
CONSTRUCTING SOCIAL JUSTICE: EVALUATING POLICY REFORMS IN LABOUR WELFARE BOARDS FOR CONSTRUCTION WORKERS

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ABSTRACT

The Building and Other Construction Workers Act is a welfare legislation brought into force to bring positive regulation in the field of construction workers and allied matters. The implementation of this legislation has been plagued by a multitude of issues which can be broadly classified into inadequate coverage, limited awareness, enforcement challenges, fund mismanagement and others. The author attempts to underlie such issues and also push forward recommendation for policy reforms in this paper.

Introduction

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers Welfare Cess Act, 1996 (the Cess Act) are two enactments of the Parliament that strive to achieve social and economic justice for construction workers and also organise the predominantly unorganised Construction sector. Close to three after the BOCW Act and the BOCWWCA Act came into force, the effectiveness of this framework remains in question. Corrective steps have the potential to extend social benefits to construction workers in word and in spirit, especially migrant workers who face particular vulnerabilities.

The genesis of these legislations can be found in the Directive Principles of State Policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. Further Article 21 of the Constitution which protects a right to life of dignity also encompasses construction workers. It is pertinent to underscore that this is the

background with which these welfare legislations must be appreciated and understood.

Issues

Since these welfare enactments came into force their implementation has been plagued by a multitude of issues which can be broadly classified into inadequate coverage, limited awareness, enforcement challenges, fund mismanagement, administrative and infrastructural issues. The creation and sustenance of these issues can be attributed to inadequate measures taken by most State Governments and Union Territory Administrations (UTA) towards implementation of the BOCW Act.

The most glaring issues with the implementation of the BOCW welfare schemes is that of inadequate Coverage, as per a reply filed by Ministry of Labour and employment to Rajya Sabha unstarred question there are 54599790 registered BOC workers under the BOCW Act across India¹. As per the Sector-wise estimated number of workers in the 3rd Round of QES conducted by the Directorate General of Employment the estimated total number of workers in the construction is 6,19,227.

If we look into the case of New Delhi, according to the Periodic Labour Force Survey (PLFS) 2019-20, there are approximately 11 lakh construction workers working within the National Capital Territory of Delhi² out these no more than 1.2 lakh construction workers are registered with the Delhi Construction Board. This leaves a population of unregistered construction workers to fend for themselves are the benefits under the welfare boards are limited to registered persons. This issue got limelight when lakhs of unregistered construction workers were denied COVID relief due to them not being unregistered with the Boards.

Out of the multiple schemes in force for the welfare of registered persons only one scheme covers unregistered construction workers “Assistance on Death of the Unregistered Worker (HBOCWWB)”³.

Administrative shortcomings have plagued the registration of workers, a probe into the records

¹<https://sansad.in/getFile/annex/262/AU578.pdf?source=pqars#:~:text=Several%20instructions%20under%20Section%2060,BOC%20workers%20which%20include%20the>

² <https://ddc.delhi.gov.in/our-work/4/digitisation-processes-construction-workers-welfare-board#:~:text=According%20to%20the%20Periodic%20Labour,National%20Capital%20Territory%20of%20Dehli>

³ <https://saralharyana.gov.in/>

of registered workers of Delhi Building and Other Construction Workers Welfare Board have found almost two lakh sham registration⁴. Such issues are fueled by corruptions, mismanagement of funds cause huge roadblocks in the invasiⁿed working of the Welfare Boards.

Non-compliance of directions issued by the Union of India to the various State Governments and the UTAs on issues such as easement of rigid registration process, directions relating to cess collection and management, welfare distribution and fund management are some. The courts have highlighted that in such issues “non-compliance remained the rule while compliance the exception”⁵

Section 4 of the BOCW Act requires a Committee to be constituted called the State Building and Other Construction Workers Advisory Committee. The purpose of this State Advisory Committee is to advise the State Government on matters relating to the administration of the BOCW Act. It is pertinent to note that the non-constitution of such advisory board has been brought up as a concern before the Supreme Court⁶ in 2008 and still yet many State Boards have failed to constitute such a committee.

Registration with the board is a prerequisite for availing any of the welfare schemes under the act⁷, this undermines a large magnitude of construction workers that are not registered with the board. Some welfare schemes should be extended to all workers regardless of their registration such as health insurance.

Currently there are no less than 105 individual State-run schemes for the benefits of construction workers on the myscheme website by the MeitY⁸. The multiplicity of schemes in operation run counter to the welfare goals of the Act. This causes nonuniformity in the schemes regarding their eligibility, welfare provided, coverage etc. this further causes issues for migrant workers who are employed in states where they do not hold domicile. Such issues can be

⁴ <https://timesofindia.indiatimes.com/city/delhi/almost-2l-construction-workers-on-paper-bogus-reveals-probe/articleshow/95286093.cms>

⁵ National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2011) 4 SCC 655

⁶ National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2011) 4 SCC 655

⁷ <https://pib.gov.in/PressReleseDetailm.aspx?PRID=1943204>

⁸ <https://www.myscheme.gov.in/>

countered by introducing one model Scheme for Building and Other Construction Workers by the centre which can be implemented by the States and UTs in their respective boards.

There are still some fundamental problems with worker registration, timely renewal, and the collection and use of cess. Even after the BOCW Act of 1996 was enacted and for 25 years, the state-by-state examination of worker registration, cess collection and utilisation, and welfare programme implementation reveals inadequate implementation of these measures.⁹ States like Madhya Pradesh (28.9%), Punjab (34.8%), Uttar Pradesh (39.5%), and Delhi (7.3%) had comparatively low rates of registration renewals. Registration process and requirements vary from state to state, there is no uniformity in this regard. (figure 1.2).

Migration of Construction Workers

Migrant construction workers are a very important variable in policy drafting as their migrant status causes a lot of considerations for the policies to be effective for such a pollution. In fact, migrant labour is in the centre of the construction sector, both because of the spatial disconnect between labour supply and demand, and because of the labour recruitment system¹⁰. Long-distance migrants are preferred as they can be hired on relatively lower wages¹¹. The benefits to migrant workers under the welfare act appear less than hoped because in some states in the absence of a domicile they are not eligible to register with the CWBs, thus they are excluded from its benefits. For migratory construction workers, the portability of assistance schemes and registration is an essential need.

Conclusion

Construction is a very important sector from policy making and implementation point of view because of its sensitive nature and large presence of informal and circular migrant workers. And the current systems shortcomings and its faults were highlighted during the COVID crisis. Due to their failure to link their Aadhar number to their bank account and to renew their annual registration, a sizable portion did not receive benefits.

⁹ Soundararajan Vidhya. Construction Workers: Amending the Law for More Safety. Economic and Political Weekly. 2013;48(23):21–25.

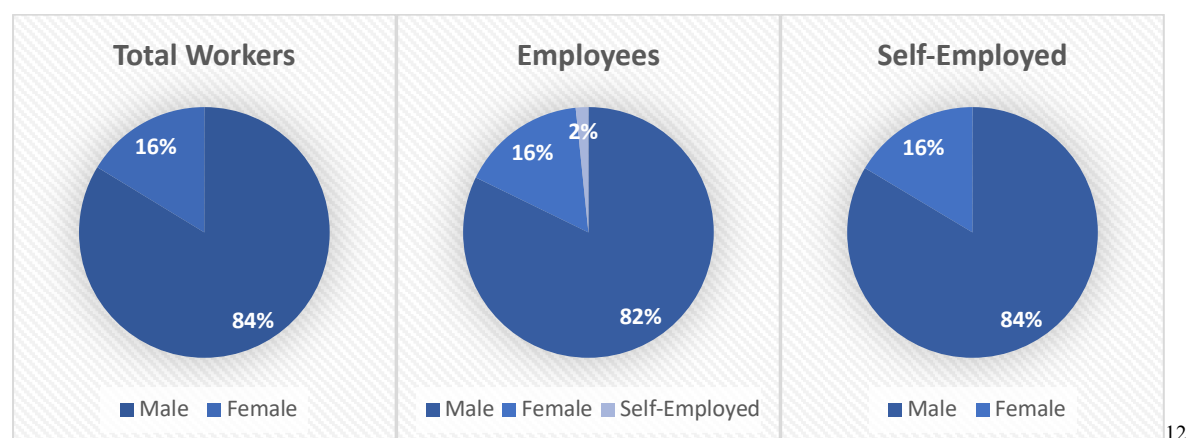
¹⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8559686/>

¹¹ Roy, Shamindra Nath, Manish, and Mukta Naik. 2017. Migrants in Construction Work: Evaluating their Welfare Framework. Policy Brief. Centre for Policy Research, New Delhi.

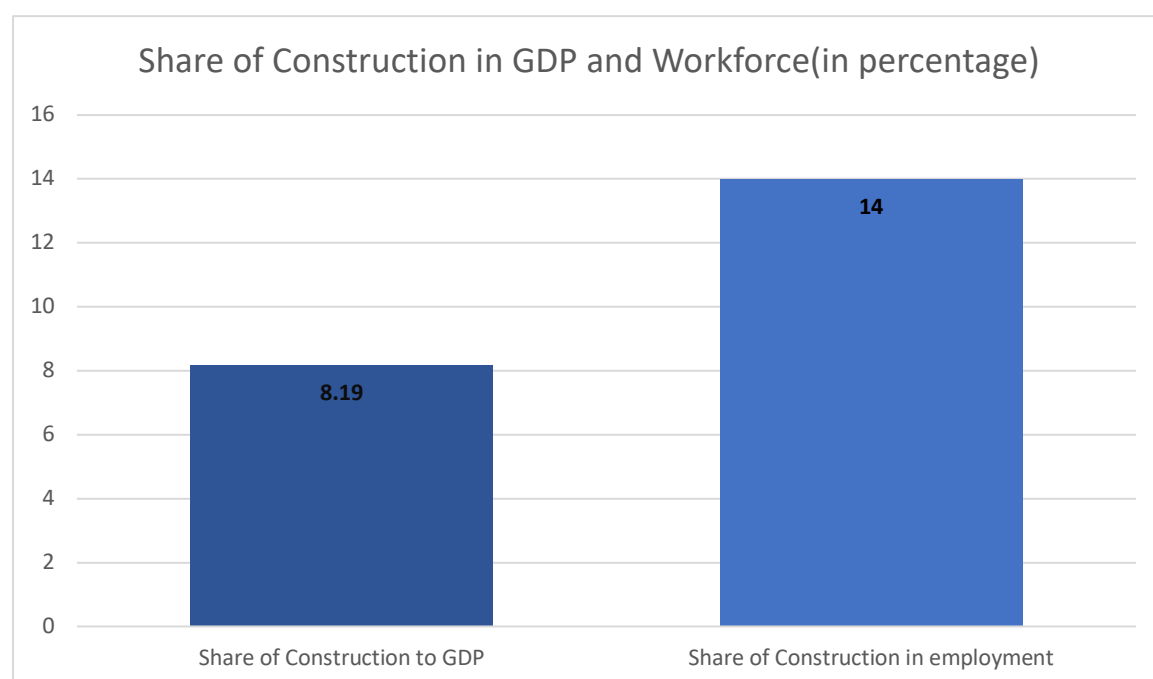
As to the June 21, 2021 Supreme Court ruling, registration is crucial and paramount when it comes to welfare programmes. The court ordered that, by December 31, 2021, at the latest, the union and state governments finish the process of registering all informal workers and build a database. Prior to that, the MoLE had been specifically instructed by the Supreme Court in 2018 to expedite and streamline the registration process for construction workers within a set time frame. In response to the directive, MoLE created a Model Welfare Framework in 2018 and recommended that all CWBs expedite, streamline, and establish an online registration method. In order to expand registration coverage and produce a dynamic database of construction workers, MoLE initiated a Mission Mode Project once more in 2020. Although the project's exact outcome is unknown, internet registration has started in several states. For instance, on June 8, 2021, the Gujarati government established the e-Nirman portal, which allows construction workers to register online. But it is pertinent to highlight that in many states such as Odisha the registration process still remains physical.

Another issue that has to be addressed is the CWBs' inconsistent approach to designing and implementing social assistance programmes. Aligning state-specific welfare programmes run by state CWBs with federally financed programmes conducted through the central portal should now be a new undertaking. Its absence results in an undesirable duplication of assistance programmes between the federal government and the state governments.

In conclusion, it is imperative for reform within the construction welfare board and its cess collection mechanisms in order to achieve the equitable distribution of resources and the safeguarding of labour rights within the construction industry. Upon doing a thorough examination, it becomes apparent that the current framework is riddled with inefficiencies, deficiencies, and systemic loopholes that undercut the desirable goals of welfare measures for construction workers. Policymakers must actively participate in meaningful communication with various stakeholders, such as construction workers, employers, civil society organisations, and government agencies, while dealing with the intricacies of policy implementation. By cultivating an environment that promotes collaboration and the establishment of agreement, we can effectively utilise the combined knowledge and skills required to negotiate the complexities of reform and guarantee the successful execution of welfare provisions.

Relevant data in from of charts(figure 1.1)

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¹² 3rd Round of QES (October-December 2021) - https://dge.gov.in/dge/sites/default/files/2022-07/Employment_Situation_in_India_as_on_June_2022.pdf

¹³**Benefits: Coverages- Types of Benefits- Quantum, Benefits for Unregistered and quantum: Prepare tables for all states(figure 1.2)**

	Delhi	Uttar Pradesh	Karnataka	Odisha
Age Criteria	18-60 years	18-60 years	18-60 years	18-60 years
Documents to be submitted at the time of registration	Proof of age/affidavit by the workers, mentioning his/her age/date of Birth, dully attested by the Notary Public; local address proof; Certificate of Employment (employer/ self-certified)	Self attested copy of Aadhaar card; passport size photograph; copy of the Self-Declaration letter; copy of Employment Certificate; Self attested copy of Bank passbook	90 Days Work Certificate; Aadhaar Number; Bank pass book copy; Nominee pass book copy	Attested proof of age; Certificate of employment (issued by employer/ trade union/ Inspector)
Registration fee	Rs. 25	Rs 20	None	Rs. 20
Annual contribution	None	Rs 20	None	Rs. 100
Validity of registration	One year	One year	Three years	No limit
Can migrants register?	No	Unclear	yes	Unclear

¹³ <https://mospi.gov.in/data;>
https://www.mospi.gov.in/sites/default/files/publication_reports/AR_PLFS_2022_23N.pdf?download=1

Number of workers registered	121289	16127262	4642374	3993727
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