

Protection of Wages of Seasonal, Circular Migrant Labour in India

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1. Introduction

About half of the country's poorest households (accounting for about 470 million people) depend on wage labour for survival (NSSO, 2011; NCEUS, 2007). Therein lies the imperative for critically examining the relationship between wages of workers and the Indian state. Wage is a contentious issue. Friedrich Engels damned wage as a disguised form of enslavement and argued that it is inherently exploitative in nature, calling for an overhaul of production systems that necessitate such a relation (1847). Yet, unfortunately, the lives of millions of poor depend on the most extractive form of waged labour. Therefore, labour movements, both in India and globally, remain preoccupied with the struggle to raise and secure the earnings of poor workers. The Covid-19 pandemic, and the resultant lockdown, has brought to sharp focus the critical importance of wages to the lives of workers, and its socio-economic function. Without guaranteed and protected wages, millions of workers across the country were not able to access the basic minimum consumption required for the sustenance of their households, both within the cities where they lived and for sending as remittances to their families in villages. Wages no longer remained a feature of the

market, but determined workers' and their households' ability to survive. This was acknowledged by the central government, which brought out a circular immediately following the announcement of the lockdown, on 29th March 2020, stipulating that all employers would have to pay wages, without deductions, to workers during the duration of the lockdown. The 29th March circular, and appeals from the Prime Minister's Office (PMO), however, did not suffice to ensure wage payments to workers, who largely remained unpaid throughout the lockdown (Sarkar, 2020).

This crisis has a social dimension—it was seasonal and circular migrant workers who were the hardest hit by the pandemic. With no means of achieving accountability from their employers to provide for them due to a lack of formal contracts and standard employer–employee relations, as well as poor bargaining power and exclusion from state institutions and social support systems at their work destinations, they undertook difficult and painful, mass exodus towards their villages (Jayaram & Mehrotra, 2020).

Despite the central government's acknowledgement of its importance in sustaining the lives of a large section of the country's population, the

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proposition of securing minimum levels of wages through state intervention via minimum wage legislation has long been mired in debate. There is fearmongering by some, particularly those of the neoliberal strain such as Arvind Panagariya, that minimum wages will rob people of jobs and shut down businesses (Singh, 2019).

Contrary to these claims, many high-level reports show, through evidence and analysis, that minimum wage legislation is critical to pick the Indian economy out of its recent, worrying slowdown that had set in prior to the lockdown. The Economic Survey (2019), State Bank of India (2019) and Reserve Bank of India (2018) highlight that the stagnation in real wages, especially rural wages, has significantly dampened the consumption capacity of the poor, which in turn has slowed down the economy (Mohanty, 2019). These observations have assumed a greater significance as businesses struggle to resume operations in the vacuum of demand, and India's GDP takes a permanent hit, following the Covid-19 lockdown. Economists across the board have argued that income security is necessary for economic revival, arguing for measures that ensure disposable income in the hands of people, including through raising and protecting wages (Thomas, 2020; Muralidharan, 2020). Instead of spelling disaster on the economy, as the accusation stands from the neoliberal quarter, the implementation of minimum wages (set at an adequate level) has become central to boosting the economy.

In recent years, the strife around wages has been hitting a crescendo. In 2019, market-leading biscuit companies like Parle-G and Britannia sent alarm signals that their businesses are experiencing an unprecedented slowdown, forcing them to cut down production. Mukherjee argues that the counter-intuitive reason for their slowdown is that the purchasing power of their main consumers—labourers such as construction workers who often survive on a meal of tea and biscuits—has dipped so low that they are unable to afford Rs. 5 for a packet of biscuits! (2019) This is hardly surprising if we pay attention to the International Labour Organization's (ILO) analysis that the share of la-

bour in profits in the country has fallen alarmingly low, and to Mohanty's reporting that both rural and urban wages have been decelerating significantly (2018; 2019). Furthermore, the Economic Survey revealed that one in three workers are not even receiving the minimum levels of wages needed for survival (2019, p. 199). When read together, these instances signal the breakdown of institutions for the protection of workers' wages in India long before the Covid-19 lockdown, having adverse effects on the country's socio-economic situation which were only exacerbated with the pandemic.

The National Commission for Enterprises in the Unorganized Sector (NCEUS) Report (2007) casts a light on the overlaps and intersections that such macro-data has on India's historically disadvantaged communities and their livelihood patterns. It shows that the category of seasonal and circular migrants lies in the underbelly of India's labour market. This vast and diverse group is populated largely by stigmatized social groups of Scheduled Castes and Tribes (SC/STs) as well as religious minorities such as Muslims, whose long-standing socio-economic oppression relegates them to the bottom spheres of the labour market in the country. Despite around 44 legislations covering various aspects of wage payments and extensive provisions related to other aspects of work conditions, these low lying spheres of the labour market (where seasonal and circular migrants persist) experience among the lowest wage levels. This in turn produces and reproduces their poverty and historical disadvantages, despite their participation in the modern mainstream economy (Jain & Sharma, 2018).

This chapter focuses on the above-mentioned category of seasonal and circular migrants as they constitute one of the most excluded groups among those dependent on wage labour in the overall informal economy. It focuses on the questions: What is the role of the state in protecting wages of workers? How can the state extend this protective role to this highly excluded group who persist in one of the lowest and most insecure wage relations in the Indian economy? The chapter discusses these questions, locating them in the complex environment

of socially structured labour market dynamics; the political economy of labour migration and its relationship to India's capitalist, accumulative growth model; and, very importantly, in the Indian state's withdrawal from its role of protecting the rights of labour, including those related to wage. The chapter draws on vast secondary and primary knowledge on the topic, including macro-studies on labour market trends and micro studies on everyday realities surrounding wage. It also relies on published and unpublished documentation by authors as part of their work with Aajeevika Bureau, a migrant and labour rights organization working in different rural and urban labour markets across western India.

The paper begins by exploring the normative basis for envisioning a role for the state in protecting wages. It synthesizes how this relationship was viewed by the Indian Constitution and other institutions of a recently independent Indian state, further influenced by the country's social movements and bolstered by a growing global consciousness on wage and labour rights as central to the notion of citizenship. It goes on to streamline the role of the Indian state as a legislator, enforcer of regulations and deliverer of justice in relation to wages. The chapter argues that while wage is a component of market forces, the state's role in *protecting* wages should be as non-negotiable and foundational. It argues that state interventions—such as fixing minimum wages at levels needed for sustaining life, creating an enabling environment for workers' collective action to be able to raise wage levels further, regulating industry to prevent loss of wages through unfair deductions and cheating and utilizing the state's justice architecture to reinstate the rights of aggrieved workers over their wages—should be seen as part of the social contract between the country's citizenry and the state. The chapter argues that there are adequate legal and normative bases to view *protection of wages* in the same spirit as a public good. The realization of protected wages is so crucial to basic human, dignified life that it necessitates the role of the state to guarantee this right. Talking within this paradigm, the paper focuses on how such a protective role of the state can be extended to seasonal, circular migrants' wages.

Section III discusses the complex mechanisms that operate in India's labour market through which the rights of migrants over their wages come to be suspended. Section IV maps the worrying trends displayed by the Indian state in its role of legislator, enforcer and deliverer of justice in the arena of wages. This analysis highlights that the Indian state, particularly after the economic reforms of the 1990s, has been withdrawing from these roles. The collusion with industry in denying basic labour rights, including those related to wages, has also emerged as a marked trend in the state's approach. Read together, Section III and IV highlight a distressing gap between the role required of the state by the poorest and most vulnerable workers in the Indian labour market, and its actual trajectory. Section V traces the dire consequences created by this gap between the needs of excluded labouring groups and the current bent of the Indian state. Wrestling with this complex backdrop, the chapter moves on, in Section VI, to explore the limited examples that exist of state governments in India that have attempted to extend protection to migrant workers. It critically examines these initiatives, in particular by Kerala and Rajasthan governments, to draw lessons and insights relevant for the national context. Section VII discusses the role that the labour movement has played historically in acting as a counter-veiling force to the Indian state, forcing it to undertake its duties vis-à-vis wages. It lays out the challenges that lie ahead of the movement that are deeply connected to the ability of the state in being able to provide protection to excluded groups of waged workers. Section VIII derives from all the afore-mentioned discussions to outline mechanisms, processes and ways to extend the state's role in protection of wages to seasonal, circular migrants of the country. The chapter concludes, in Section IX, reiterating that this manner of protection is not just an immediate need of the poorest sections of the Indian population, but is also deeply connected to the larger project of inclusive and equitable economic revival in the post-pandemic phase, and for deepening Indian democracy in the midst of unrest triggered by rising unemployment and impoverishment, coupled with low and unprotected wages, which has only been aggravated by the lockdown.

2. Normative Bases for Protection of Wages as a Public Good by the State

Adequate wages have historically been a mainstream idea and a recurrent demand of workers' movements in India. Since colonial times, working class movements have pushed for higher wages as a central component of their strikes against employers. Several legislations that protect freedom of association and collective bargaining—such as the Trade Union Act 1926, Industrial Disputes (ID) Act 1947 and several laws that form the Factories Act 1948—have come into being as a result of workers' struggles for wage determination and pushing up wages. These legislations acknowledged that enabling workers to carry out collective bargaining as a strategy to claim workers' share in profits by increasing wages is a central mechanism for ensuring industrial peace and economic growth. A significant example is that of the Madras Labour Union, formed in 1918, amidst labour unrest fuelled by poor working conditions and repressed wages in Madras city. In the aftermath of the strikes, and its severe consequences for European capital, the colonial government was forced to enact the Trade Union Act in 1926, which decriminalized strikes and granted workers the right to form unions (Sundar, 2018).

While labour struggles in the colonial state was appropriated by the Indian National Movement as a common agenda against British government and capital, the post-Independence period in India witnessed the distancing of political leadership from working class movements. Dr. Ambedkar, in his speech at the Indian Trade Union Workers' Study Camp, critiqued the emphasis on liberty and freedom of contract without taking into account the socio-economic inequality which influences these processes as a troubling tendency of parliamentary democracy and the process of nation state building (1943). According to him, democracy is synonymous with equality, and without achieving socio-economic equality, the project of parliamentary democracy would merely signify 'a government of the hereditary subject class by a hereditary ruling class' (as cited in Sharma, 2017).

In the Indian Constitution, this tendency of parliamentary democracy is reflected in the higher priority accorded to civil and political rights of citizens, which are protected as fundamental rights. Socio-economic rights, including food, health-care, education, housing and adequate wages are accorded secondary status in the Directive Principles of State Policy (DPSP). As a result, labour movements in newly independent India focused on achieving socio-economic equality for the working class through legislations (Agarwala, 2011). The first organized labour strikes in India were focused around enactment of legislations such as the Minimum Wages Act 1948, which protected workers against 'starvation wages' and allowed them to achieve a fairer share of industrial profits (ibid). Working class struggles for achieving socio-economic equality and substantive citizenship included adequate wages as a central component along with access to welfare provisioning and regulation of working conditions.

Article 43 of the Indian Constitution states that 'The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities' Article 39 states, in particular, that the state shall direct its policies towards ensuring '(a) that the citizens, men and women equally, shall have the right to an adequate livelihood... [and] (b) that there is equal pay for equal work for both men and women' (Constitution of India, 1950) In India, the labour movement played the critical role of securing these socio-economic rights as public goods, including the rights to education, healthcare, food and housing. It also resulted in progressive and comprehensive labour legislations, including wage protection laws, which provided a minimum floor of rights to workers and protected the interests of workers against that of capital by restricting capital from extracting workers (Papola & Pais, 2007). The protection of labour rights ensured that the benefits of industrial growth would lead to the economic betterment and social regeneration of its labouring population in

order to attain social justice and establish a welfare state, in return for which workers promised industrial peace (Thakur, 2007). Following this, such a view has also been upheld through judicial activism and judgments such as Justice Bhagwati's landmark ruling (1982, cited in Agarwala, 2011):

The only solution of making civil and political rights meaningful to these large sections of society [that is the poor] would be to remake the material conditions and restructure the social and economic order so that they may be able to realize the economic, social and cultural rights.

The concept of adequate wages, as utilized in this paper, includes two components: minimum wages and living wages. The discussions at the Indian Labour Conference (ILC) in 1957 have great significance for understanding adequate wages in India. It unanimously adopted a formula for fixing of minimum wages on a needs-based criteria. Such a criteria is used to de-commoditize labour, fixing wages at a level that will allow labour-dependent households to achieve a basic dignified standard of living rather than basing it on the productivity of labour or the firm's capacity to pay alone. The needs-based criteria includes 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. Minimum wages would, therefore, not only ensure minimum consumption, but also fulfill social and cultural needs of the workers' households.

Following this, the Supreme Court, in the *Workmen v Raptakos Brett & Co* case (1992), laid down six criteria for fixing minimum wages, including: a) Three consumption units for one earner; b) minimum food requirements of 2,700 calories per average Indian adult; c) clothing requirements of 72 yards per annum per family; d) rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme; e) fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total; (f) children, education, medical requirements, minimum recre-

ation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 per cent of the total. This has been rearticulated in the 44th and 46th ILCs held in 2012 and 2015 respectively, and the 7th Pay Commission had set Rs. 18,000 as the minimum wage for central government employees based on this criteria. While central government employees have further demand a hike of minimum wages to Rs. 21,000, central trade unions have repeatedly pushed for the implementation of similar criteria in determining minimum wages for all wage labour—demanding Rs. 21,000 as minimum wages during the nationwide strike on 8th January 2020 (Jha, 2020). Such criteria for fixing wages has not featured in the government's methodology, but provides a strong precedent for strengthening legislation for statutory wages which balances the needs of workers as citizens against accumulative capitalist growth.

On the other hand, the transformation of an adequate minimum wage, as a statutory right, into a living wage which allows workers to share profits commensurate to their contributions is enabled through a process of collective bargaining. Gearhart argues that living wages are best determined through collective bargaining processes as workers are more aware of the level of wages that is required for them to have a decent standard of living, and can effectively gauge the wages that they deserve in terms of the labour power that they expend and the firm's capacity to pay (2009). Living wage, thus, calls for collective bargaining methods to increase workers' control over production through participation in wage determination.

The right of labour to adequate wages has not only featured in relationship to their status as citizens of liberal democracies, but also as a universal human right over and above citizenship status. It has been upheld by the Universal Declaration of Human Rights under Article 23: 'Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity' (United Nations, 1948). The normative basis for the inclusion of living wages as a human right, therefore, signals that

liberty—in the political and civil sense as well—cannot be achieved without simultaneously protecting socio-economic rights, which allow labourers and their families to remain above the poverty line, improve their material reality and participate in social and cultural life. The declarations of the ILO also establish the right to a living wage as a human right, stating in the preamble to its Constitution that living wages are the basis for social justice, without which universal and lasting peace cannot be achieved. As a signatory to ILO Conventions and the Universal Declaration of Human Rights, the Indian government has committed to protecting adequate wages and recognizing its centrality to achieving socio-economic equality and, consequently, upholding its democratic structure.

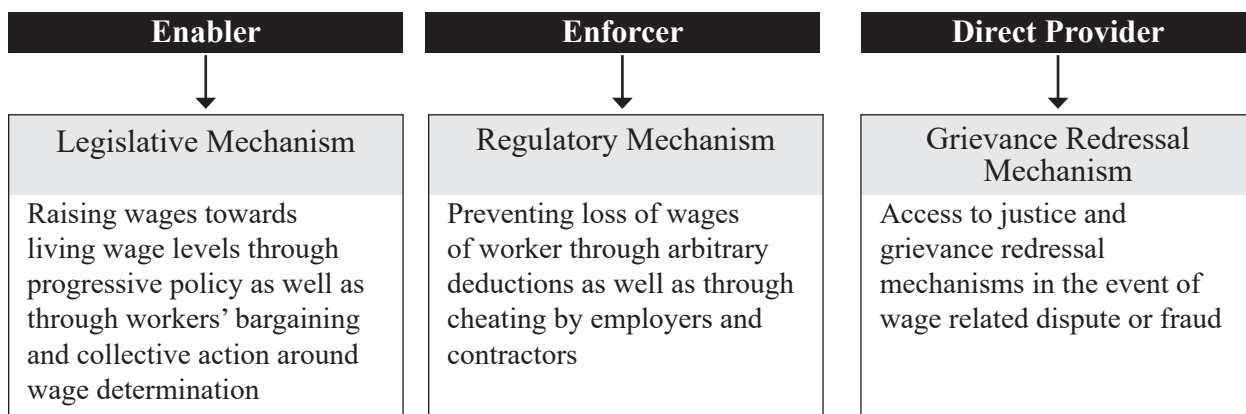
2.1 Conceptualizing Protection of Wages as a Public Good

The demands of workers' movements provided the basis of the state's protection of wages, both through legislations for setting statutory minimum wages and enabling the right to collectively bargain for pushing wages towards living wage levels. It has also established institutions for enforcing this legislative framework by regulating the employer and providing grievance redressal to workers in the case of non-compliance. This means that, as mentioned previously, labour movements have historically relied on legal empowerment through legislations to establish the minimum floor of rights available to waged workers as individuals. At the same time, they have sought state support to augment their collective bargaining ability to push industries to pay higher wages as a collective right. Labour rights, including wages, formed an essential component of the social contract between citizens and the state, where citizens promised their labour power in return for the state's commitment to protect their rights.

In other words, protection of wages can be articulated as a public good, which is essential to achieving substantive citizenship and a healthy, functional democracy. A public good, for the scope of this paper, is understood as any good or service that is to be provided by the state due to its centrality

to human well-being. It is often complementary to other public goods, or a pre-requisite for accessing them—as the lockdown period revealed that wages, and remittances from migration, were necessary for workers and their families, regardless of public provisioning, without which they were not able to meet their consumption needs for food, shelter, water, sanitation and healthcare.

The central government circular of 29th March, 2020, asking all employers to pay wages during the lockdown had little effect, and was eventually withdrawn in June 2020. This is because in the past three decades, the structure of the labour market has altered significantly—marked by the casualization and informalization of labour, a lack of employee–employer relations or written employment contracts and long chains of intermediaries between workers and employers. Such features of the labour market allow employers to act with impunity and remain unaccountable while cutting costs through wage violations (Sankaran, 2007). Alongside this, rather than attempting to extend protection to the informal and migrant workforce, the role of the state in protecting the wages of workers has been steadily eroded through the labour reforms agendas of successive governments. Since the 1990s, there has been a steady dilution of labour legislations and a weakening of the state's regulatory and justice delivery institutions which can be activated in case of non-compliance to labour protection laws (Mitchell et al., 2014). This was evident in the announcements by several states such as UP and MP, which moved ordinances for suspending core labour protective legislations, as the singular solution for ensuring economic revival by improving the 'ease of doing business'. The central government, on the other hand, has assured its commitment to its labour reforms agenda, which has been opposed by workers representatives and trade unions as effectively dismantling the labour protection regime by diluting and weakening provisions of existing legislations in consolidating them as four Labour Codes (WPC, 2019). In fact, the top policy body in the country—the NITI Aayog—welcomed the UP government's decision as 'bold' and encouraged more states to follow suit, ignoring the advice of



economists that wage and employment security is key for economic revival, rather than the suspensions of labour laws (Kant, 2020).

This reversal of the state's mandate necessitates an urgent and strong articulation of the protection of wages as a public good. Without the intervention of the state, informal and casualized labour, facing high levels of marginalization and fragmentation, will be further commoditized in the post-pandemic phase—viewed merely as a factor of production, rather than as citizens who can stake claims over profits through their socio-economic rights. The state performs this function by providing a statutory basis for capital's accountability in ensuring a fair distribution of profits and ensuring that the grievances of labourers are addressed when capital fails to provide wage security to workers (Papola et al., 2008). In such a context, the conceptualization of protection of wages as an essential public good must take on a comprehensive form, which addresses the diverse means through which the wage security of labourers is being undermined in the current model of capitalist growth. This necessitates the state to perform three roles:

1. *State as enabler*: This requires the state to establish mechanisms to set adequate wages that permit the basic economic, social and cultural fulfillment of labourers and their families. This includes both coherent methodologies to set a floor of minimum wages which allow labouring communities to meet basic standards of living, and inclusive processes such as the augmenting of workers' collective bargaining platforms to demand higher wage rates over and above the minimum wage, which prevents

the cheapening of labour and improves labour share in profits based on the firm's capacity to pay. This requires the state to act as enabler by creating an environment conducive for wage security through progressive legislations and executive action.

2. *State as enforcer*: The reality of pervasive wage thefts and non-enforcement of existing labour legislations must be corrected through mechanisms which pre-empt and prevent arbitrary deductions from wages and other measures taken by employers for cost-cutting by denying workers their rightful wages. This is possible through the state's supervisory and regulatory role over industry to ensure that violations are reported and punitive measures taken to curb and discourage non-compliance.

3. *State as direct provider*: Institutions responsible for delivering justice must be made accessible to labourers and effective in responding to violations of wage legislations by employers. In this context, the state is responsible for the direct provision of justice to labourers facing violations of wage laws.

3. System of Labour Migration and Protection of Living Wages

Informal, casual labour, which makes up the majority of India's workforce, faces varying levels of exclusion from the public good of protection of wages. Seasonal, circular migrants form a substantial category within the informal workforce, wholly excluded from the state's guarantee to protect wages. This can be ascertained by mapping their status vis-à-vis the three dimensions of wage protection that were laid out in the last section. Along these three

dimensions, we find that migrant workers experience a culmination of disadvantages which place them in a particularly fragile location, distant even from the possibility of enjoying wage protection.

1. Wage protection not accessible to sub-segments of the labour market

India's wage crisis has affected all sections of the working class, with one in three workers not receiving minimum wages (Economic Survey, 2019). Seasonal, circular migrants form a large majority of this group of workers.

Chandrasekhar and Ghosh (2014) find that India's labour market shows strong trends of wage differential across social categories, with STs, SCs and religious minorities trapped in low wage livelihoods, and women and children within these social groups faring even worse. The 2007 report on unorganized workers by the NCEUS highlighted that there is a strong overlap between these historically marginalized groups, that are also trapped in the poorest economic quintiles in the country, and the phenomenon of seasonal and circular migration. The report argues that migrant workers come from the poorest, historically most oppressed groups that are now toiling under the lowest strata of India's highly unequal labour markets. The Labour Bureau's reports on the implementation of minimum wages corroborate this (2013; 2014). It reveals that extreme rural distress and dispossession from rural livelihoods, leading to conditions of indebtedness, loss of income-yielding assets and the non-availability of decent work in rural regions, forces impoverished and historically marginalized rural groups to migrate to seek work in informal labour markets that pay well below minimum wages. Compelled to work for low wages, these communities tend to occupy the 'bottom-of-the-heap' jobs in informal labour markets (Breman, 2013).

Many labour economists and anthropologists, such as Rodgers and Soundararajan (2016), Papola (2012), authors of the NCEUS report (2007), Breman (2013) as well as Shah and Lerche (2018), agree that in India's labour market, wage discrimination is an entrenched feature. However, the nature of this discrimination can be hard to call out.

They function less as unequal wages for equal jobs, but more through highly unequal pathways to access jobs with decent wages. The wage differential therefore manifests in a way that labour from social groups of SCs, STs and religious minorities have a disproportionately higher chance of receiving minimal wages throughout their lives, being isolated in sub-segments of the labour market (where even legally mandated minimum wages may not be paid) with very high barriers to accessing better spheres of work where living wages are a possibility.

2. Poor enforcement and lack of access to justice delivery institutions

Low wages are merely the first assault on the right of migrant workers to protected, living wages. It is a very common practice among employers and contractors to make arbitrary deductions from the wages of migrant workers. The insecurity and irregularity of wage flows for migrant workers is made worse by the high rates of wage theft they experience from their employers. As mentioned previously, Aajeevika Bureau found that more than 68 per cent of the 300 migrants studied reported experiencing a major dispute at work (most frequently related to wages) at least once in the last one year (2008). Migrants reported that is a common experience for employers to deny paying wages or full wages for months at a time, effectively holding the worker hostage at the worksite without pay. If the worker leaves, he or she knows that they will never be able to recover their earnings. While there are numerous ways in which even the minimal pay of migrant workers are eroded, the study found that none of the workers had taken their case to any formal legal channel. They were all forced to forfeit their wages and reported that they were not aware of any redressal mechanism that would hear their grievances and help secure justice.

3. Exclusion linked to the 'system of migration'

The deep irony in talking about living wages for migrant workers is that the very logic behind industry's strong preference for such temporary, mobile workers is that they do not have to pay living wages, not even minimum wages, in many instances. Mitra,

Samaddar and Sen argue that in India's contemporary capitalist economy, hiring migrant labour is a central way for capital to accumulate profits (2017). Cockcroft (1983) and Burawoy's (1975) critique of the system of migrant labour highlight that this is not unique to India but a dominant mode of functioning in the global capitalist system, in which employers maximize profits by hiring migrant labour, saving costs that would have been much greater in case they had employed local labour. The latter, typically, have higher bargaining power and state machinery that is less averse to taking responsibility for them as local communities. With migrant workers, employers save because they can totally avoid bearing the costs of the worker's household and family. The audacity to outrightly neglect this fundamental, social function of wages is a lot more possible for employers in case of migrant workers. Inherent in the very logic of hiring migrant labour is that the employer can abandon bearing standard costs of employees, such as health, nutrition, old-age, education and other basic human needs of the worker and the household, appropriating all of these as profits. Discussions and efforts to realize protected, living wages for migrants are doubly beset with such seemingly intractable problems and contradictions.

Though Cockcroft (1983) and Burawoy's (1975) critiques come from the larger Global South context, Breman (2013)'s landmark empirical work on migrants in India reiterate the insight—that inherent to the very logic of the system of migration is refusal to pay living wages—in India's context. Shah and Lerche also point out that the cyclical and seasonal forms of labour circulation in the country are generated by industry to cheapen labour as well as to control it; that is, to pre-empt demand-making and other forms of resistance to their methods of extraction (2018). For instance, Raj's empirical work shows that migrant labour from eastern and central India are usually paid the lowest among the various groups of labourers found at their works destinations, much lower than local workers, even if the latter are also from SC or ST backgrounds (2018). Moreover, they argue that for the industry, dividing workers by caste and region and hiring

desperately poor labourers who feel alienated in their worksites is a key strategy for taming them. Excluded from trade unions as well, such a system precludes any significant possibility that workers are able to organize and undertake the forms of collective action that have the power to raise wages of workers (Sharma et al., 2014).

3.1 Mechanisms that Suspend Migrant Workers' Right to Protected, Living Wages

Why are the experiences of seasonal and circular migrants so far removed from even the minimal degree of wage protection, as illustrated above? Such deep insecurity cannot be ascribed to an absence of protective labour legislation, since there are around 44 Central and state laws that are applicable to informal workers (including migrant labour), which have extensive provisions on wages, terms and conditions of work, right to association, social security, life and accident (NCEUS, 2007). These vary in terms of criteria and have their limitations based on firm size, but nevertheless cover a very significant section of the informal workforce (Chandrasekhar & Ghosh, 2002). Though not without shortcomings, the Minimum Wages Act 1948, the Payment of Wages Act 1936, Payment of Bonus Act 1965, and Equal Remuneration Act 1976 had provisions to prevent the wage thefts and arbitrary deductions highlighted in the last section.¹ Therefore, the unprotected, insecure and low wages routinely experienced by migrant labour is not the result of absent legislation, but because of their dilution through the labour reforms agenda, and poor enforcement and grievance redressal mechanisms.

Rampant wage violations experienced by migrant workers, we argue, germinate in the very structure of India's labour market and its high degree of segmentation along the lines of social hierarchies. But how do these larger structures and labour market characteristics play out on the ground,

¹ These four central legislations related to wage protection have been amalgamated under the Labour Code on Wages 2019 which was enacted by the Parliament in August 2019. The rules of the Labour Code on Wages is currently in draft form, and there is no clarity on the timeline for its finalization or implementation. In the interim, the existing wage legislations continue to be in use.

in the everyday lived realities of migrant workers struggling in the country's informal markets? We argue that it is critical to unpack the norms, practices and dynamics that surround the everyday transactions and processes that govern the payment of wages to migrant labour to be able to demystify the mechanisms that generate exclusionary outcomes for them. This section highlights how these factors function to routinely suspend labour laws and instead regulate behaviour of employers and labourers based on a set of extra-legal norms. These processes explain the tragic gap between the vision of adequate and protected wages (already enshrined in existing labour laws to some degree) and the wage flexibility that has come to dominate worker–employer relations in these spheres of India's labour market.

3.1.1 Socio-economic Inequalities Inform Contract Negotiations

Informal and migrant labour across different sectors and employment types are unable to access written contracts—with 80 per cent of the workforce not having any form of written contracts, and the large majority of the remaining 20 per cent with short-term contracts of less than a year (Sapkal & Sundar, 2017). In the construction sector, where migrant labour often seeks work at labour *nakas* (daily wage labour markets) or are hired directly by contractors from their villages to work on construction sites, the workers are unable to seek basic information or negotiate the terms and conditions of work (such as hours, duration for work completion or how many workers are required for the job, or even the contact details of the contractor). The authors' experience at the labour *nakas* across Rajasthan and Gujarat reveal that contractors and employers do not like to hire workers that ask questions, even if it is to seek information on the terms of employment. '*Yeh mera interview le raha hai*' ('He is trying to interview me') is an illustrative response that a contractor gave to the authors, complaining that some workers ask too many questions. Contractors also said that they prefer migrant labour as they will live on the site. If they remain on-site, they can be called in to work at any time, without negotiations about over-

time payment and work hours. Their dependency on the contractor and employer as their only connections in the city prevent them from undertaking these negotiations on equal terms. The terms and conditions of the contract is shaped by a long history of social hierarchy between workers on the one side and their contractors and employers on the other, with workers usually belonging to lower castes and tribes while contractors and employers are usually from dominant castes. This plays a huge role in how they perceive each other, in creating a sense of entitlement among the latter and an attitude of submissiveness in the former. Though there are many instances of worker resistance, caste relations continue to guide the everyday transactions and behaviours in these labour markets, including the right to seek or the duty to provide basic information, which forms the basis of contract formation.

Unlike the formal sector or relatively more standardized forms of work in the informal sector, here, 'work' constitutes many different jobs and roles that the labourers might have to perform. Especially in the construction sector, through various phases of construction, workers perform various roles with varying payment rates. Workers rarely keep an adequate, written record of the tasks performed by them, capturing measurements of time, volume or the intensity of the job. This leads to a one-way record-keeping by the employer, who after the work is performed, provides *hisaab* (an account), which workers find hard to challenge in case of discrepancies. As mentioned above, migrant workers interviewed by the authors during Aajeevika Bureau's case resolution process reported that at this stage, contractors provide abstruse calculations, use technical language or they complicate the chain of events, confusing the workers. Even if the worker is able to spot the discrepancies in the calculation, lack of a written record, poor knowledge of wage-related labour laws and fear of the contractor often prevents them from negotiating for their due wages. Often, workers are forced to leave work because of workplace accidents or harassment. In such cases, typically the employer refuses to bear the cost of medicines, treatment or accident com-

pensation, and in some cases, workers even have to even bear the risk of forfeiting wages for the days when the work was performed.

3.1.2 Suspension of the Standardized Notion of Wages

These mechanisms are further complicated where a standardized notion of wages is suspended. A significant example is the perverse system of advances that exists across many sectors—where labour is paid a lump sum before migrating to work in distant worksites to pay off the amount. In the brick kilns in Punjab, for instance, as reported by Anti-Slavery International and Volunteers for Social Justice, there is a strong preference for inter-state migrant labour who tend to take higher advances due economic desperation, leading to greater indebtedness (2017). Employers and contractors then employ different means to ensure that workers are in a perpetual cycle of indebtedness to extract cheap labour. Firstly, the payments are based on a piece-rate system, where the entire family unit is paid for every 1,000 bricks that they produce. This incentivizes migrant families to work longer hours, with women and children engaged as unpaid or invisible workers. The wages and conditions surrounding work are altered unilaterally by contractors and employers, who make illegal deductions such as transportation, electricity and equipment costs. The wages are withheld until the end of the season, and it is always reported back to the workers that their advance amount has still not been paid off. Even where workers have a record of their work, it often doesn't match that of the management, and they are not able to take any action.

Similar processes are prevalent in the agricultural sector. In Idar, Gujarat, the authors interviewed migrant families who are employed as sharecroppers with a 6th or 7th share of the produce from the farms they work on. They are brought to the farms with an advance, and are expected to work throughout the season to pay off this debt. The contractor keeps an account of the work performed. Multiple deductions are made from their share based on a system where small amounts of cash are given to migrant families to pay for emergency expenses

such as health issues. This amount is then adjusted from the final share. Many migrant families reported to the authors that they end up owing the employers money at the end of the season as a result of this system, often having to pledge their labour for another season to pay it off.

In small hotels and *dhabhas* (roadside food stalls) of Gujarat, which employ single male migrants, including children, Jain and Sharma find that employers tend to withhold 15 days of wages from workers as a disincentive that prevents them from leaving work to go back home (2018). Though prohibited under the Payment of Wages Act 1936, this is a deeply entrenched system in the hotel sector, normalizing conditions of captivity by introducing a risk of wage forfeiture. Similarly, they find that contractors deduct money from migrants' wages for medicines and doctor's fees, even if the cause of illness is related to the occupation, and therefore, the employer's legal liability.

Afraid of perpetual indebtedness through advances, aggravated by the payment systems described above, workers push themselves to work more and more for rates well below minimum wage. Employers and contractors prefer migrant workers as they can easily bind them in such cycles of indebtedness, with very little power or opportunity to bargain or raise questions against these unjust systems.

3.1.3 Caste and Gender Relations Create Sense of Impunity amongst Offending Employer

Wage violations among migrant labour are also closely related to poor bargaining power. Based on their observations of relationships between employers and workers in factories, construction sites and other production units in destination cities like Ahmedabad, Surat and Mumbai, Aajeevika Bureau's Workers' Right Centres report that wage theft is often accompanied by a total sense of impunity among employers, which further increases or decreases depending on the social group and standing of workers involved. For instance, while employers regularly treat workers from SC groups with disdain, use abuses to address them instead of their names, they display some degree of fear or hesitation in seizing their wages because of the existence

of Dalit groups and mobilizations in the city, even if the reach of migrant workers to these groups is rare. However, employers are aware that Adivasi workers are entirely defenceless and widely dismissed as subhuman and uncivilized. With such workers, employers display an unabashed sense of impunity in deducting and withholding wages. Employers also deploy a range of intimidation methods to prevent reporting or protest by workers, threatening them with repercussions. Workers report to Aajeevika Bureau's centres that the fear of losing work opportunities and being accused with false charges of theft by the employer that they would not be able to defend themselves against make them reluctant to report wage violations by employers.

Wage violations are also gendered in nature. In the instances of brick kilns and agriculture sector mentioned earlier, women and children work as a part of the family unit, where their labour is both unrecognized and undervalued. Even in the construction sector in urban areas, women are often hired under the *jodi* system, as a pair with their husbands or male relatives. They are paid as a labouring unit, as 1.5 labourers, rather than as two individual workers, even though both the man and women perform equally strenuous manual labour. Employers and contractors are able to utilize patriarchal norms to underpay women and push down labour costs. In Ahmedabad, this translates to a large gendered pay gap in the construction sector, with women being unable to negotiate their wages or exercise any control over their income, which is directly handed over to their husbands (Jayaram et al, 2019). Interestingly, across the country, from garments factories in Tiruppur, Tamil Nadu (De Neve, 2016) to rural non-agricultural waged work, adolescent girls and single women have become the most preferred workforce (Srivastava & Srivastava, 2010), as their low bargaining power and compulsion to work due to the economic condition of their families, alongside the easy devaluation of their work because they are young girls and women, allows employers to reduce their wages well below minimum wage levels.

3.1.4 Dilution of Accountability through Obfuscation of Employee–employer Relationships

Large chain of intermediaries in hiring migrant labour results in complex contractual chains, with information, discussions and relationship between different actors in the chain remaining undisclosed. For example, in the construction sector, it is often the case that workers do not have the means to know what their work arrangements are, including wage rates that have been decided between the subcontractors and the main contractor or the engineer and the builder, or who is responsible for ensuring their payments and welfare. At this stage itself, not only is the work contract unwritten and the basic terms and conditions of employment unclear, but the employee–employer relationship is further obscured by a contractual chain where information does not flow to migrant workers (Aajeevika Bureau, 2008).

Given the unequal historical power enjoyed by social groups that tend to occupy the worker–contractor hierarchies in the labour market, the employers have much more room to engage in opportunistic behaviour. In the 13,088 wage theft cases registered with Aajeevika Bureau, the common trend among them was that the employers would try their best to avoid any documentation that would establish an employer–employee relationship between the migrant worker and them. Simple rules of accountability such as providing receipts for payments, maintaining attendance registers, providing written hisaab of deductions made, are intentionally avoided to keep the employer–employee relationships vague and outside the purview of law. These relationships are further obscured in the case of women, who are employed as a family unit or as part of a couple.

Even in the sectors where women dominate the workforce, such as small manufacturing units through home-based work or as domestic workers, they are rarely given the status of workers and the establishment of employee–employer relations is doubly challenging. For instance, domestic workers face a multiplicity of employers, often working in many homes on any given day for a certain number of hours. This affects both their ability to hold

a single employer to account for paying adequate wages and also further obscures employer–employee relations (Sarkar, 2019). In the case of home-based workers, the authors’ investigations in Surat, Ahmedabad and Mumbai found that women perform important value added activities to products that are sold in local, national or global markets. However, it is impossible to trace the product back to the principal employer, which are usually large retail brands which produce different parts offshore to keep costs low. Women are given specialized work such as sewing buttons, cutting threads from textiles, embellishments etc. on subcontracted basis by agents who then take the final goods to local units that aggregate the product to sell in the domestic market or to export houses that supply to international brands. Home-based workers are not considered workers, but as self-employed, and are paid on a piece-rate basis. They are required to take the risks for the quality of the product and market demand, often not receiving payment due to orders being rejected or unsold. Their earnings are pushed down due to intense competition around these contracts (Jhabvala & Shaikh, n.d.). Without official recognition of their work—which is considered an extension of what is considered their natural, unpaid work as women—or any form of documentation of this work, they do not come under the ambit of law, reflecting the patriarchal norm of devaluing work performed by women within the domestic sphere.

Even where workers are able to establish work relationships, it remains restricted to contact with petty contractors who supply to big builders or large companies or marginal employers who supply products to retail brands in domestic or global value chains. During the Covid-19 lockdown, workers were only able to ask help from their petty contractors or marginal employers, who were themselves struggling to survive the lockdown due to their survivalist status and small profit margins, with no liability falling on those at the top of contracting or supply chains, where profits accumulate. The cost of the slowdown is ultimately passed by contractors and employers to workers, through renegeing on wage payments (Jayaram and Mehrotra, 2020).

The above examples illustrate that not only is the standardized notion of work as applicable to the organized sector absent in the sub-segments of the labour market where migrant labour is employed, but the standardized notion of wages does not exist as well—facilitated by long contracting chains and opaque supply chains, which pin responsibility on petty contractors and marginal employers, rather than big retailers, export houses and large builders who benefit from cheap labour. Rather, perverse payments systems, informed by caste and gender based relations, is the norm, and the means through which the costs and risks of production is passed on to the worker. Rather than extend state protection of wages through improved enforcement mechanisms and institutions for calling employers to account, the labour reforms agenda undertaken by successive governments have moved in the opposite directions.

4. State’s Response to Exclusion of Migrant Labour from Wage Protection

Rampant wage violations among migrant labour are caused by the supplanting of protective wage legislations by extra-legal norms and mechanisms of exclusion. The failure of the state to protect wages in sub-segments of the labour market, where the overwhelming majority of migrant labour is employed, is viewed as a consequence of the ungovernable nature of the informal sector rather than a result of the socio-economic structure and nature of the state. As a result, within academic discourse and policy and practice spaces, the informal sector has been vilified as the ‘illegal’ sector where labour protective laws, including wage protection, cannot be implemented (Kamath, 2017). However, trade unions and civil society organizations have actively been using existing wage-related legislations for protecting the wages of informal and migrant labour. We argue that *wage violations in the informal sector is symptomatic of a larger, more perverse, underlying structure; one which breeds, produces and reproduces wage insecurity for workers through the in-*

creasing trend of keeping work casual and cheap, coupled with the forces that have come to normalize and legitimize this mode of hiring.

4.1 Deepening Informality as a Means for Labour Cheapening and Flexibility

Breman argued that after Independence, the informal economy was viewed as the residual sector, with pre-modern modes of production emerging from the traditional sectors of the country (1996). The expectation was that with India's economic development, these would eventually come of age and become part of the organized, formal sector. However, the trajectory of the global capitalist economy and India's complicit neoliberal shifts have shown that the informal sector is not a leftover of the traditional, but a zone of flexibility that is actively and consciously created for modern, capitalist interests from the very top, linking formal and informal sectors in inextricable ways. A simple instance of this is that the most modern, multinational and glamorous industries such as fashion wear, sport equipment and automobiles, actively subsidize their costs by shifting production to small, dirty and dangerous informal units that are highly prone to labour rights violations (including wage theft), while maintaining an arm's-length and legal distance from the whole arena of the informal economy (Jha 2014; Khara & Lund-Thomsen, 2012; Mezzadri, 2008). Such shifting of production is not incidental but strategic and directly related to avoiding costs associated with compliance to labour regulations, including those that seek to protect wages (Sankaran, 2007).

Causalization of work allows for capital to deploy various types of flexibilities which operate as norms that shape production and labour processes. In the sub-segments where migrant workers toil, high degrees of flexibility shape the rules of the game. Sen and Dasgupta (2009) argue that there are three major ways in which employers turn a work environment shaped by laws into one shaped by their extractive norms: One, by hiring in temporary and non-standard manners through sub-contractual chains to ensure that workers' claims and rights, legally and practically, are reduced to the minimum (numerical flexibility). Secondly, by ad-

justing wage levels freely, to stay competitive and reduce costs (wage flexibility). Thirdly, by shedding workers in low season and not hiring additional workers during peak demand but making lesser number of workers perform unpaid or underpaid overtime work (temporal flexibilities). In a work environment shaped by such adverse logic, wages can be easily cheapened, arbitrarily deducted and made insecure. Sundar argues that such informality is not just a feature of India's general poverty conditions, but also actively sought by the industry that has means to bear costs of formal rules but undertakes all kinds of methods to circumvent such eventualities (2019). The industry deploys various strategies towards this end, such as ensuring that their workers do not complete more than 240 days of work to avoid provisions of the ID Act, fragmenting one production unit and registering them as smaller units to avoid coming under the purview of labour legislation among other, similar practices to circumvent regulation.

It should not be surprising, therefore, that insecure, transient and casual work is on the increase in the country, instead of declining. Legally uncertain, weak contractual relations that leave workers highly susceptible to wage theft is increasingly the norm. National statistics reveal that formal sector job creation has halted. Between 2000 and 2010, 6.4 million new jobs were added, but three-fourths of these were in the unorganized sector. Of the remaining jobs in the organized sector, more than 80 per cent were informal in nature (NSSO, 2010). Rodgers and Soundararjan argue that reasons for low wages include fragmented production structures, unequal distribution of assets, skewed power balance between capital and labour, social hierarchy as well as poor education and skills (2016).

The informal sector is not simply an ungovernable and illegal sector. Rather, it operates to promote labour cheapening and flexibility, which attracts business into the country and orients production to be competitive in global markets.

4.2 Evaluating the State's Role in the Protection of Wages

The state's inability to protect the wages of sea-

sonal, circular migrants can be also be understood as its complicity with the interests of a capital position that is far removed from the original intent of labour legislations. This can be ascertained by analysing its interaction with informal and migrant labour through the three dimensions of wage protection.

4.2.1 State's Role as Enabler: Dilution of Labour Legislations

While the implementation of labour protective laws have generally been poor, another dangerous shift has been in the legislative content and position itself on protection of labour, particularly through the changes envisaged under the proposed Labour Codes. The recently enacted Labour Code on Wages (Wage Code), for instance, completely ignores the formula that was unanimously recommended by the ILC and Supreme Court for fixing living wages that allows workers and their households to achieve minimum consumption and also meet their social and cultural needs. On the contrary, it disregards the rights of workers to adequate wages, leaving the setting of minimum wages to the discretion of administrators. There is no clarity on who will set it, or how it will be set, with the procedure being left to the rules formulated by the central government. The Wage Code states that a floor minimum wage may be set by the central government either at the national level or regional levels, and that state governments may set minimum wages at the state level. This leaves room for competition between states to set wages low enough to attract investments through labour cheapening (Jayaram, 2019).

Furthermore, while the Wage Code claims to extend the coverage of wage protection legislations to the informal sector, it is important to note that the existing laws were already applicable to informal and migrant workers. In fact, they placed special emphasis on sectors where bargaining power was low in order to ensure minimum wages to workers who did not have platforms to participate in wage determination. In diluting the provisions of existing acts and creating confusion in definitions and methodologies for setting minimum wages, the Wage Code effectively dilutes the ability to protect wag-

es. Interestingly, it has further weakened the position of women in the workforce by omitting important provisions in the Equal Remuneration Act 1976, such as equal opportunities in recruitment, promotion and transfers (ibid).

Trade unions and organized resistance by workers has played a central role in realizing higher wages for workers. Given the onslaught of late capitalism on the very basic rights associated with work, with production structures becoming even more precarious and insecure, the expectation from the state is to correct the increasingly skewed power relation between employer and employee by enabling spaces that allow the most marginal workers to organize and provide a counter-force to the unabated powers enjoyed by capital in contemporary economy. However, similar to legislations related to industry regulation, the state's dominant approach since liberalization in the country has been to stealthily but steadily reduce the bargaining powers of workers' groups. The proposed Labour Code on Industrial Relations (IR Code), for example, has proposed alarming and far-reaching provisions to effectively make it impossible for trade unions to function, protest and put pressure on employers for wage hikes towards living wage level or for other labour rights. The consequences of the provisions would be to practically make it impossible and illegal for workers to strike under any circumstance, in effect legitimizing police brutality and firing of workers for protesting. The code proposes heavy penalties and even imprisonment for workers who strike, contribute financially for a strike fund and/or for leaders who mobilize workers for resistance. This displays undeniable intentionality of the state to crack down on workers' solidarity and to end the historical role of unions of negotiating wages as well as checking capital's recurring tendency to overstep workers. Meanwhile, the code proposes an incredibly light touch while dealing with employers who violate labour laws. Another major blow that severely curtails the ability of union and workers' collectives to bargain for higher wages is the proposed move to take away the right of these worker bodies from demanding a copy of the balance sheet of the firm or unit, which unions have historical-

ly used to calculate and argue for a just share of workers in the unit's profits. The collusion of the state with capital in eliminating the very conditions from which any resistance could emerge—such as financial resources for people's movements, guarantees of minimum security of work, a rights based discourse, a state machinery mandated to protect protests of the poor—has become undeniable and all pervasive.

4.2.2 State's Role as Enforcer: Dismantling of Regulatory Institutions

The state's role in enforcing protected, living wages requires a strong, effective regulatory presence that is firmly located in the paradigm of checking the natural tendency of capital to extract labour. Given the mechanics of exclusion discussed above, the need of the hour is to invest in the capacities and resources of the country's regulatory institutions and empowering them to widen their scope to more casualized and transient segments of the labour force. Instead, there is overwhelming evidence that successive governments have unleashed a systematic weakening of regulatory institutions in the country, especially since liberalization. Pais shows evidence that the rates of reporting and prosecution by labour inspectors has been consistently falling (2008). The systematic under-resourcing, understaffing and disempowerment of labour departments and other regulatory bodies show an unmistakable intention to hollow out these central institutions that need to be reclaimed and improved (NCEUS, 2007; SNLC, 2002). There has been a drive by the state to dilute mechanisms such as labour and factory inspections, which are available to monitor the application of minimum work conditions and industry standards, in favour of attracting foreign investments, as exemplified in the case of Rajasthan and Gujarat (Bremman, 2013; Hirway, 2014). This has made it easier for employers to easily keep workers off their books (especially the most invisible ones such as circular labour migrants), declaring their firm size to be smaller than minimum size criteria of applicable laws, with no real threat of being caught (Jain & Sharma, 2018). Jenkins argues that the very institutional framework within which India's labour operates lacks coherence (2004). Increasingly, the loca-

tion of labour issues has been strategically shifted from domestic policy to the international economic agenda. Institutions dealing with labour in India are also bodies responsible for reviewing proposals for foreign investments, whereas the judiciary has exhibited an anti-labour trajectory (ibid).

There has also been a strong normative shift that has been underway since liberalization, functioning to delegitimize the role of regulatory institutions by creating an all pervasive rhetoric around India's 'inspector raj'. Sundar's discourse analyses of speeches by recent prime ministers reveal the continuous characterization of the idea of industry regulation as unnecessary, prohibitive and corrupt (2019). The hegemonic discourse around economic growth through liberalization has also meant the creation of Special Economic Zones (SEZ). In these SEZs, which predominantly employ migrants, industry has been exempt entirely from the system of inspection, with a 'Development Commissioner' replacing Labour Inspectors. The very nature and scope of the role of a Development Commissioner is contrary to the principle of checking industry's tendency to extract labour. The final assault on the notion of regulation can be found in the Wage Code, where the term 'inspector' itself has been replaced by 'facilitator', whose main role is to 'supply information and advice to employers and workers, concerning the most effective means of complying' (as cited in Jayaram, 2019). The policy renders the central oversight function of regulatory institutions toothless by diluting their punitive capacity, instead requiring the 'facilitator' to give two opportunities to the employer to comply before initiating prosecution. Regulatory inspection, as opposed to these 'guidance inspections', will be subjected to state government regimes, the rules for which are handed down by the Central government. These rules will keep regulatory inspections constrained by a web-based, auto generated system of inspections, which practically mean that registered factories might face an inspection once in three to five years. Moreover, the inspector is de-capacitated from following an intelligence lead or complaint to inspect a factory (outside of the auto-generated instructions). These changes are in strict violation

of the ILO Convention on labour inspections ratified by India (ibid).

4.2.3 State as Direct Provider: Incompatible, Inactive, Hostile Justice Architecture

The state's role as a direct provider of justice to aggrieved workers is in an abysmal state. Its approach is embedded in a view of labour relations that is heavily biased towards the formal sector, which makes it unable to even identify or verify when contracts have been breached in the informal sector. Thamarajakshi reiterates that administrative approaches towards disputes resolution created for workers in formal employment cannot be blindly reproduced and expected to work for the informal workforce (2005). The state's relationship informal labour is an awkward one. On the one hand, it understands 'informality' not as a logical space of its own, shaped by social realities as much as economic realities, but as the simplistic 'other' of the formal sector (Kamath, 2017). The piecemeal attempts to 'formalize' the 'informal' have largely been from a capital view of bringing firms and units under taxation more than being about extending legal protection to informal workers (Unni, 2017). The efforts to extend social security to informal workers has also been largely arbitrary, plagued with huge gaps (NCEUS, 2007). The state's relationship to informality continues to be shaped by a fundamental lack of understanding of its nature and composite forces.

The first step in invoking legal and justice architecture for wage violations is to prove employer–employee relationship, a puzzling requirement to demand from a migrant worker. The procedures and imagination of state officials and bureaucrats—advocates, judges, labour departments and Lok Adalats is based on formal work, where relatively standardized and documented conditions of work exist. The very logical frame within which this justice architecture is built poses a very heavy barrier for informal workers to access state institutions, particularly migrant workers. For instance, in the construction sector, a daily wage worker might perform different types of work at the construction site, like lifting and carrying, tile fitting, wall construc-

tion etc., which are all paid differentially, based on piece rate, height of wall, area of tiles fitted and similar such factors. These make wage calculations complex and difficult to fathom if approached from a standardized, formal work lens. Most often, state institutions, interfaced by officials, lawyers and judges who are unable to comprehend these work arrangements and function with incomplete documentation, tend to dismiss these cases as unviable for litigation.

Approaching the labour court is difficult for many other reasons. The timing when a migrant worker has the ability to file a case forces them to skip work, leading to loss of daily wages on which everyday subsistence depends. The ticket size of these cases tend to be relatively small (though they are significant for workers), so the heavy upfront fees required to file cases can outweigh the amount under dispute. Moreover, labour courts are infamous for time-consuming and lengthy processes which are doubly difficult for migratory labour. The lack of legal portability in the state architecture is another major hindrance for a migrant worker's access to justice. When a dispute occurs at the worksite, informal and migrant workers are forced to return to their villages as it is not possible to procure food or rent at the work destination without daily wages. Meanwhile, the formal system, governed by rules of geography-based jurisdiction, requires that cases be lodged where the dispute has occurred. For instance, workers who have suffered a workplace injury are required to visit the Employee's State Insurance (ESI) dispensary located near their worksite, acquire certification and proceed for compensations at the same location. They are disallowed from doing this in the states and districts where their households are, and where they are forced to return to in the eventuality of any distress event. The sedentary bias in these processes, do not take in to account the practical challenges faced by workers in remaining and navigating the city and its institutions without employment or any support structures in the event of a dispute.

Migrant workers have to work and live in peripheries of cities and other isolated areas, where

state institutions tend to be absent. Courts, lawyers, police stations and labour departments are usually out of reach to workers, whose mobility is also often highly limited or dependent on the employer themselves. A lack of outreach and dissemination of information by the Labour Department or the District Legal Services Authority in regions that are inhabited by workers leaves them with little understanding on where to report their cases, or the processes involved. Furthermore, migrant workers come from highly disadvantaged communities, with little exposure to administrative or legal procedures, and are easily dismissed by state officials who often use difficult terms, demand the completion of elaborate forms and documents or fulfilment complex procedures. Social stigmatization faced by these groups is reproduced in their interactions with the state, which makes the state additionally distant, unapproachable and even violent. Aajeevika's case documentation reveals that when migrant workers from SC communities approach the police with a case, the police often treat them as criminals, cross-questioning the workers and accusing them of lying, as if the worker themselves was the offender. The treatment towards Adivasis is even worse, with reports of the police asking aggrieved workers to sit on the floor at the police station, wait for long hours with no information on next steps, making them come back multiple times with vague or no reasons provided for delays. It is no surprise therefore that migrant workers are reluctant to go to the police or any state official for grievance redressal, as the experience is laced with being shamed, accused or neglected.

Given both the incompatibility of the justice delivery architecture towards cases involving informal and migrant workers, as well as the hostile position of the state towards these groups of workers, the legislative changes under the Wage Code further weakens workers' ability to report their cases with the state and access justice. Appellate authorities have been given the mandate for providing justice in the case of wage violence, taking away the jurisdiction from courts. However, the composition and functioning of these authorities have not been defined, though their decisions are binding, without

possibility for judicial review. The ability of workers to access grievance redressal from the state is also weakened as cases can only be filed with the appellate authorities by an appropriate authority, employee or trade union, with the definitions of these terms tending to exclude migrant labour, who often do not have employee status and do not belong to trade unions.

This not only removes criminal liability on the employer for wage violations, but also omits provisions from existing provisions through which employers could be called to account. For instance, through altered definitions of principal employer, it releases the employer from being held accountable for payment of wages to workers where the contractor fails to do so. This creates challenges for migrant labour, who are often employed through multiple layers of subcontracting, and are unable to hold any of their contractors or employers liable to pay wages. It has also permitted employers to deduct the wages of workers based on performance or for recovering losses, without mentioning a due process to be followed. Given the manner in which wage thefts and deductions are made from the wages of migrant labour, this provides further impunity to employers for arbitrary deductions from workers' wages. It has created challenges in claiming overtime payments by excusing employers from complying with statutory limits on working hours in the case of emergencies, urgent work or work that is preparatory or complementary in nature. The understanding of overtime as any work that goes on beyond the permitted number of hours per day has been removed, allowing employers to easily present overtime work as urgent or necessary addition to the existing work hours.

4.2.4 Lack of Information and Official Data

In addition to all of these, another central problem in the state's role in this area is related to the lack of information and official data on the issue of labour migration. Many debates have raged about the inability of national statistics to adequately capture and count seasonal and circular labour migration, given the complexity involved in treating short-distance and several other, diverse forms of movement

occurring in the country. While these statistics are important, a doubly troubling absence is that of lack of knowledge and understanding among local governance bodies such as panchayats and municipalities about migrant workers living in areas under their jurisdiction. This lack of data and understanding result in poor, or entirely absent, systems of public provisioning for migrant workers. Other existing pathways for data gathering on workers including migrant labour, such as the Inter-State Migrant Workers Act, firm-based registration under Factories Act, Building and Other Construction Workers Act, or even ESI and Provident Fund are not reliable data sources as all of these are under-used and manipulated by industry. Even where contract and daily wage workers are employed at the same firm for extended periods of time, they do not feature on the rolls of the firm. It has been the experience of the Rajasthan government's Legal Aid, Education and Advocacy (LEAD) cell that employers often maintain fake records of workers using dummy names, but do not register workers who are actually employed by them. It is also common for employers to cut PF and other social entitlements from the salaries of workers but not make it available to them. A vacuum of information on migrant labour not only suppresses public provisioning and an implementation of their rights, but on a larger level, functions to reproduce the state's neglect and amnesia in responding to the exclusions faced by them.

5. Consequences of Exclusion from Protection of Wages

Exclusion from the state's mechanisms for protection of wages, characterized by low wages and wage thefts, has the effect of further immiseration of circular migrants and their households, who already face high levels of poverty and marginalization. As mentioned earlier, insecure, risky and long hours of back-breaking work that migrant workers perform in informal labour markets at the destination take a significant toll on the body and mind of the migrant worker, who often faces occupational hazards in the form of diseases such as TB, silicosis or musculoskeletal diseases, or through a depletion

of their bodies that are too exhausted to continue working as a result of toxic work conditions and poor living conditions aggravated by a lack of nutrition and access to public healthcare services. This means that migrant workers are often unable to continue working after the ages of 35 to 40 years (Sharma et al., 2014). For women migrant workers at the destination, low wages and poor living conditions create an additional gender based burden, in having to ensure the subsistence of their households without adequate income or public provisioning. Floro argues that a lack of access to basic services and infrastructure, poor wages and inflation affect women the most, as they resort to working longer hours and performing more than one task at a time to make up for the income poverty experienced by their households (1995). In the context of migrant women in Ahmedabad, Jayaram et al. (2019) reveal that women spend 17 hours a day working, of which 5.5 hours was on domestic and care work in frugal conditions, and another 3.5 hours on accessing basic facilities such as water, sanitation and fuel. This leaves them with little or no time for sleep, rest and leisure and leads to low food intake and poor health.

The case is not different for the households of migrant workers, where the women, elderly and children remain in the villages, while the adult male member(s) migrate. The lack of a living wage, or in many cases, even legally mandated minimum wages received by the migrant workers, takes a direct toll on the household, for whom remittances from migratory labour make up a substantial portion of the livelihood basket. Even though the male migrant saves by giving up dignified living conditions and essential goods in the city, they are able to remit only between Rs. 1,000 to Rs. 1,500 to their households, which does not even meet the consumption needs of their households (Sharma et al, 2014). It is women, through their labour, who subsidize capitalist growth, which is based on labour cheapening, by working more and more for the subsistence of their households, providing a 'gender subsidy' to capital (Naidu & Osome, 2016). The low amount of remittances leaves the migrant workers' households in a constant state of inadequacy, which is

made up by women workers who invest both performing paid labour in NREGA or local construction and mining, and in unpaid domestic work by processing meagre income into goods and services required for the reproduction of households. Even then, they are only able to ensure the subsistence of their households, but not meet its consumption requirements with adequacy. Once migrant men return from their work destinations between the ages of 35 and 40 years, weakened, ill and unable to work, they depend on their wives to provide for the household.

Children from migrant households grow up in a state of deprivation, leaving them with a poor start to life. Mohan et al. (2016) find high levels of malnutrition and wasting as compared to children from other communities, with over half of the children they studied across 500 families being malnourished. These children are also required to migrate for work as early as 14 to 16 years, dropping out of formal education, with little or no skills, to replace their fathers' income in informal labour markets (Sharma et al, 2014). Inadequate wages are therefore central to the intergenerational transfer of poverty, where the next generation of emaciated children—with little scope for vertical mobility and better earnings—take over the previous generation, creating a cycle where circular migrant households are kept in a state of poverty in order to facilitate cheap labour (Jain & Sharma, 2018). It deprives migrant households from access to other basic public goods, particularly, food, health and education, which form the basis of a healthy and productive population. The large wage dependent and migrant population thus remains trapped in the cycle of toxic work, inadequate and insecure wages and impoverishment.

6. State's Attempts for Protecting the Wages of Migrant Labour

The growing exclusion of migrant labour from employer or state provided welfare provisioning has led some state governments to develop initiatives to improve their well-being. In Kerala and Rajasthan, state governments have set up unique initiatives,

which provide important lessons for setting up institutional mechanisms to realize the wage rights of workers. In this section, we examine these two prominent responses—by the Kerala (destination state) and Rajasthan (sending state) governments—to critically evaluate the successes and challenges of these models.

6.1 Kerala Government's Migrant Resource Centres (MRCs)

The Kerala government has established a number of notable models to promote the welfare of migrant workers coming into the state, including progressive measures for improving migrant workers' access to public provisioning, such as enhancing access to education and healthcare. A flagship initiative of the Kerala government is the Awaz scheme, a state health insurance designed specifically for migrants. It has also undertaken the initiative of state-subsidized hostels, enabling migrant workers to access decent housing. While these initiatives have been met with many challenges, they remain pioneering instances of destination state governments recognizing and subsidizing migrant workers.

While these instances of welfare provisioning designed for migrant workers is easily available on the public domain, its efforts to uphold the labour rights of migrant workers—by implementing key labour legislations, regulating industry and holding employers or contractors to account—is not easily accessible. A lesser known initiative undertaken by the Kerala government is the Migrant Resource Centre (MRC) that was established in 2018, with initial plans to extend this model to all districts. However, information regarding this initiative and its implementation remains limited to our interactions with practitioners and researchers who work with the government and migrant labour, rather than official information, as we were unsuccessful in securing interviews with relevant state officials.

While other states, such as Bihar and Odisha have established MRCs, they are largely concerned with the provision of information and delivering services such as imparting skills and providing social security linkages to migrants going out of

the state. Engaging with the pervasive and deeply political issues of wage theft, poor and low wages at destination states and provision of grievance redressal to workers in the case of wage law violations is not the central mandate of these models. Based on our conversations with practitioners who were involved in discussions with the government during the its conceptualization, one of the provisions of the MRC is to integrate it with the Labour Department and envision as a space where migrant workers can register their disputes, which would then be referred to the Labour Department for resolution, allowing workers with access to justice delivery platforms. A model for protection of wages is therefore inbuilt in the MRC within a rights-based paradigm, rather than being a body which merely delivers information and services. However, the official mandate of the MRC is not available on public domain, and we were not able to procure official orders from the state government regarding MRC functions.

An evaluation of the current functioning of the MRC, however, reveals some interesting insights. This is based on the authors' conversations with researchers and practitioners in Kerala, who have to rely on their field insights and interviews with migrant labour in the absence of adequate official data on this model.

6.1.1 Resourcing, Capacities and Outreach of the MRC

We were informed by practitioners working in Kerala that the MRC faces understaffing and under-resourcing—the central issue facing labour departments across the country. Only a single officer has been appointed, on a part-time basis, without prior training on the issues facing informal and migrant workers engaged in daily wage-based, casual and contractual work, or the operating principles of informal labour markets. Rather, protection of labour rights and grievance redressal is based on the Labour Department's approach towards local, often unionized and more permanent labour. The lack of a lawyer at the MRC or the Labour Department, who is trained in representing casual and migrant

workers' cases, leads to serious deficiencies in the MRC's ability to take up migrants' cases of wage violations.

Additionally, interviews with migrant workers who visit the MRC revealed that legal outreach and education on workers' rights conducted by the government was largely restricted to the Awaz health insurance scheme. Field practitioners in Kerala report that there is a footfall of an average of 300 persons per month at the MRC. However, migrant workers visiting the MRC revealed that they feel that it is an Awaz card is a mandatory identity document to be able to continue working in Kerala, and their sole purpose for visiting the centre is to register for the Awaz scheme. A large number of the workers shared that they do not know the uses of the Awaz card and have not been able to use to access subsidized healthcare up to Rs. 15,000. Migrant workers interviewed also reported that they did not know of the grievance redressal mechanism offered by the MRC. It appears that the MRC has not taken into consideration the low status of legal literacy or the fact that migrant labour often do not know that their rights are being violated in order to report them.

The location of the MRC, which is far removed from migrant living spaces and worksites, in a locality which is largely urban and dominated by the local middle classes, is reported to create further barriers to access. The MRC also does not appear to have provisions for phone-based helplines for workers in distant locations or challenging situations to reach them.

6.1.2 Enabling Migrants to Reach Out to State Institutions

A large part of the drive for registering migrant workers under the Awaz scheme, according to practitioners interviewed, was also for the motive of maintaining a record of migrants for surveillance purposes, due to the deep-seated suspicion towards 'outsiders'. The suspicion towards and criminalization of migrant labour across public spheres and media is ingrained in the state as well. A prime example of this was the exodus of migrant

workers from Ernakulam following the police's demand that they produce No Objection Certificates (NOCs) from local police stations in their source states to be allowed to continue working in Kerala (Prasad-Aleyamma, 2019). Hostility and suspicion from front-line officials of the state is a result of the ethnic and linguistic federalism in the country, where state administration views migrants as outsiders and not citizens (Jain, 2018). This can only be overcome through conscious efforts to integrate migrant workers into the mandate of state institutions. However, the MRC does not appear to have ties with other state institutions, particularly the police, who are often the first point of state contact in cases involving migrant workers.

6.1.3 Migrant Labour's Integration with Local Workers' Platforms

Kerala is one of the most successful states in bringing the labour agenda, through strong trade unions, to the centre of the state's politics. The current government, led by the Communist Party of India (Marxist)—the CPI(M)—draws from the support of Centre of Indian Trade Unions (CITU), the party's trade union, and is a labour-backed government. Local labour unions in the construction, manufacturing and plantation sectors have been able to successfully engage in collective bargaining for wage determination, with many unions forming cooperative models to eliminate middlemen and contractors, taking labour contracts directly from employers.

However, there do not appear to be visible efforts to include migrant workers in leadership and agenda-setting roles at the industry level or in central trade unions. The MRC, which can refer wage-related cases of migrant labour to the Labour Department, does not attempt to involve trade unions and workers' organizations in migrants' cases. Unions and workers' organizations are essential for demanding adequate, living wages or achieving support systems while reporting wage violations. Rather, the MRC operates as a separate model which focuses on the individual case of the migrant worker, rather than mobilizing or supporting collectives, which are essential for asserting migrant

rights in a state where migrant workers do not have access to social networks and support.

Our conversation with researchers and practitioners involved in migrant issues in Kerala revealed that labour unions in the state, especially in the plantation and construction sectors, are often involved in directly taking contracts for supplying labour. There have allegedly been cases of migrant labour being employed through labour unions, but being paid well below market rates or rates agreed upon between the union and employers (Prasad-Aleyamma, 2019). Such instances reveal the manner in which migrant labour comes to occupy the most marginalized and excluded categories in labour markets, even in a state that has a history of strong labour mobilization.

The Kerala government has expressed the view, during public consultations or official meetings attended by the authors, that the welfare mandate belongs to the state, backed by labour unions, and must not be left to civil society. As a result, it has not engaged in partnerships or collaborations with civil society organizations that work on diverse issues of migrant workers in the state, who might have greater and more detailed understanding of the nature of migrant labour markets, the living and work conditions of migrants, and might be more approachable to migrant workers. Furthermore, this alienates civil society and social movements from holding the state and established local unions accountable in their approach towards migrant workers.

Kerala bases its efforts on its recognition of migrant workers' contribution to the state's economic growth. This plays a significant role in challenging the narratives that ignore and devalue the labour power provided by migrant workers, with the top political leadership in the state recognizing their value to the state. However, the question of protection of wages requires a rights-based approach, where migrants groups are able to hold state and industry to account. It requires the state to move beyond the role of benevolent welfare provider to make space for the voices and agency of migrant workers to stake their claim over the state.

6.2 Rajasthan Government's Legal Aid, Education and Advocacy Cell

Rajasthan government's Legal Aid, Education and Advocacy (LEAD) work has developed strategies for utilizing and applying labour laws and activating state institutions in cases involving informal and migrant workers. Since it was set up in 2010, it has compensated Rs. 15 crores to over 60,000 informal and migrant workers. It has achieved this through: a) legal counselling and mediation services for resolving cases by involving workers, contractors and employers; b) providing support and networks for litigation in labour courts and ensuring police action for criminal violations. These services are accessible through walk-in centres in rural and urban areas, as well as a toll-free labour helpline, supported by community led paralegals and workers' collectives.

6.2.1 Innovations for Responding to Informality and Migration

LEAD's innovations are focused on overcoming the shortcomings of formal justice mechanisms by making its techniques more suitable for informal work and migrant workers, in the following ways:

1. Legal personnel with thorough understanding of informal work arrangements: Legal counsellors, advocates and staff are trained in the norms, practices and processes of the informal economy and the nature of informal work arrangements and work relationships. Rather than attempting to fit these work arrangements within the frame of formal organized work, it attempts to understand the intricacies of the different trades and work sectors in the informal economy, the challenges faced by different groups of workers and the functioning of informal labour markets in order to formulate suitable responses. It also attempts to update its understanding as per the rapidly changing dynamics of informal labour markets.
2. Developing skills and techniques to use informal documentation to establish employer–employee relationships: It makes informal documentation acceptable for formal

processes, including litigation by recording the oral testimonies of workers, contractors or employers during counseling. It mediates process in case files signed by all parties; creating documentation of work and wage calculations based on the accounts of workers and the erratic or informal documentation maintained by them, using photographs of workers at the worksite, payslips or digital payment receipts to create a record of their work and establish employer–employee relationships. This is then authenticated through a verification process with co-workers, contractors, employers or visits to the worksite to gauge the work.

3. Use of labour laws as legal tools: It uses different labour laws, including the Payment of Wages, Employee's Compensation Act, Minimum Wages Act, Equal Remuneration Act, Contract Labour Act or Interstate Migrant Workmen Act, as well as criminal laws. In this process, it identifies and activates the clauses in these laws that are sensitive to informal and migrant workers. It does so both to pressurize uncooperative employers and contractors during mediation or for litigation in labour courts. In wage disputes, it actively engages the clause that places liability on the principal employer for making wage payments to workers in order to pressurize the employer to ensure that the payments are made across the long and complex contracting chains. The Employee's Compensation Act has a clause that allows the portability of injury compensation, such that the case can be lodged and entitlements claimed at any location.
4. Leveraging on workers' collectives and community-level paralegals: It ensures last mile access through an active involvement of paralegals who are drawn from the same community as informal and migrant workers in its operational areas, as well as supports in facilitating and running informal and migrant workers' collectives. These

community platforms are able to perform campaigns that reach out to remote locations inhabited by informal and migrant workers, conduct awareness and education sessions, perform first level counselling following the occurrence of a dispute, and even resolve cases at the local level. These platforms are embedded in the community, and so they understand its dynamics, making them more accessible, sensitive and responsive.

5. Local presence and use of technology: Walk-in centres exist at the local or block level in rural areas, or at the city level or in deep industrial or other remote work locations, with a concentration of informal and migrant workers. It also ensures access through a toll-free helpline, so that workers can report their cases from isolated, far-flung locations through their phones.

Investing in strategies that creatively utilize and apply labour laws and activate state justice delivery mechanisms to address and respond to labour rights violations in the informal economy are also pertinent in the long run for creating a greater balance between the interests of labour and capital and reconciling social justice principles with that of economic growth. They have the effect of both reducing the impunity that the industry enjoys during labour rights violations of informal and migrant workers and improving labour norms and practices that are utilized by employers to extract workers to become more competitive.

6.2.2 Challenges: Informality, Vulnerability and High Labour Mobility

The strategy utilized by LEAD is restricted to mediating the cases of individual workers, on wage-related issues, but it faces severe challenges in calling to account and penalizing principal employers or creating regulatory systems at the industry level for resolving the wage-related vulnerabilities of migrant labour.

Due to this reason, it is able to reach out only to certain segments of the migrant workforce, who

are able to engage in mediation with their labour contractors. It faces several challenges in accessing the most vulnerable and marginalized migrant populations, in using informal documentation and in working with highly mobile labour. While it is easily able to reach out, counsel and register disputes concerning daily wage construction workers, it is not able to achieve the same levels of success with workers who live at their worksites or are in more long-term employment contracts, such as contract labour who live on construction sites, factory workers who live within the factory compound, in the hotels where they work or on the shop floor. These are also workers who are likely to face greater threats from their employers, alienation from state mechanisms and who are unable to report their cases due to a fear of loss of jobs. The levels of alienation and high degree of dependence on the employer make it difficult to support this large section of migrant workers to register disputes.

When workers do approach the system, they often hold back from reporting or filing cases against the employer for criminal aspects such as abuse and harassment that go hand in hand with wage disputes. Particularly in the case of women workers, direct reporting is very low, which means that they rely on men in their labour group to approach LEAD. While their wage cases might get reported through the assistance of male co-workers or relatives, harassment of women at the workplace which often occurs alongside wage disputes remain under-reported. Workers are keen on recovering their wages as it is directly linked to the sustenance of their households, but remain afraid of not finding employment or repercussions from the contractor or employer if they register a criminal complaint against them. This means that penal actions against employers, especially those who repeatedly perform these offenses, become difficult as a regulatory strategy. Therefore, while mediation is easier to achieve when contractors or principal employers are identifiable or willing to engage, cases are resolved at the individual level, without activating state machinery or creating change at the industry level.

Migrant workers often return to their source villages after the occurrence of wage disputes as they are not able to recover their wages from the contractor or employer. Despite its operation across source villages and work destinations, LEAD finds it difficult to activate the state machinery at the destination once the labourer has moved back to the source. The deep bias against mobile labour in the state machinery means that many legal entitlements of workers are not portable. Rather, cases have to be lodged at the place where the violation occurred. In such cases, workers also ultimately move on to new work destinations and become unavailable for the long drawn-out process of interstate dispute resolution.

Often, even the informal documentation kept by workers is incomplete, erratic and arbitrary and heavily manipulated by the contractor or employer, which makes it difficult for LEAD to prepare it for litigation, leaving employer–employee relationships impossible to establish or to verify and prove the number of days and extend of labour performed. This makes a large number of cases unviable for labour courts, leaving them exclusionary of migrant workers.

7. Role of the Labour Movement in Protection of Wages

During the course of India's post-Independence history, the state on many occasions has upheld its duty of protecting workers' wages, meeting different degrees of success. An examination of the dynamics surrounding such instances reveals that it took a strong labour movement and workers' resistance to ensure that the state performs this role. India's postcolonial history highlights that the Indian state does not function linearly as a neutral, Weberian bureaucracy that can simply legislate rational and legal rules and then enforce it, acting from above society for transformation and national construction. Instead, the state's functioning displays the sociopolitical logic of a porous entity that has complex relations with society and markets, mediated by networks of highly politicized class and caste identities (Kumar 2005, Webb, 2013; Gupta,

1995). Given this nature of the Indian state—implicated and embedded in the hierarchies as well as the idiosyncrasies of its societies and markets, the counterweight of workers' movements fixated on labour rights has been central in ensuring that the state plays its role of protecting wages. The labour laws of the country, for instance, were not bestowed to Indian workers by independent acts of benevolent or enlightened legislators. Instead, as section II emphasized, it took a strong trade union and workers movement to work in the background to gestate these legislations.

In addition to labour law legislation, one of the tasks of the Indian state as a regulator is to participate as a stakeholder in industrial relations. The ID Act of 1947 requires that the government view demands from worker protests as a phenomenon that helps in maintaining industrial peace, giving an opportunity to broker settlements with employers through tri-partite negotiations. India is among the select countries that have a significant tradition of tri-partite relationships, dating back as far as the colonial era (Ramaswamy, 1983). Casting a light on cases of wage hikes won through tri-partite negotiations reveals a similar dynamic—that the state had to be forced by workers' movements to overcome the pressure they face from industrial lobbies to get them to perform this role in the spirit of the ID Act. For instance, in the pre-liberalization phase of Tamil Nadu's textile industry, the state played an active role through wage boards and tribunals for the enforcement of minimum wages and for fixing wage hikes for all categories of workers in the state's textile industry. However, acting in the backdrop were several trade unions. Krishnamoorthy highlights that nearly every labourer in the Tamil Nadu's 3 lakh-strong textile workforce was a member of at least one union (2005). Behind the successful wage hike, therefore, were a series of lockouts and strikes that occurred over a period of time, which pushed the state into protecting the wage demands of workers through many conciliatory efforts with industry.

From the post-liberalization phase of the country, tri-partite discussions over wage hikes for tea plantation workers in North Bengal and Kerala are

instructive. Demands of women workers in the Dohars region of North Bengal have rocked the tea industry on many occasions and halted production. Over the decades, these have resulted in state-brokered negotiations, resulting in raising wage levels of workers, though they still remain low and protests are forcing the state to take up the issue of bonus payments now (Gothoskar, 2012; Sarkar, 2019; Deb, 2018). Similarly, in the Munnar region of Kerala, then Chief Minister Oommen Chandy himself presided over tri-partite discussions that led to a 30 per cent wage hike for plantation workers. His involvement was achieved through a dramatic struggle of women workers whose demands were long ignored by the state's powerful, male trade unionists that claimed to represent them. The women ultimately by-passed these entrenched powers to organize themselves. Once they started garnering attention and led successful mobilizations, trade union leaders attempted to co-opt their movement and represent them in tri-partite negotiations, which the women flatly refused. They kept their representation to ordinary women leaders who emerged from their ranks. It took a prolonged, uncompromising and dogged resistance by the women, which ultimately forced the chief minister to push against not just the influential tea lobbies, but more importantly against the entrenched power of patriarchal trade union leaders in Kerala to back the resistance of ordinary women workers (Kamath & Ramathan, 2017; Raj, 2019).

Emphasizing the countervailing role of the labour movement is even more relevant today given the deadlock we face vis-à-vis the nature of the contemporary Indian state itself. As discussed earlier, the Indian state today is deeply entrenched in an unabashed collusion with industry to erode even basic rights of workers. Therefore, the project that this chapter is invested in, i.e. to conceptualize ways to extend state protection over wages to the most vulnerable workers in the labour market, is mired in the dissonance of moving in a contradictory direction from the logic of the contemporary Indian state. A deeper tension lies if one looks at the Marxian critique that wage labour is in itself a form of enslavement and that the project should

be a political one of reconstituting production relations away from these terms based on grave inequality (Engels, 1847). Ramaswamy argues that the Indian labour movement has been grappling with these tensions since its inception (1983). While the political project of transformation is an ideological commitment, trade unions have had to pay attention to the practical, everyday struggles of workers revolving around higher wages and better working conditions. The emphasis on union action on these issues is criticized as legitimizing exploitative capital relations and inhibiting the larger task of reconstituting relations on equal terms. However, Marx himself had sympathy for the need to look at practical imperatives and daily struggles of workers (Randive, 1985). Also, securing minimum human conditions of sustenance is needed to embark on the larger objective of shifting the very nature of production relations. The experience of the labour movement suggests that drawing strict binaries between the reformist and revolutionary agenda is a self-defeating position. Lakha (1988) and Mathew (2020) highlight that the praxis of striking, negotiating for higher wages and other incremental changes can itself be the most effective way of creating class consciousness and represents a social war between classes, a microcosm of the larger political agenda. In a similar vein, this chapter is based on the position that reforming the state for incremental changes that enable protection of wages of seasonal and circular migrant labour is part of the process of reconstituting the state away from the current paradigm of neoliberal process. In this dynamic process, Gillian and Lambert argue that the global labour movement is one of the key actors that have the potential for reclaiming the state through 'a countervailing politics to the hegemony of neo-liberalism' (2013).

One of the central reasons why the wages of seasonal and circular migrant labour remain so unprotected is also because of a near total absence of unions and workers' resistance among them. Hostility from trade unions and local labour towards migrant labour is common, and successful efforts to form platforms for these workers to increase their bargaining capacity have been very limited

(NCEUS, 2007). NGOs have been more prominent in advocating for the rights of migrant workers, rather than trade union action. The helpline operated by the Rajasthan government is a case in point. This helpline and method of intervening in the case of wage theft of migrant labour was not conceptualized or developed the state, but by an NGO that worked closely with various migrant communities to evolve ways to extend protection of wages to such workers. It was through years of advocacy, putting pressure on the state and demonstrating success that this arbitration method tailored for migrant workers was finally authenticated and adopted by the state. The following section attempts to outline such mechanisms to streamline processes and develop creative, institutional strategies for the inclusion of highly excluded categories of workers in a protective framework over their urgent imperative of adequate and secure wages. It does so based on the Indian labour movement's experience that realization of rights, even if limited by their economic nature and partial realization, has the ability to shift the norms governing the everyday sociality between workers and employers in the labour market, and the social classes they come from.

8. Potential Pathways for Protection of Wages

Reclaiming the state's role in the protection of wages requires a re-imagination of augmented mechanisms for responding to wage-related violations in the context of the widespread reality of seasonal, circular migration and the increasing casualization of employment. This involves both concerted functioning and enhancing the capacities of existing institutions for responding to wage-related violations affecting migrant labour, along with an enabling legislative and policy environment for realizing the wage rights of these groups of workers.

8.1 Concerted Institutional Mechanism for Responding to Wage-related Violations

Responding to wage violations among informal and migrant labour requires the coordinated functioning of four existing institutions: a) MRCs b) Police

c) Labour Departments and d) Labour Courts. An important function of this institutional mechanism should be the timely resolution of workers' case and speedy industry inspections and regulatory processes where violations will be identified through fast-tracked processes.

8.1.1 MRCs

A large number of MRCs are being operated across different states, such Bihar, Odisha and Kerala, run either by the state or civil society, or as a collaboration between the two. While MRCs have a wide potential to reach out to migrant populations, they remain focused on information or service delivery. While the provision of these services are important, the scope of MRCs can be utilized to re-conceptualize them as Migrants Rights Centres, which act as spaces for responding to labour rights violations and upholding the rights of casual and migrant workers, in addition to service delivery. They can undertake legal literacy and counselling so that migrant workers possess adequate information and confidence to report labour rights violations, building the reportage of cases for enabling swift response from state institutions responsible for delivering justice, as well as archiving and documenting cases in order to activate state regulatory action over industries, clusters or employers where violations are recurrent. These centres should also be equipped with lawyers trained in responding to cases involving informality and migration, and can act as capacity-building centres for training and supporting a network of lawyers and trade union representatives in these methods.

8.1.2 Police

The police system plays an important role in addressing wage-related violations. This is because, while workers report cases where they have not been paid the wages promised to them by their employers or contractors, they often do not report the lack of payment of minimum wages or other criminal violations such as harassment, intimidation and threats that exist alongside wage violations. Similar to the case of other violations where police investigations are conducted after the filing of an FIR, police authorities, rather than dismissing wage-re-

lated violations as civil cases, must actively seek out the criminal aspects that are intertwined with these cases. Circular migrant workers who report wage-related cases are most likely not being paid even minimum wages, which amounts to forced labour under the law, making it suitable for police action. Secondly, police stations are present in most remote and far-flung localities as well. This accessibility can be utilized to improve reporting of cases by extending the Zero FIR facility—that are commonly applied to cases relating to offences against women—to wage-related cases of migrant workers. This can be facilitated by inter-police and inter-department coordination such that migrant workers are able to report their case in the places of their residence as well. Police departments must also work alongside other stakeholders such as MRCs, labour departments and labour courts to undertake action on a priority basis when labour-related cases are referred to them.

8.1.3 Labour Departments

Labour Departments play two important functions, that is, a) the regulatory functions that it performs over industry through its inspections; and b) grievance redressal for workers where their rights have been violated. However, the Labour Department's role in both these instances has been highly diluted and weakened.

The dismantling of the Labour Department's inspection function through the Labour Codes as well as central schemes should be reversed, and a process for its strengthening should be put in place. Labour departments are currently present only at the district level, which makes them inaccessible to workers who live in remote and far-flung rural regions. In urban regions, circular migrants are often located in isolated industrial locations or living on their worksites, making it difficult for them to navigate the city and access the Labour Department. The presence of the Labour Department at least at the block level in rural regions, and near migrant dense clusters in urban regions, will make them more accessible.

The resourcing of the Labour Department, vis-à-vis its staffing and financial resources, is central

to its ability to perform the important role of regulatory oversight for the protection of wages. The resources allocated to labour departments should allow for an adequate number of officers to carry out inspections within reasonable time periods and conduct spot inspections in urgent cases, as well as building their capacity to perform these tasks. Rather than further weakening the state's supervisory function over industry as a response to corruption prevalent in the system, Labour Department officials at the grassroots level should be subject to strong accountability mechanisms to curb corrupt practices. This can include different processes such as timely filing and checking of reports following inspections as well as spot verification inspections by higher officials to ensure the veracity of the labour inspectors' reports. Accountability measures can be further enhanced by ensuring that trade union or worker organization members or civil society representatives accompany labour inspectors during inspections.

Labour Departments should also recover its original function of acting as a grievance redressal cell for labourers, and revive the Lok Adalat system which utilizes a 45-day mediation period for quick resolution of workers' cases. In this role, it will be able to register and address disputes that come through its own units, police or MRCs. Such a role will also have positive effects on its supervisory and inspection roles, as it can maintain a database of grievances reported by labourers, which will allow it to identify repeat offences by employers or industrial clusters, enabling pointed inspections and punitive action at the level of the individual unit or industry. This will particularly be useful in the case of forced labour cases, where workers are paid below minimum wage, in order to identify employers for whom this is a common practice and to activate appropriate criminal justice mechanisms.

8.1.4 Labour Courts

Labour courts are strong judicial mechanisms available to workers for dispute resolution. However, they remain inaccessible due to lengthy and expensive processes. A fast-track mechanism for adjudicating wage-related cases of migrants may be

put in place to address this issue. In this case, labour courts can activate and work alongside the District Legal Services Authorities (DLSA) to ensure that migrant workers receive free legal aid. In order to overcome the lack of documentation which makes migrant workers' cases unviable, Labour Courts must accept and encourage creative means of informal documentation such as photographs of the worksite, digital receipts of wage payments, workers' informal records of their work and payments due to them.

Currently, in the instances where labour courts are able to take up disputes registered by workers and rule in their favour, they do not have the power to implement their judgments. Labour courts must be empowered to demand police action in the case of grave criminal violations and to demand follow-ups on the implementation of its rulings as in the case of other civil and criminal courts. In the case of recovery of wages, labour courts place the onus on the worker to prove that the employer has the capacity to pay by taking account of the employers' assets. This means that even judgments in favour of workers remain un-implementable as workers are unable to perform this task. This responsibility should be shifted from the worker to the state.

8.2 Creating a Supportive Environment for Enhancing Wage Security of Workers

The proposed institutional mechanisms for ensuring wage security of workers require a supportive environment through strong and relevant legislations, timely executive action and the simultaneous empowerment of workers and their collective bargaining powers in order to the function effectively.

8.2.1 Setting an Adequate Minimum Wage Standard and Addressing Wage-related Violations through Legislations

The Wage Code should specify the definition of minimum wages based on the principles of adequacy, social rejuvenation and economic upliftment of labour-dependent households. A methodology for ascertaining the national minimum wage should be set according to the needs-based criteria that have been outlined by the ILC resolutions, as well

as Supreme Court judgments. Continuous social dialogue and workers' representation in tripartite arrangements should be established to check the discretion of state officials in setting the Minimum Wage. Rather than omitting the provision for gender equality in recruitments, the state should strengthen legislations that prohibit discrimination not only based on gender, but also caste, religion and region, in order to address widespread wage inequalities in the country. Another serious blow dealt by the labour codes is the removal of the liability of the principal employer for payment of wages to workers, when the contractor fails to do so. This provision should be brought back by correctly defining the term principal employer, which cannot include contractors or supervisors, but the owner of the establishment. In addition to this, legislations to mandate transparency in supply chains and strengthen principal employer liabilities across domestic and international supply chains must be undertaken. Large companies, such as market facing retail brands or export houses sourcing from marginal producers or home-based workers can be identified and held liable for the payment of statutory wages. Survivalist employers or petty contractors who face cut-throat competition and rely on the small profit margins allowed by larger companies that source from them, cannot be held solely responsible for the payment of wages. Migrant workers can also benefit from ensuring the portability of their legal entitlements for all wage-related legislations, as already exists under the Employee's Compensation Act. This means that workers will not have to remain at their work destinations in order to register their cases with the state, but can do so while returning to their source villages as well.

8.2.2 Workers' Organizations and Collective Bargaining Mechanisms as Central Actors in Wage Protection

While statutory minimum wages should be based on the needs of workers and their households, wage determination through collective bargaining will enable labour to claim a higher share of the firm's profits. The Wage and IR Codes deal a serious blow to collective bargaining and freedom of association. The state should focus on the establishment of

strong voluntary processes and workers' collective bargaining platforms through which its own intervention for enforcing minimum and living wages is reduced. Previously, trade unions and worker organizations were presumed to be lawful in nature, and necessary for industrial peace and equitable growth. The state must act to once again strengthen lawful protest and workers' organizations' collective bargaining ability, in the spirit of the fundamental right to freedom of association, through its legislations.

At the same time, workers' organizations and trade unions must see adequate integration into the above-mentioned institutional mechanism for regulating industry and redressing the grievances of workers. Workers' organizations can easily identify violations at the industry level as well as individual cases of workers, while acting as accountability structures against the state and industry. State institutions should work in concert with workers' organizations to respond to cases brought in through these organizations, and to conduct inspections based on inputs from them.

8.2.3 Responding to Heterogeneous Categories of Wages and Diversity in Employment Relations

There is an urgent need to extend labour rights to sectors dominated by women and marginalized castes, which involve high levels of subcontracted work through numerous intermediaries and unclear employee–employer relations, where these groups do not even gain recognition as 'workers'. Sectors such as domestic work, home-based work in small manufacturing and the lowest rungs in modern sectors such as construction, manufacturing and hospitality are dominated by women, children and marginalized groups. In these cases, the state must take a proactive role in recognizing the heterogeneity of employment relations and wage payment practices described in previous sections by including them in the ambit of wage and labour legislations. The subcontracted nature of work and multiplicity of employers in these sectors require the state to recognize marginalized groups as workers, rather than as self-employed, regardless of the nature of these employment relations. This will allow workers in these sectors to hold the principal employ-

er to account. In the case of domestic workers and for piece-rate work, wage rates based on standard hours of work should be included in the scope of the minimum wages legislation.

8.2.4 Effective Outreach and Capacity-building Measures to Improve Reporting of Wage-related Violations

The issue of poor legal literacy among workers has to be addressed by the state through concerted outreach campaigns that cover remote and isolated locations, including the living spaces and worksites of workers. The state should also provide door to door services. This can be done by activating the DLSA, which is responsible for conducting legal literacy campaigns. The state has proven that it is capable of conducting successful public campaigns through outreach under prioritized schemes such as the Swachh Bharat Mission. Similar enthusiasm and resources can be allocated for the legal literacy of workers as well.

The establishment of a worker helpline, at least at the state level, will allow workers in distress to access grievance redressal platforms regardless of their location. This phone-based helpline can be embedded within the institutional mechanism described above, and can refer cases to the relevant authorities. This will also allow workers to reach out for redress even when they fear threats and intimidation by their employers. The local presence of labour departments as well as strengthened workers' organizations and trade unions will also help reduce employer intimidation of workers.

State officials should be provided capacity-building training for using innovative means and informal documentation in responding to cases which involve informality and migration, overcoming their challenges in using informal documentation to argue cases and understanding the specificities of the functioning of informal labour markets.

An important reason for non-reporting of cases is the stigmatization that workers face from the very institutions that are responsible for delivering justice. Providing caste and gender sensitivity training to state officials, along with strong feedback

mechanisms through which workers can register complaints against the behaviour of these officials, are necessary for alleviating this situation. Along with this, these institutions should provide support to migrant workers for following the lengthy and complex bureaucratic procedures necessary for filing and following up on complaints.

8.2.5 Improving Data Collection and Utilization for Responding to Wage-related Violations

Current macro-level data sets which estimate the magnitude and trends of migration are unable to adequately capture the movement of circular, seasonal and short-term migrants who constitute the most perilous and risky migration stream. This shortfall can be addressed by using socially grounded and decentralized methods for capturing migration data at the local level, as was done in the case of the Rajasthan State Migration Profile 2014, undertaken by civil society organizations across the state, and the Centre for Women's Development Studies' surveys on migration in 2013. Capturing local level data leads to more accurate information and takes into cognizance detailed trends and shifts in migration. This data set is relevant not only for the sake of having data on migration but also for utilizing the understanding of migrant dense clusters as well as identifying migration corridors and the nature of migration in diverse locations. Such data can be used to plan state presence and regulatory functions for the protection of labour rights including wages.

Another important data deficit that has to be addressed is the lack of registration of workers at the firm level, which obscures employer–employee relationships. Ensuring the firm-level registration of workers will require spot checks by labour inspectors, which verify that the workers on the permanent records of the establishments are actually employed there, and workers employed on a regular basis at the unit are registered by the employer. This is a crucial link in helping workers establish employer–employee relationships which are critical for registering their disputes for litigation and resolving their wage-related issues. At the same time, the common practice followed by employers to register less than the statutory limit of workers,

so that they can evade state's regulations, can also be addressed.

Urban local bodies can play an important role in filling both data gaps mentioned above through the extension of their mandate. Their responsibilities can be extended to enumeration and recognition of migrant workers in the cities, as well as taking care of their settlements. This can serve the dual purpose of understanding migrant flows into the city, as well as to ensure public provisioning to these workers and their settlements. In addition to this, urban local bodies can maintain records of employment of migrant workers as they enter the city, which clearly register their place of work and principal employer. It can then work in coordination with the labour department to ensure that workers are being paid minimum wages, and other labour rights are being upheld. This will also serve as evidence of employment relations in court.

The maintenance of records of workers' hisaab, which encompasses the different types of work performed, number of days' work and payments owed to the worker, also forms an important aspect of making data available for protecting wages. One-way record-keeping by the contractor, who is able to manipulate the payments on this account and engage in opportunistic behaviour, should be replaced with records that are accessible to, and maintained by, both workers and contractors jointly. The maintenance of this record should form a legal liability on the principal employer, and should also be verified during labour inspections.

8.2.6 Decentralized Governance and Protection of Wages

Labour rights issues, including wage security, must be at the centre of citizens' agenda in local governance processes. This is because not only are the majority of citizens either waged workers or employers themselves, but also because labour rights are vital for the realization of socio-economic equality and democracy. This can be achieved only through the sensitization of the public towards the caste, class, language and religion based stigmatization of labourers. Public sensitivity towards other, related issues, such as environmental rights,

public health, education and food should extend to labour rights issues as well. This means that wage security and access to living wages must be recognized as a public good, and inform the mandate of local democratic institutions.

Local decentralized bodies, both at the panchayat and the municipal levels, need to be both aware and capable of responding to labour rights violations. Data on migration should be captured at the local level in order to allow urban governance bodies as well as rural democratic institutions to respond to precarious migration and wage-related violations, as well as to introduce measures for protection of wages in the conceptualization and implementation of local level plans and schemes.

Civil society institutions, which work on rural development, skills training, urban planning, education, healthcare and other rights which promote the socio-economic empowerment of marginalized communities need to engage with labour issues, and view them as central aspects of accessing these diverse public goods. Labour rights have to be understood as a cross-cutting phenomenon which has implications on all other citizenship rights.

9. Conclusion

India's economic revival plans in the post-pandemic phase revolve around the further dilution of labour protection, rather than taking steps to ensure the wage security of its migrant population. The economic strife underway in India is deepening inequality and hurting its democratic project. In 2019, India recorded the highest rate of unemployment in 45 years (Mody, 2019)! It is not an accident that this fall into desperation for labour occurred alongside successive steps to dismantle labour laws. Having chosen a growth model that is primarily based on extraction of poorest wage-dependent populations, as well as of marginal and small employers in survivalist enterprises or of petty contractors, we are witnessing an increasing concentration of wealth built on erosion of rights. Such a situation of unemployment, competition and poor wages is antithetical to democratic peace and participation,

and is aggravating class- and caste-based conflict (Sreevatsan, 2019). Workers' protests countered by police brutality was a marked feature of the lockdown across the country (Nathanael, 2020), while measures to further dilute labour protection as a response is bound to result in labour market anarchy (Sundar & Sapkal, 2020). Reclaiming the role of the state in protecting workers' rights, especially on wages, is therefore not just a labour issue, but also a concern from the point of view of India's economic revival, as well as democratic and social fabric. The chapter attempts to frame an inclusion agenda for seasonal circular migrants, as realizing the rights of those on the extreme margins has the most potent effect towards equitable economic growth and deepening democracy. While we focus on the role of the state in the chapter, we attempt to approach the issue by putting the labour market's social dimensions centre-stage, and stressing on the need for the labour movement as well as people's resistance to continue to inform and constitute the state in its role as protector of labour rights.

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