

# Legal Challenges in Addressing Emerging Occupational Hazards

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## ABSTRACT

Unpaid labour, also known as "invisible labour," is a significant issue in India, with 90% of this work being performed for no compensation, such as childcare, housework, and elder care. The National Statistical Office's first Time Use Survey (TUS) revealed that 38.2% of people aged six or older were working or performing related activities in India. In this group, females were more likely to provide unpaid domestic assistance than males, with a higher percentage of females in rural areas. The COVID-19 pandemic has had severe impacts on the lives of migrants, particularly those who have relocated from one country to another. The COVID-19 pandemic has led to the closure of schools, workplaces, and transportation facilities, forcing many migrants to return home with their families. The Code on Work Related Security, Wellbeing, and Working Conditions, 2020, defines inter-state transient labourers as those who have been hired by an employer or temporary worker for working in another state and receive compensation within the maximum amount allowed by the central government. The Niti Aayog's draft on Vagrant Work Approach aims to better recognize migrants' commitment to the economy and support them in their efforts. It proposes a modern National Movement Approach and the establishment of a unique unit within the Work Service to work closely with other services, aiming to provide a comprehensive understanding of the causes and impacts of relocation and the necessary interventions.

**Keywords:** Invisible labour, COVID-19, Migrant workers, Niti Aayog's draft.

## INTRODUCTION

Nobility of work has to be our national obligation, it has to be a portion of our nature. The labourers and workers are that portion of our society that makes a difference in actualizing the extraordinary thoughts born out of the minds of prodigies. We tend to put such virtuosos on a platform and compensate them with status and cash. The specialists who work behind the scenes are regularly overlooked almost. Their rights, respect, the standard of living, and indeed a way better work environment, which are crucial for a human being to survive, are frequently disregarded. After Freedom till date, the work laws in India have spun around the rights and benefits for the specialists whereas barring the administrative level workers. However, after nearly 75 a long time, the labourers still confront abuse at the hands of the bosses. The Government with bona fide eagerly has attempted to cover most of the requests of the specialists, all these a long time, whereas planning and drafting numerous work laws but still at ground level, their negligible execution is a matter of concern. The unused work codes have attempted to cover most perspectives but still, challenges win. Moreover, their usage is to be seen, since the Middle and the states have to work together, surrounding rules in similarity and executing the codes in their genuine soul. In this unused period, unused concepts have come around such as the gig economy, stage specialists, consultants, etc. In

such cases, there is no contract with the manager and the conventional employer-employee relationship is bypassed making it outlandish for the labourers to get any cure, in the case of a debate or abuse, against the boss. On the other hand, the imperceptible work and sex imbalance still win which is a matter of concern since it influences the development of our economy and, most imperatively, influences the lives of ladies who endure and are constrained to live undignified lives. The requirement of the hour is to see after the rights of the interstate vagrant workers, who are influenced by the COVID-19 widespread. Most of them misplaced their employments, their homes and are constrained to move back to their towns since they have no other choice. In this exposition, we will briefly talk about the modern work codes and their issues; the challenges confronted by the chaotic, gig and stage specialists; the winning undetectable work and the sex imbalances; the conditions of the interstate vagrant labourers and the suggestion of COVID-19 on their lives and, at long last, concluding with the challenges which the current work laws will confront in the future.

## **THE NEW INDIAN LABOUR LEGISLATIONS**

### **CODE ON WAGES, 2019**

Code on Compensation which was passed in the year 2019 supplanted four laws. The laws which got supplanted are, the Least Compensation Act, 1948, the Rise to Compensation Act, 1976, the Instalment of Compensation Act, 1936, and the Instalment of Reward Act, 1965. This Act was presented to revise and solidify the laws relating to compensation and rewards and things associated with them.

Some issues concerned with the Code on Compensation are:-

1. The state governments are not permitted to settle the least compensation underneath the floor cost. The issue is that all the state governments settle their least compensation over the official floor cost as it were. Or maybe than settling an authoritative floor wage, the government ought to settle an authoritative least wage rate so that there is no double wage rate.
2. Section 45 of the code states that any debate emerging will be listened and decided by a Gazetted Officer. It is a matter of concern that the officers will listen complicated questions of law without having a lawful acumen.
3. A modern arrangement has been presented by means of Segment 52 of the Code which states that the control to force a punishment will be with an officer who is not underneath the rank of a secretary, in the put of a legal judge. This segment abuses Article 50 of the structure which requests a division of legal from the executive<sup>1</sup>.
1. 4. Section 56 of the Code too exempts managers from correctional arrangements if they are able "to demonstrate that they had utilized due constancy in implementing the execution of the Code, and it was the other individual who had committed the offense without his information, assent or conspiracy".

### **CODE ON SOCIAL SECURITY, 2020**

Social security is a human right that reacts to the all-inclusive requirement for assurance against certain life dangers and social needs. Viable social security frameworks ensure pay security and wellbeing assurance, subsequently contributing to the anticipation and diminishment of destitution and imbalance, and the advancement of social consideration and human dignity. The Code on Social Security is an Act

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<sup>1</sup> R. Silva, M. Humblet, 'Standards for the XXIst century: Social security', (Geneva, ILO, 2002)

which alters and solidifies the laws relating to social security and amplifies social security to all workers and specialists either in the composed, chaotic or any other sectors. It endeavours to satisfy the long-standing demands and requests of three categories of labourers: chaotic specialists, gig specialists, and stage specialists. It solidifies 9 past Central Laws.

Some issues concerned with the Code on Social Security, 2020 are:

1. The code prohibits a huge number of labourers from the plot as it incorporates the labourers of as it were those foundations where there is the least number of representatives (such as 10 or 20 representatives) and gives benefits such as benefits and restorative protections benefits to as it were such foundations. The other category of specialists which incorporates the sloppy division labourers where the least labourers are less than 10 and self-utilized specialists are cleared out to be secured by different optional plans, as and when the government notifies.
2. The code moreover states that other benefits like Provident stores, Annuity benefits, Restorative protections benefits are as it were accessible to those workers gaining over a certain level as may be informed by the government. Such arrangement clears out the rest of the workers hung out to dry.
2. 3.No up-gradation in the conveyance of social security benefits. The Code receives already utilized plans which incorporate: (i) a Central Board of Trustees to regulate the Employee's Provident Finance (EPF), Employee's Benefits Plot (EPS) and Employees' Store Connected Protections Conspire, (ii) a Representatives State Protections Organization to regulate the Worker State Protections (ESI) Plot, (iii) Plans for disorderly segment will be managed by national and state-level Social Security Sheets, and (iv) cess-based work welfare sheets for development workers.
3. The code requires workers and labourers to give their Aadhaar Card number to profit or get social security benefits from the career middle which may abuse the judgment of the Preeminent Court passed in Puttaswamy-II, case2.

### **CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020**

This code gotten the President's consent in September 2020 and has supplanted 13 ancient central work laws. This code was presented to solidify and correct the laws relating to word related security, wellbeing, and working conditions of people utilized in different establishments.

The two most imperative issues that have to be tended to in this Code are:

1. It gives arrangements around the working conditions of certain working experts as it were such as indicating that working writers cannot work more than 144 hours in four weeks and moreover notices that deals advancement workers are getting extra clears out. This appears to be oppressive to other workers<sup>3</sup>.
2. This code does not incorporate charitable or non-profit based foundations.

### **CODE ON INDUSTRIAL RELATIONS, 2020**

Concurring to the Worldwide Work Organization (ILO), "Mechanical Relations bargain with either the relationship between the state and bosses and labourers organizations or the connection between the word related organizations themselves." The Code on Mechanical relations is an Act to solidify and correct the

<sup>2</sup> K Chandru, A wage code that is a hasty competition;(2020) The Hindu <<https://www.thehindu.com/opinion/lead/a-wage-code-that-is-a-hasty-composition/article32726499.ece>> accessed 4 April 2024.

<sup>3</sup> Code on Industrial Relations 2020, s 62

laws relating to Exchange Unions, conditions of business in the mechanical foundation or undertaking, examination, and settlement of mechanical debate and for things associated therewith or accidental thereto. Some of the issues concerned with the Code on Mechanical Relations are:

1. The capacity of the labourers to strike and bosses to bolt out specialists will be influenced since the Code requires all people working in a foundation to provide earlier take note of 14 days some time recently a strike or lock-out which is substantial for a most extreme of 60 days. It, too, disallows strikes and lock-outs in two circumstances, firstly, amid and up to seven days after a conciliation continuing and besides, amid and up to sixty days after procedures some time recently a tribunal.
2. The Code communicates that the respects passed by a Mechanical Tribunal will be enforceable on the expiry of 30 days. In any case, the open specialist can acquiesce the prerequisite of the honour in certain conditions on open grounds impacting the national economy or social equity.

### **WORKERS IN THE UNORGANISED SECTOR**

Though not exactly so, the issues that unorganized workers, gig workers, and platform workers confront are comparable. Only about 8% of all jobs in India are in the organized sector, while over 90% of workers are employed in the informal or unorganized sectors. These sectors are largely unaffected by social security benefits like medical benefit plans, pension plans, and provident fund benefits, and they face numerous obstacles like restricted access to institutions and other forms of support. Because of employment uncertainty, they are reliant on many sources of income.

These jobs are location- and climate-dependent, so that employees must choose new jobs every three to six months. Article 23 of the Indian Constitution forbids paying employees less than the minimum wage prescribed by law since doing so amounts to compelled labour, *Union of India v. Peoples' Union for Democratic Rights*, The Indian Supreme Court affirmed the impoverished worker's ability, as stipulated in Article 32 of the Indian Constitution, to petition the court directly for the enforcement of rights established under several labour laws. The Supreme Court expanded the definition of Article 21 of the Indian Constitution (the "right to life") to encompass not only the "right to live," but also the "right to livelihood." Workers' lives are made unhappy and unpredictable when they are not paid the minimum wage in accordance with standards, even in spite of specific requirements<sup>4</sup>.

The terms "gig workers" and "platform workers" emerged in the last several decades. To put it bluntly, the large businesses devised a strategy to circumvent labour laws worldwide and limit their responsibility with regard to the rights of these individuals. The gig economy employed the "carrot-and-stick" hiring strategy, which implies that it gives incentives to workers to perform certain things and penalizes them for refusing to comply. Similar to this, workers in the unorganized sector were enticed with more incentives (a carrot-and-stick strategy), raising their standard of life and encouraging them to take out loans. Ultimately, workers become dependent on their employers when incentives are reduced, which breeds resentment among them.

The definitions of the three seem to overlap in the new codes, which may have an impact on how the codes are implemented in the future. The term "gig worker" is applied to those who, like Uber drivers, do not have a "traditional employer-employee relationship" and operate without an employment letter or set working hours. However, they are hired and employed by Uber through the use of the "Uber app," an

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<sup>4</sup> Mohit M Rao, *The 'gig' economy is creating lakhs of jobs, but workers don't see a future*, (2019)The Hindu <<https://www.thehindu.com/business/Economy/the-gig-economy-is-creating-lakhs-of-jobs-but-workers-dont-see-a-future/article29299673.ece>> accessed 5 April 2024

online platform, which also turns him into a platform worker. As such, it is unclear how the particular plans for each of them would operate. Benefits and rights for such workers are not explicitly defined in the Code on Social Security 2020.

It does not offer a platform for compliance and a single registration procedure for all employees. The Standing Committee recommended—but it was never implemented—that "minimum entitlement" be granted to unorganized workers and construction workers in all states to facilitate portability<sup>14</sup>. What French entrepreneur Nicolas Colin refers to as "a new social contract" should be implemented to protect workers from the emerging risks. These risks include the inability to rent a place in a city when your income comes from gig platforms and the availability of loans when and where you need them—perhaps not for a car purchase but rather to acquire new skills that will help you when it's time to move on.

### **INVISIBLE LABORERS AND GENDER INEQUALITIES**

Unpaid labour is typically referred to as "invisible labour." Work that is performed for no compensation, such as childcare, housework, elder care, and other tasks, is referred to as invisible labour. Ninety percent of this invisible labour is done by women. The portion of labour that is uncontrolled because it is not acknowledged or seen is known as invisible labour. With the release of the four new codes, invisible labour is not mentioned in any of them. The most boring job profile is that of invisible labour, which includes unpaid employment, no paid weekends, no set hours, no vacations, no recognition, and unappreciated household tasks<sup>5</sup>.

While examining the data, it is important to keep in mind that 38.2 percent of people who were six years of age or older were working or performing related activities, according to the results of the National Statistical Office's (NSO) first Time Use Survey (TUS), which was conducted from January to December 2019 and is a division of the Ministry of Statistics and Programme Implementation in India.<sup>16</sup> According to the report, 18.4% of women and 57.3 percent of men in the nation were employed or involved in similar activities. In all, 53.2 percent of survey respondents provided unpaid domestic assistance to family members.

In this group, the percentage of females was larger than that of males, at 81.2 percent vs 26.1 percent. In comparison to 79.2 percent in cities, the percentage of females providing unpaid domestic services for household members was greater in rural regions, at 82.1 percent.

### **THE IMPACT OF THE COVID-19 PANDEMIC ON THE LIVES OF MIGRANT WORKERS**

A "vagrant labourer" is characterized in the Worldwide Work Organization (ILO) rebellious as an individual who relocates from one nation to another (or who has relocated from one nation to another) expects to be utilized other than on his account, and incorporates any individual frequently conceded as a transient for business.

### **CASE STUDY: COVID-19'S HARMFUL EFFECTS ON MIGRANT LABORERS**

The Covid-19 Widespread has had serious impacts. Agreeing to the World Financial Circumstance and Prospects as of mid-2021, this worldwide emergency has "clearly declined destitution and within-country disparity", and it is anticipated that it "will take off long-lasting scars on work markets whereas switching advance on destitution and pay imbalance in numerous economies."<sup>18</sup> In June 2020, two UN

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<sup>5</sup> United Nations, *Researching the Impact of the Pandemic on Internal Migrant Workers in India* | Academic Impact

Extraordinary Rapporteurs cautioned almost the "well-being of more than 100 million inner transient labourers enduring hardship after COVID-19 measures constrained them to travel long separations domestic, numerous on foot."<sup>19</sup> When the to begin with 21-day lockdown was reported in the year 2020, where all schools, workplaces, shops, development locales, etc were gathered to stay closed. Vagrant specialists who were absent from their homes and families, who survive on day by day compensation had no other choice but to return domestic when their source of salary halted. They couldn't bear to live anyplace else. With the closing of the transportation offices moreover these labourers were constrained to walk back to their states and their homes. The situation of these labourers strolling back domestic with their families on interstates, unshod with restricted or no nourishment was fair traumatic. A part of specialists misplaced their lives as well in the exertion to reach their places. Apart from labourers who move from one nation to the other, a few labourers relocate from one state to the other. The Code on Work related Security, Wellbeing, and Working conditions, 2020 characterizes an inter-state transient labourer as a individual who: (i) has been enrolled by an boss or temporary worker for working in another state, and (ii) draws compensation inside the greatest sum informed by the central government and moreover includes that any individual who moves on his claim to another state and gets business there will too be considered an inter-state vagrant labourer. The code moreover indicates that as it were those people will be considered as inter-state transients who are winning a greatest of Rs 18,000 per month, or such a higher sum which the central government may notify.<sup>20</sup> The Niti Aayog's draft on Vagrant Work Approach is a clear articulation of expectation to way better recognize migrants' commitment to the economy and bolster them in their tries. It proposes a modern National Movement Approach and the arrangement of a uncommon unit inside the Work Service to work closely with other services. The unused structure would bring almost much-needed joining over line offices and would be a tremendous step towards all inclusive understanding of the causes and impacts of relocation as well as the intercessions required. It examines at length the arrangements beneath the Break even with Compensation Act, The Reinforced Work Act, the Building and Other Development Specialists Act, and the Interstate Transient Laborers Act, among others.<sup>21</sup> Seeing the situation of the vagrant labourers amid the to begin with wave of coronavirus, it was the require of the hour to come up with a arrangement that bolsters and guarantees the vagrant labourers<sup>6</sup>.

## CONCLUSIONS

The Intermittent Work Constrain Study Report (2018-19) shows that 70% of standard wage or salaried workers in the non-agricultural segment did not have a composed contract, and 52% did not have any social security benefit.<sup>22</sup> Too as per the Niti Aayog, the existing work laws system does not energize the development of work seriously segments as a matter of plot or course of action. These laws require to be looked into in such a way that it presents a component of motivation for more noteworthy work absorption.<sup>23</sup> The Four modern Work codes which are however to be actualized address the issues at hand<sup>7</sup>. As per the Central Government's notice, the rules have been arranged by the Service of Work, but a few states are however to draft and outline the rules. Certain political reasons in India such as the decision in Uttar Pradesh (due in February 2022) is moreover deferring the execution of the codes. It has been a couple of decades presently and feels as if we are stuck in a perpetual circle, ceaselessly inquiring for the same essential acknowledgment of our humankind. The convenient and appropriate execution of the Codes

<sup>6</sup> Ministry of Statistics and Programme Implementation, *Periodic Labour Force Survey Report (2018-19)* (April 2024)

<sup>7</sup> Niti Aayog, *Employment (Vision 2020)*;

<[https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/bkpap2020/32\\_bg2020.pdf](https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/bkpap2020/32_bg2020.pdf)> accessed 5 April 2024

would deliver a help to the labourers influenced by COVID-19. Most of the arrangements of the Codes address the past requests and inconsistencies, acting as helpful equity for the past hurts. The Code ought to have been cutting edge in approach whereas giving assurance to the labourers and tending to the debate related to Colonization and Mechanical autonomy, Manufactured Intelligence-powered workforce, and Bio-engineering, which might prevent the rights of the labourers in the coming decades.

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