hours to 12 hours (Hrs) a day and 72 Hrs a week.
17 April 2020	Gujarat	Extension of working hours to 12 Hrs a day and 72 Hrs a week. Payment for overtime to be done at a proportional rate and not the double rate mandated by the Factories Act (valid for 3 months).
20 April 2020	Punjab	Extension of working hours to 12 Hrs a day and 72 Hrs a week (valid for 3 months).
20 April 2020	Uttar Pradesh	Exemption to all establishments, factories and businesses from the purview of all labour laws except for four labour laws for a period of three years. Working hours extended to 12 Hrs per day and 72 Hrs per week. Applicable to all factories. Overtime not required. No minimum wage as Minimum Wage Act not applicable.
21 April 2020	Himachal Pradesh	Extension of working hours to 12 Hrs a day and 72 Hrs a week (valid for 3 months).
24 April 2020	Madhya Pradesh	Extension of working hours to 12 Hrs a day and 72 Hrs a week (valid for 3 months).
28 April 2020	Uttarakhand	Extension of working hours to 11 Hrs a day and 66 Hrs a week (valid for 3 months).
29 April 2020	Haryana	Extension of working hours to 12 Hrs a day and 72 Hrs a week (valid for 2 months).
5 May 2020	Madhya Pradesh	Exemption to new manufacturing units from all, but some provisions, in the Factories Act, 1948 for the next 1000 days i.e., close to three years. Exemption to all units from Factories Act provisions for 3 months. Exemption from inspections of factories. Exemption from provisions of Industrial Disputes Act, Contract Labour Act etc.
5 May 2020	Uttarakhand	Modified the earlier order by extending the working hours to 12 Hrs a day and 72 Hrs a week for factories engaged in 'continuous' processes.
6 May 2020	Madhya Pradesh	The Madhya Pradesh Labour Laws (Amendment) Ordinance 2020 promulgated – further amendment of MP Industrial Employment (Standing Orders) Act, 1961 and MP Shram Kalyan Nidhi Adhiniyam, 1982.
8 May 2020	Gujarat	Exempts new industrial units in the manufacturing and service sector from all labour laws, except three basic acts-Minimum Wages Act,

		Industrial Safety Rules, Compensation Act, for 1,200 days.
7 May 2020	Goa	Order applicable to all departments-Work hours increased to 12 hours a day. Maximum weekly hours increased from 48 hours to 60 hours. OT required.
7 May 2020	Uttar Pradesh	The Uttar Pradesh (Temporary Exemption from Certain Labour Laws) Ordinance, 2020 passed. Various labour laws in the state suspended for 3 years (including Minimum Wages Act, Industrial Disputes Act, Factories Act among others. Only the Bonded Labour System (Abolition) Act, Building and Other Construction Workers Act, Sections of the Payment of Wages Act and Workmen's Compensation Act to remain in force.
8 May 2020	Uttar Pradesh	Exemption to all establishments, factories and businesses from the purview of all labour laws except for four labour laws for a period of three years. Working hours extended to 12 Hrs per day and 72 Hrs per week. Applicable to all factories. Overtime not required. (notification effective from 20 April to 19 July 2020)
8 May 2020	Gujarat	Exemption new industrial units in the manufacturing and service sector from all labour laws, except three basic acts-Minimum Wages Act, Industrial Safety Rules, Compensation Act, for 1,200 days. (Ordinance passed to this effect, sent for President's approval on 13 May 2020_
8 May 2020	Odisha	Applicable for three months. Daily working hours increased from 8 to 12. Maximum weekly hours from 48 to 72 hours. OT required.
8 May 2020	Assam	Applied to all factories for three months. Daily work hours increased to 12 hours a day. Weekly hours not specified. Overtime to be paid.
8 May 2020	Uttar Pradesh	Exemption to all establishments, factories and businesses from the purview of all labour laws except for four labour laws for a period of three years. Working hours extended to 12 Hrs per day and 72 Hrs per week. Applicable to all factories. Overtime not required. (notification effective from 20 April to 19 July 2020)
13 May 2020	Gujarat	Contract Labour (Regulation and Abolition) Act to establishments with 20 or more workers (instead of 10 or more as was followed in the state).
15 May 2020	Uttar Pradesh	Provision on increase in work hours (and notification of 8 May 2020) withdrawn
21 May 2020	Goa	Provision of Self-Certification Scheme for Factories (under Factories Act, 1948 and Goa Factories Rule, 1985) - Reduction of visits of Inspectors for inspection of factories. Scheme valid for five years. Similar scheme adopted for 'self-certification' of Boilers.
21 May 2020	Tripura	Working hours extended to 12 hours a day and 72 hours a week.
22 May 2020	Karnataka	Applies to all factories. Daily work hours increased to 10 hours. Weekly max increased to 60 hours. Order applicable till 21 August 2020.
24 May 2020	Rajasthan	Notification regarding extension of working hours (of 11 April 2020) withdrawn.
27 May 2020	Tripura	Applicability threshold of Contract Labour (regulation and Abolition) changed to now apply to establishments with 50 workers (instead of 20). Notification valid for 6 months.
3 June 2020	Chandigarh	Extension of working hours to 12 hours a day (valid for 3 months)
4 June 2020	Puducherry	Provision of Self-Certification cum Online Common Inspection

		Scheme for Shops and other Establishments.
11 June 2020	Karnataka	Provision regarding increase in work hours (order of 22 May) withdrawn.
26 June 2020	Goa	Passing of state Ordinance to increase applicability the Contract Labour (Regulation and Abolition) Amendment Act to establishments with 50 workers (instead of 20). Offending establishments permitted to compound offences- defaulting factories/owners permitted to admit their fault and be punished by fine.
30 June 2020	Karnataka	Introduction of 'fixed term workmen' under Karnataka Industrial Employment (Standing Orders) (Amendment) Rules, 2019 – employed for fixed period, given wages, hours, allowances, benefits like permanent workmen, but not entitled to any notice or pay in lieu of it, if services terminated upon term completion.
30 June 2020	Assam	Passing of state Ordinance amendment to Factories Act, 1948 – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20).
1 July 2020	Puducherry	Passing of Building and Construction Workers (Regulation of Employment and Conditions of Service Act), 1996 Amendment Rules 2020 – permitting employers to submit returns online. (including details of accidents, their consequences)
2 July 2020	Bihar	Passing of state Ordinance to amend Industrial Disputes Act and raise the limitation (for owners' liability on retrenchment or laying off workers) from industrial establishments employing 100 workers to 300 workers.
2 July 2020	Bihar	Passing of state Ordinance to amend the Factories Act, 1948 – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20).
2 July 2020	Bihar	Passing of state Ordinance to change applicability of Contract Labour (Regulation and Abolition) Amendment Act increased to only establishments with 50 or more workers (instead of 20).
3 July 2020	Gujarat	Passing of state Ordinance to amend clauses of the Industrial Disputes Act amended – the limitation (for owners' liability on retrenchment or laying off workers) raised from industrial establishments employing 100 workers to 300 workers.
3 July 2020	Gujarat	Passing of state Ordinance to amend Factories Act, 1948 – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20). Further a Section 106B is inserted allowing for 'compounding' of offence by defaulting factories/owners.
4 July 2020	Tripura	Exemption for 1000 days or till further notification to establishments or contractors from provisions of Contract Labour (Regulation and Abolition) Act, 1970 raised from 20 to 50 (i.e. the law will not apply to places with upto 50 workers).
8 July 2020	Chandigarh	Exemption to a wide range of Factories and Establishments from physical labour inspections under Labour Laws as part of Ease of Doing Business
9 July 2020	Himachal Pradesh	Passing of state Ordinance to amend the Factories Act, 1948 –

		applicability changed – to factories with 20 or more workers (power driven) and 40 or more workers (non-power)
9 July 2020	Himachal Pradesh	Passing of state Ordinance of amendment to Contract Labour (regulation and Abolition) Act to change its applicability to cover establishments with 30 workers (instead of 20).
9 July 2020	Himachal Pradesh	Passing of state ordinance amendment to the clauses of the Industrial Disputes Act - the limitation (for owners' liability on retrenchment or laying off workers) raised from industrial establishments employing 100 workers to 200 workers. Strikes prohibited in public and non-public utility services.
10 July 2020	Goa	Passing of state Ordinance - the Goa Amendment to the Factories Act, 1948 – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20).
14 July 2020	Telangana	Application of Computerised system of Risk Assessment based inspections scheme to 13 labour laws in the state; exemption from compliance to this to wide range of establishments.
20 July 2020	Gujarat	Further extension of 17 April 2020 order extending working hours – till 19 October 2020.
20 July 2020	Haryana	Passing of the Factories (Haryana Amendment) Act, 1948 – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20). Further a Section 106B is inserted allowing for 'compounding' of offence by defaulting factories/owners.
20 July 2020	Gujarat	Passing of state Ordinance amendment of Contract Labour (Regulation and Abolition) Act to increase its applicability to establishments with 50 workers (instead of 20).
23 July 2020	Dadra, Nagar Haveli	Extension of working hours to 12 hours a day (13 hours with rest and intervals), and not more than 60 hours a week. Overtime not more than 7 days at a stretch, and not more than 75 hours in a quarter. (effective for 2 months from date of order)
30 July 2020	Himachal Pradesh	Governor's Order for online automatic non-discretionary deemed renewal of registration/licence under Factories Act, Contract Labour Act, HP Shops and Establishments Act and Inter State Migrant Workmen Act.
31 July 2020	Karnataka	Passing of Industrial Disputes and Certain other laws (Karnataka Amendment) Ordinance, 2020 – to amend ID Act and Contract Labour Act to boost ease of doing business. Applicability of ID Act raised to 300, Factories Act applicability raised to units with twenty or more workers (power based) and 40 or more (non-power) – instead of 10 and 20 previously. Contract labour Act applicability raised to units with 50 or more workers (instead of 20).
6 August 2020	Punjab	Exemption to industrial establishments engaged in continuous processes from provisions of Punjab Industrial Establishment (National and Festival Holidays and Casual and Sick Leave) Act, 1965.
8 August	Assam	Extension of working hours to 12 (13 including rest periods), total

2020		hours not extending 60 per week – in tea factories due to peak season. Order effective for 3 months.
11 August 2020	Punjab	Passing in Assembly of Industrial Disputes (Punjab Amendment) Ordinance, 2020 – to amend ID Act. Applicability of ID Act raised to 300, Factories Act applicability raised to units with twenty or more workers (power based) and 40 or more (non-power) – instead of 10 and 20 previously. Contract labour Act applicability raised to units with 50 or more workers (instead of 20).
11 August 2020	Punjab	Passing of state Ordinance amendment to the Contract Labour (Regulation and Abolition) Act – to increase its applicability to establishments with 50 workers (instead of 20).
13 August 2020	Himachal Pradesh	Further extension for 3 months of notification of extension of working hours.
20 August 2020	Madhya Pradesh	Passing of Labour Laws (Madhya Pradesh Amendment) Ordinance 2020 – applicability of Factories Act 1948 raised to establishments with 50 or more workers (from 10 or more). Contract Labour (Regulation and Abolition) Act 1970 amended and applicability restricted to establishments with 50 or more workmen (from 20 or more).
24 September 2020	Punjab	Passing of the Factories (Punjab Amendment) Ordinance 2020 - the Factories Act, 1948 amended – applicability changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20), along with other clauses.
14 September 2020	Goa	The Contract Labour (Goa) Ordinance of June 2020 repealed and the same passed in Assembly as Contract Labour (R&A) (Goa) Amendment Act, 2020.
14 September 2020	Himachal Pradesh	Passing of the Contract Labour (R&A) (Himachal Pradesh) Amendment Act, 2020 in Assembly after repeal of the Contract Labour (Himachal Pradesh) Ordinance of July 2020
9 September 2020	Himachal Pradesh	Approval in Legislature of Amendment to Industrial Employment (Standing Orders) Himachal Pradesh Rules 1973 with provision for "fixed term employment" as a category.
9 September 2020	Himachal Pradesh	Passing of Industrial Disputes (Himachal Pradesh Amendment) Act 2020 in Assembly after repeal of Industrial Disputes (Himachal Pradesh) Ordinance of July 2020.
9 September 2020	Himachal Pradesh	Passing of Factories (Himachal Pradesh Amendment) Act 2020 –to replace the Ordinance of July 2020 – change in applicability of the Act to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20) among other clauses. Provision also for compounding of offences of different kinds by employers.
14 September 2020	Goa	Passing in Assembly of the Contract Labour (R&A) (Goa) Amendment Act, 2020 to replace the Contract Labour (Goa) Ordinance of June 2020
14 September 2020	Himachal Pradesh	Passing of the Contract Labour (R&A) (Himachal Pradesh) Amendment Act, 2020 in the Assembly after repealing the Ordinance of July 2020.
24 September 2020	Punjab	Passing of the Factories (Punjab Amendment) Ordinance 2020 changing applicability of the Factories Act, 1948– to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20), along with other clauses.

29 September 2020	Telangana	Provision for automatic non-discretionary deemed renewal of license through online system under the Contract Labour Act, and exemption to employers.
28 September 2020	Rajasthan	Provision for Online Auto Renewal of Licences of Factories –under the Factories Act 1948, clause 6 and the Rajasthan Factories Rules 1951, Rule 7.
26 September 2020	Karnataka	Provision for Online Auto-renewal of Licences etc. - the renewal procedures of Certificates/ Registrations/ Licences (under Contract Labour Act, Inter State Migrant Workmen Act, Factories Act) for establishments.
24 September 2020	Goa	Passing of the Industrial Disputes (Goa Amendment) Act 2020, to replace the Ordinance passed in July 2020- raising limitation (for owners' liability on retrenchment or laying off workers) from industrial establishments employing 100 workers to 300 workers. Exemption to new industries are exempted from ID Act for 1000 days. Provision for compounding of violations committed by employers.
24 September 2020	Goa	Passing of The Factories (Goa Amendment) Act 2020 - replacing the Ordinance of July 2020 – changes the applicability of the Act to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20) among other clauses
1 October 2020	Punjab	Passing of Contract Labour (R&A) (Punjab) Amendment Act, 2020 passed after repeal of Contract Labour (Punjab) Ordinance of August 2020.
1 October 2020	Punjab	Passing of Industrial Disputes (Punjab Amendment) Act 2020 passed after repeal of Industrial Disputes (Punjab) Ordinance of August 2020.
14 October 2020	Himachal Pradesh	Notification of Rules for ease of compliance for maintaining registers under various labour laws – eg the BOCW Act, the Contract Labour Regulation and Abolition Act, the Inter-State Migrant Workmen Act, Minimum Wages Act, Payment of Wages Act.
14 October 2020	Meghalaya	Provision of Online inspection scheme - 'Central Inspection System' to cover all major labour laws. Provision for online compliance. 'High risk' establishments to be inspected once a year, new startups and family run units exempted altogether from inspection for 5 years.
20 October 2020	UP	Exemption to the Factories Act through passing of the Factories (UP Amendment) Act 2020. Exemption to be temporary.
21 October 2020	Odisha	Passing of Contract Labour (R&A) (Odisha Amendment) Ordinance 2020 - Section 1 of the Contract Labour (R&A) Act 1970 amended increasing the threshold from 20 to 50 within the state.
21 October 2020	Haryana	Provision of online renewal of licences under various labour laws like Contract Labour (R&ECS) Ac, Inter-State Migrant Workmen Act etc.
22 October 2020	Rajasthan	Provision of online Auto Renewal of Contractors' licence to hire contract labour under the Contract Labour Act 1970.
23 October 2020	Haryana	Provision of auto renewal of factory licences for 5 or 10 years at a time.
9 November 2020	Punjab	Passing of The Factories (Punjab Amendment) Act 2020 to replace the Ordinance of September 2020 –applicability of the Act changed to cover factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20) among other clauses. Provision also for compounding of offences by employers.

18 November 2020	Madhya Pradesh	Passing of Amendment to MP Factories Rules – Provision for appointment of Third Party Certifier for safety standards, based on online applications. The duration of the certificate of recognition given to the certifier is variable.
18 November 2020	Bihar	Passing in Assembly of Industrial Disputes (Bihar Amendment) Act 2020 repealing Ordinance. Owners' liability on retrenchment raised and exemption to new establishments from the provisions of the ID Act for 1000 days from date of establishment.
18 November 2020	Bihar	Passing in Assembly of Amendment to Factories Act (Bihar) 2020 after repealing July Ordinance-– applicability of Factories Act 1948 changed – to factories with 20 or more workers (power driven – previously 10) and 40 or more workers (non-power – previously 20).
18 November 2020	Bihar	Passing in Assembly of Contract Labour (R&A) (Bihar) Amendment Act, 2020 passed after repeal of Contract Labour (Bihar) Ordinance of July 2020
1 December 2020	West Bengal	Notification by Governor of the Non-discretionary auto-renewal of licences To "rationalise compliance burden on business to improve ease of business" Governor introduces the "non-discretionary auto renewal" of licences (based on self-certification) under The Factories Act 1948 and for contractors under The Contract Labour (R&A) Act, and for under the Inter-State Migrant Workmen (RE&CS) Act, 1979.
3 December 2020	Andhra Pradesh	Introduction of Self-Compliance Certification instead of Inspections under Factories Act 1948 (AP Amendment)- The Scheme of Self-Certification/Third Party Certification of compliance to replace departmental inspection – no regular inspections except in case of accidents or complaints etc.
7 December 2020	Andhra Pradesh	Provision for maintenance of online registers and records for various labour laws
17 December 2020	Goa	Provision for online renewal of Licences - under Shops and establishments Act, Contract Labour Act, Inter-State Migrant Workmen Act etc.
22 December 2020	Meghalaya	Provision for online renewal of licences including online auto-renewal of Factory Licences.
22 December 2020	Goa	Provision for online auto-renewal of factory licences.
5 January 2021	Puducherry	Provision for Self-Certification-cum-Online Common Inspection Scheme - inspections under various labour laws (from Equal Remuneration Act, Contract Labour (Regulation and Abolition Act etc.) to take place only in case of complaints with permission from Labour Commissioner
11 January 2021	UP	Provision for central inspection scheme under various labour laws in UP - including the Equal Remuneration Law, Payment of Wages Law, Factories Act and several others – Valid for 3 years .
12 January 2021	Assam	Provision for auto Renewal Scheme for Licenses to factories/units under Labour Laws through online application and self-declaration of owners.
28 January 2021	Haryana	Provision for Online services to investors – Services like Registration of factories, licensing of contractors, renewal under the BOCW Act, Registration of the Inter State Migrant Workmen Act, Renewal/registration under the Contract Labour Act - through the

		Haryana Single Window System. Provision of third party verification of approval/licences/registration on Labour Dept Website.
1 February 2021	Central Govt.	Provision of Employees' Provident Fund Organisation Unified Portal for Principal Employers to view EPF compliances of their Contractors/contract workers – Principal employers can view compliance by their contractors and employees online.
12 February 2021	Andhra Pradesh	Provision of online acceptance of Integrated Annual Returns and extension of deadline for filing returns.
15 February 2021	Telangana	Exemption from applicability of certain provisions of labour laws Shops and Establishments (including certain provisions like - Sections of Acts like S. 36 of Telangana Labour Welfare Fund Act, or Section 31 of the Contract Labour Act or Section 31 Interstate migrant workers Act etc.) Also, provision for self-certification for compliance to be taken by factory owners.
26 February 2021	Puducherry	Passing of Amendment to Puducherry Factories Rules - Licences granted under this rule valid for 10 years or more. Registration and Renewal to be done online.
20 February 2021	Telangana	Exemption from inspection (except in case of accidents) to companies/factories on the basis of online Self-Certification/ Third Party Certification from provisions under Factories Act 1948 and Telangana Factories Rules 1950.
4 March 2021	Rajasthan	Provision for Third Party Certification Scheme under Labour Laws –18 Labour Laws including 'Contract Labour Act', 'Industrial Disputes Act', 'Equal Wages Act', 'Workmen's Compensation Act' etc. covered.
23 March 2021	Rajasthan	Introduction of Rajasthan Third Party Building & Other Construction Workers Establishment Inspection Scheme —for provisions regarding health and safety for registered establishments under the BOCW Act 1996.
6 May 2021	Himachal Pradesh	Extension of working hours to 12 per day (72 per week) Valid till 20 June 2021.
7 May 2021	Telangana	Extension of dates for furnishing of integrated returns under various Labour Laws – in view of Covid 2nd wave - employers given time till 30/6/21 to submit returns of compliance under various labour laws (Contract Labour Act, Inter State Migrant workers Act, Minimum Wages Act, etc.)
24 May 2021	Maharashtra	Extension of Working hours were raised to 12 per day in all factories. Valid till 30 June 2021.
25 May 2021	Uttarakhand	Extension of working hours in factories supplying 'Essential Commodities' and 'medicines' to 12 hours a day. Valid for 60 days.

ANNEXURE 4: Fact-findings into fires in two factories in 2019 in the designated Industrial Areas of Narela and Bawana

"*With the onerous responsibility of fulfilling the dreams of industrial entrepreneurs of Delhi, relocation of industries has been the prime concern of DSIIDC. Under the directions of Hon'ble*

Supreme Court, the Commissioner of Industries, Govt. of Delhi had formulated the scheme of "Relocation of Industries" in the year 1996. The rationale of the scheme is to reposition and manage the operation and maintenance of industrial units working in the non-conforming/residential areas of Delhi to conforming areas in NCT of Delhi.

DSIIDC has taken significant steps poised to overhaul and bring about a holistic transformation in the flourishing capital. Dreams have been realized and lives positively impacted through diverse projects which are at various stages of commencement and/or execution."

- http://www.dsiidc.org/relocation-industry

In pursuit of these multiple aims the Govt. relocated industries to Narela, Jhilmil, Badli, Bawana among others. The Supreme Court of India in its order dated 19.04.1996 in I.A. No. 22 in Civil Writ Petition No. 4677 85 *M.C. Mehta* vs. *Union of India* and others has observed that under the Master Plan of Delhi-20001, non-residential activities in the residential premises are permitted only under certain conditions as laid down in Master Plan. Between 1996 when the scheme began, and 2016, of 51,858 entrepreneurs who applied for plots and flatted units only 27,984 were declared eligible and allocated plots ranging from 28 to 250 square metres (sq.m.) in Bawana I and II, Narela, Jhilmil, Okhla, Badli, Patparganj etc. The largest number (nearly half) of the applications were for plots of 100 sq.m., and the next for plots between 100- 200 sq.m. Together these account 40% of the plots. Delhi's first relocation scheme was officially concluded in 2016 with the last 77 plots allotted at a cost of about Rs. 23 lakhs. Units of less than 100 sq.m. were to be flatted and did not require a license, unless they use hazardous substances in the production process.

Both Narela and Bawana are therefore planned industrial zones, meant to counteract the mushrooming of factories /production units in residential areas. These were the "conforming zones". Posited as model zones for the growth of industry and workers' well-being, logically all the Labour Laws of the country should have been enforced here. However, in practice this is far from the case as two fact-findings into factory fires showed. The focus here is on factory fires and their interrelations with workers' lives.

Narela Industrial Area

The Narela Industrial Complex came up under two schemes: one, the Narela scheme of 1978 and the Narela Industrial Complex Relocation Scheme of 1996. In 2011 as per a DSIIDC report only 56% of the units allocated under the Relocation Scheme were functional. At present visibly many units are non-operational and other plots have turned into rubbish dumps.

A fire broke out in the early hours of 19 February 2019 in F-1763, Narela Industrial Area. Plastic and rubber chappals are manufactured in the unit which is owned by Ankur Goel. Plastic, rubber, chemicals all are highly inflammable. Bablu Mahto, a 28 year old migrant

worker from Bihar was killed in the fire and eight other workers were injured. The immediate cause of the fire was allegedly sparking in an exhaust fan. Work was going on in the factory at the time of the accident. Bablu was sleeping in the basement. The fire brigade reached at 2.40 am. The scale of the fire was such that it took almost nine hours to extinguish. Bablu's body was discovered buried under the debris only on 20 afternoon when the rubble was cleared.

Casualties would have been higher but for the fact that the factory had a guard (chowkidar). He opened the main factory gate in time. We learnt from the chowkidar's two small children who live on the second floor of the building that their father brought them downstairs and then to safety through the large front gate. The chowkidar's vigilance and promptness made the difference between life and death. Bablu however could not escape as he got trapped in the basement.

When our team first visited the site on 9 March 2019, twenty days after the incident, the factory was sealed. On our second visit to the site on 16 March, the gate was open, electricity had been restored and production had restarted, less than a month after the fire. The question is that had the safety requirements been met within the month and the unit given a fire NOC? The malik (owner) was present on the premises. Clearly, he had got bail. The chowkidar's family was still there. Seeing the children speaking to us from the threshold of the small gate the owner instructed that it be shut. Even after the fire the administration saw no reason to enforce the laws on industrial safety, not to speak of fixing criminal liability. While it is uncertain whether and what compensation was paid, there is no doubt that production did not suffer.

FIR No.89/19 was registered at PS Narela Industrial Area under Sections 285 and 304A IPC (negligent conduct with respect to fire or combustible material, causing death). The punishment for S.285 IPC is imprisonment for 6 months and fine of Rs. 1000. S.304 (Causing death by negligence not amounting to culpable homicide) has a maximum punishment of 2 years and a fine. Bail is quick. Procedurally factories are sealed after fires and owners have to pay compensation to the workers. The general practice is that no such compensation is given, though it is not known whether Bablu's family received any compensation.

At 350 sq.m., F-1763 is one of the larger plots in Narela. Like other factories in that lane, it has 3 storeys. Ankur Goyal's chappal factory ran in the basement. Other factories with different maliks operate on the ground, first and second floors. We found that F-1763 had just one gate which serves as both entrance and exit, with a smaller door set into it. Workers use the hatch/ smaller door, and the large gate is opened only when raw materials and chemicals are brought in, or the finished products loaded.

Our fact-finding revealed that at the time of the fire in 2019, the building at F-1763 had no separate exit door, in direct violation of safety requirements mandated by the Department of Fire Services for getting an NOC necessary for getting a license. These include requirements such as separate and clear means of exit (which means separate entrance and exit doors), fire escapes, fire extingishers, hoses etc. Separate entrance and exit doors in F block are a structural

impossibility as the factories are constructed back to back and contiguously with units on either side. The lack of gaps between factories makes the possibility of fires spreading to adjoining units very high. Nor is there space for fire brigades to approach the buildings except from the front thus seriously hampering rescue work.

We learnt from firemen in Narela that on an average there were 50 fires per month in the industrial units (this is apart from the large number of fires in the local bastis). Given the kachcha connections, wires hanging loose, uncovered electric transformers, plastic and other waste materials as well as empty containers which had contained chemicals, this is not surprising. Plastic, rubber and chemicals used for making the chappals are highly combustible materials. These conditions violate the stipulations regarding safety, safe working conditions, hazardous materials and so on under the Factories Act, 1948 and Delhi Factories Rules. The other units manufacture PVC pipes, rubber sheets, jeans etc. Chemicals are used in all these products. The firemen assumed that F-1763 like a large number factories in the area did not have the mandatory No Objection Certificate (NOC) from the fire department. The possession of such documents was an exception and not the rule. Most fires apparently start in the basement because the raw material, chemicals are stored there. The incidence of fires is higher in winter, because workers smoke beedis and light small fires to keep out the cold.

According to workers from a jeans unit in the same lane their malik ran four units, against one license. The jeans unit was illegal because there was no license to run it. Under the Delhi Factories Act, 1948, there is no requirement for *suo moto* inspections. Inspections are to be carried out only in cases of a complaint from workers or trade unions about violations of safety norms, irregularities in compliances, and have to be authorised by a competent authority. Workers from the jeans factory reported that on the rare occasions that factory inspectors visited to investigate a complaint, owners paid them off. In the case of the jeans unit on one occasion, the manufacturer locked the gate from outside and claimed that the unit was not operational, all the while work was going on inside. These are routine practices in the area. This means that if a fire breaks out in these units which do not exist on paper, fixing accountability is near impossible. The discrepancy between the number of licences and actual number of units means that there is no way of ascertaining the number of units, and who is operating these.

Bawana Industrial Area.

On 15 February. 2019 there was an explosion following which a fire broke out in a nail-polish unit in Bawana on plot no. E-236 Sector 4, DSIIDC, Bawana. Nine workers were injured. There were no deaths. There was an explosion on the second floor, possibly caused by a short circuit. The strength of the blast was such that the side wall had been completely destroyed, the walls were black with soot, fans twisted completely out of shape, huge cracks running down the remaining inside walls, chunks of concrete hanging precariously from the ceiling ready to crash down. The factory was a corner plot so it could be accessed from one side and the front. On that

side the blast had thrown large canisters some distance from the factory and shards from hundreds of shattered nail polish bottles were scattered around.

When we visited in early March the factory was sealed and appeared deserted, though we learnt later that at least three of the injured workers were back. The front was covered by tarpaulin. Presumably some repairs were being carried out behind these. Rubble surrounded the factory. It seemed a miracle that only nine workers were injured and no one died. They sustained 20-40% chemical burns. The MLCs also record other injuries such as abrasions and puncture wounds on face, neck, hands and feet. In at least one case a worker suffered a cut on his head. One of them suffered a leg fracture. Redness of eyes, and in one case inability to open the right eye were recorded. According to workers from nearby factories, the nine were rescued in the nick of time by workers in the adjoining factory who pulled them up over a common wall when the fire broke out.

All the injured were in their twenties- the eldest 29 and youngest 20. The only address on the Medico-Legal Certificates (MLCs) of all nine is that of the factory. They were both working and living on the premises. This saved them rental and transport costs. Two of them named Honey, the owner, under relative or friend. Besides, the good offices of the owner were the road for getting employment for other family members in the same unit. Three of those injured were brothers – Ravi, Pappu and Chhotu- aged 25, 23, 20. One had come to the city and then called the others. The FIR was based on one of their statements. The three brothers were back at the factory soon after the incident. Over the phone, someone who claimed to having been there, praised the owner saying that he was the one who took them to hospital.

The complainant changed his statement before the Magistrate, thus allowing the owner to get bail. Given the circumstances where these workers were doubly dependent on the owner, for work and shelter, this was not surprising. On the grounds that the chemical was not known the police had made a case under the Explosives Act under which bail is difficult. Moreover, Honey claimed that he was running the factory for his aunt and that she was principal employer. According to the Investigating Officer, the ambiguity between owner, lease-holder, operator/producer was frequently used by maliks to get bail. The lack of paperwork make the police’s job that much more difficult in the case of fires and accidents.

Work, shelter and safety

In both incidents the workers were living on the factory premises. This is a routine practice amongst migrant labour so as to save on rent and transport. In both areas, there were workers occupying the topmost floor. Some families also live on the premises though these are usually of supervisors, or the chowkidar in the Narela unit fire we investigated, who could afford to bring them to the city. It is a common practice for owners to lock workers in when they leave for the night because of the fear that workers living on the premises will steal goods. The ‘precautions’ extend to shutting off all the exits with locked iron grills. While this guards the owners against loss of property, it increases the likelihood of death and injury to workers in

conditions where fires are an everyday hazard. Firemen at Bawana mentioned one incident where a very large number of workers burnt to death because the factory where they lived had thick iron grill work. The firemen found them charred to death near the entrance which was locked. The workers even called their families back home in desperation. The story of the fire in Narela's F-1763 might have been the same but for the crucial presence of the chowkidar. The difference between life and death for workers can rest on whether the employer decides to pay a chowkidar's salary.

ANNEXURE 5: Ground Reality of Labour Rights: Kundli 2021

Kundli Industrial Area, Haryana, shot into limelight in early 2020 following the arrest of labour activists Nodeep Kaur and Shiv Kumar on 12 and 16 January 2021. PUDR carried out a limited investigation into the incident of arrests, detention and violence in police custody faced by both labour activists, as well as the especially brutal custodial torture and illegal detention of Shiv Kumar. There were extensive revealing reports in the press about these, as well as the context of their arrests and the struggles of workers in the area– the following account has been compiled from all these. The events that transpired in Kundli in late 2020- early 2021 reveal the ground reality of labour laws and the fight for legally guaranteed labour rights.

Workers' Struggle at Kundli after Pandemic-lockdown: Mazdoor Adhikar Sangathan and the Issue of Workers' Pending Wages

Both Nodeep and Shiv Kumar had been working with an organization called 'Mazdoor Adhikar Sangathan' (MAS)– an informal workers' collective that had been working in Kundli since about 2016, and more active since 2018. It is important to note that there were apparently no other active workers' organizations or unions in Kundli in the last few years, even though the area has several thousand small and big units, and over a lakh workers. On the other hand the Kundli Industries Association (KIA) a private organization of industrialists to defend their interests has existed since 1990.

MAS has been trying to raise issues of implementation of labour laws, minimum wages and equal wages, regular leave, arbitrary salary deduction, denial of PF, payment of compensation for accidents, contractors retaining large part of the workers' wages, etc. – i.e., all rampant problems faced by workers in Kundli. They have also been demanding that a foot over-bridge be constructed for the workers who have to cross the highway to reach the Kundli Industrial Area, from the two major localities in Kundli, Prem Colony and Chauhan Colony where most workers stay. The Union has not been able to get registered despite efforts.

Following the pandemic related lockdown and the later reopening of factories the vast majority of migrant workers (mostly from UP and Bihar) in the area, began to face a new problem, with which MAS decided to help. Many of these workers had migrated to their home states and

villages after the lockdown in March 2020, and the abrupt closing down of factory production, and of companies. Many of them had not been paid before the lockdown. When they returned after the unlockdown and reopening of factories/companies in Kundli in late 2020, some workers got back their old jobs after effort but were not paid their pending wages from the weeks and month before the lockdown, due for several months by this time. Despite repeatedly asking managements and contractors they could not secure the same.

At this time, from 26 November 2020, farmers' protests against the unjust Farm Laws began at Singhu border adjacent to Kundli Industrial Area and on 2 December 2020 MAS led a large group of workers to Singhu to show solidarity with the farmers. MAS also set up a tent at the protest site and workers began to regularly come there. Realising that many workers were struggling to secure their pending wages, rightfully due to them, MAS put up a notice on their tent asking workers who had not been given the pending wages by company owners/contractors to contact them. MAS leaders then tried to help the workers by issuing each worker a letter on the letterhead of the organization indicating the amount due to him or her and asking the company to pay the same. Workers approached their companies with these letters and some companies responded by paying them the dues. In cases where companies refused, MAS members accompanied the workers to meet the owners and contractors, to collectively and peacefully demand workers' legally guaranteed right to wages. Farmers who came to know of the workers' issues, accompanied them in these demonstrations. By the end of December 2020, according to a MAS member, they had succeeded in getting more than 2 lakh rupees of pending wages for different workers by these methods. Many workers working in different small and medium units that comprised Kundli Industrial Area came to know of and support the organization during this struggle, as one that was fighting for their rights in this time of crisis.

Business as Usual: Response of the Kundli Industries Association response – crackdown by Quick Response Team and Police

For the KIA, the workers' collectively demanding their pending wages was 'excessive' (even though some companies did respond to workers' legitimate demands, and paid the dues). They responded to the MAS letters and workers' demands by sending their own private security personnel, bouncers in the so called 'Quick Response Team' (QRT) of the KIA to prevent and counter the workers aggressively. In a situation where workers and MAS members had been prevented from even distributing leaflets for May Day celebrations in the area or organizing themselves actively, their demanding and getting their legal pending wages was treated as extreme by companies.

It was on 28 December 2020, when the workers and MAS members went to various factories/companies to demand various sums of money (ranging from Rs. 6500 to Rs. 9000) not paid to individual workers in each factory, after a few companies paid the amount, the management of one company summoned the QRT of KIA to disperse workers. The QRT

arrived and attacked workers, and one QRT member was seen firing a gun at workers. The police reportedly watched all this but later refused to register workers' complaint against the QRT for firing live bullets. They instead lodged an FIR against the workers (FIR no. 649/2020, Kundli PS) maligning them and MAS members with allegations of extortion (Ss. 148/149/323/384/506 IPC) acting at the behest of the company managements.

Again on 12 January 2021, on another such procession after one factory agreed to pay the pending dues, the management at another company refused to pay pending wages owed to a worker (a sum of Rs. 5000 was due to one worker of the factory). The workers started protesting outside, and the company summoned the QRT and the police. The latter lathi-charged the workers, abused and man-handled the female workers, and arrested Nodeep Kaur, under FIR Nos. 25 and 26 of 2021, Kundli PS. Shiv Kumar who was arrested later and severely tortured was also arrested under these three FIRs, under sections 148, 149, 186, 332, 353, 384, 379B (Snatching after preparation made for causing death, hurt or restraint in order to the committing of snatching) and 307 (Attempt to murder). The nature of the injuries suffered by Shiv Kumar which showed up in a medical examination on 22 February 2021, weeks after being inflicted include blunt force and grievous injuries (such as "right foot swelling" which showed a large "blackish discolouration area" and toe nails that were blue and tender, among others). It is shocking that Shiv Kumar had been presented in court after such torture and even though he was visibly injured and in pain, the magistrate had remanded him to judicial custody on 2 February and no proper medical examination was conducted to record his injuries. It was only because of a High Court ordered medical examination (following a petition by him and lawyers) that this torture came to light.

Till date there is no information about action being taken against the police who inflicted this torture. For the KIA Nodeep, Shiv Kumar and other workers with MAS were supposedly carrying out 'ugar pradarshan' and their representatives have stated that these workers are 'anti-nationals'. The aggression of the QRT has not been anywhere recorded in police records.

What was the crime that Nodeep, Shiv Kumar, and MAS members and workers in Kundli really guilty of? Has there been a fair investigation of this, and could a fair investigation be expected from the police who are guilty of such crimes themselves?

The police's blatant bias and active complicity with the companies, with the QRT and the KIA is visible – their common objective is to set an example to all workers, to crush labour organization of any kind, including workers' demand for their basic legal rights. The fact that the owners/managements of companies were committing a crime by denying workers their basic labour rights and refusing to pay them for work they had already done several months previously is also equally clear. The silence of the Labour Department and the targeted violence on worker-activists and leaders leaves no doubt about the state's complicity with business. At present, even though Nodeep and Shiv Kumar have got bail, the police action against them

earlier in the year seems to have achieved its purpose – of deterring labour organisations, and preventing workers from demanding their basic democratic rights.

These developments at Kundli serve as an example of the very real imbalance of power on the ground that already exists between workers and companies, ‘business’ and ‘labour’ in industrial areas in parts of the country, even before the full implementation of the Labour Codes. They also illustrate the degree of pro-capital bias of the police and state agencies, institutions which are, ironically, entrusted with the work of protecting all citizens, including workers.