

Transitioning in Vacuum: Ambiguities in Labour Registration in Light of the Recent Labour Law Reforms

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The COVID-19 lockdown exposed and re-entrenched long-existing structural inequalities in India's workforce. Underpinning this was the fact that India currently does not have a robust system to recognize and register almost 92% of its workforce engaged in the informal sector.⁴⁷ Without formal recognition, workers in the informal sector are left with no legal recourse to assert their rights. Non-registration also means that the State does not have the necessary data for ensuring workers' access to entitlements. This became particularly apparent during the lockdown when lack of data/recognition meant that many workers could not assert their right to entitlements such as social security and wages.

Taking cognisance of this, in the case of *In Re: Problems and Miseries of Migrant Labourers* [Suo Moto Writ Petition (Civil) No. 6 of 2020] (*In re miseries*), the Supreme Court ordered all states to complete registration of informal workers by 31 December 2021. In pursuance of this order, the Central Government launched the National Database of Unorganized Workers (NDUW), that is, the E-Shram portal on 26 August 2021, to register and collect information about unorganized workers across the country. Although this is a long-overdue measure, its implementation on the ground has been haphazard. One of the multiple impediments to its implementation is that the labour law regime in India is currently in the process of being overhauled, leading to confusion on the ground.

In 2019 and 2020, the Indian parliament enacted four new labour Codes, including the Code on Social Security, 2020, which deals with the registration and social security of informal workers. The four codes repeal and replace 29 existing labour legislation. The four new codes, which were initially meant to come into force on 1 April 2021 have not been fully notified. As of 22 November 2021, draft rules have been formulated under all the codes.

However, only one of the draft rules has been finalized yet.⁴⁸ Due to ambiguity on how and when the labour codes will be implemented, there is little clarity on the process through which registrations should occur. Moreover, despite the announcement of the number of schemes linked to E-Shram registration, as listed on the E-Shram website, there is still confusion about whether registered workers will automatically be provided with benefits associated with the schemes or if they will need to apply for benefits under these schemes separately. In other words, there is considerable ambiguity in how the labour law regime, and hence the labour registration system, will transition from the old to the new.

Drawing on the experience of four organizations (CSJ (Center for Social Justice), Aajeevika Bureau, Econet, and Zenith) of facilitating labour registrations and interacting with government officials in Gujarat, Chhattisgarh, Maharashtra, and Madhya Pradesh, this article will highlight the challenges faced at the ground level as the labour law regime gets overhauled. Before delving into this analysis, we will contextualize the discussion by outlining the changes taking place in the labour registration regime.

BACKGROUND: CHANGES TO REGISTRATION-RELATED PROVISIONS

Labour laws in India provide for two types of registrations with respect to the informal sector: establishment registration and direct workers' registration. While in the former, social security benefits are conferred on workers only if the establishment is registered, the latter directly entitles workers to social security benefits. As per the old labour law regime, Unorganized Workers⁴⁹ and Building and other

⁴⁷ Punia, K. (2020, March 12). *Future of unemployment and the informal sector of India*. Observer Researcher Foundation. <https://www.orfonline.org/expert-speak/future-of-unemployment-and-the-informal-sector-of-india-63190/>

⁴⁸ Two sets of rules have been formulated under the Code on Wages, of which one, that is, Code on Wage (Central Advisory Board) Rules, 2021 (Central) has been notified.

⁴⁹ Regulated by the Unorganised Workers Social Security Act, 2008 (UOW Act).

Construction Workers ('construction workers')⁵⁰ are eligible for self-registration. Upon registration, workers falling under each of these categories are entitled to some level of social security, as described below.

- The Unorganised Workers Social Security Act, 2008 ('UOW Act'), places a duty upon the state and central governments to formulate schemes to provide social security benefits to registered workers.
- Under the BOCW (Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, registered workers are entitled to a package of benefits (including pension, maternity benefits, medical expenses, etc.) funded through the collection of cess from the employer.

The new Code has largely retained the existing framework. The Code distinguishes between unorganized and construction workers and replicates the scheme and cess-based social security systems for the two, respectively. There are, however, some minor differences in the definitions of the different categories. The Code has also added two new categories—gig workers and platform workers—which are dealt with similarly as unorganized workers. Apart from this, the main changes are in the registration procedure, which will be discussed below. As both the old and new systems empower unorganized and construction workers to directly register, the rest of this article highlights ambiguities in the design and process of self-registration with specific reference to unorganized and construction workers under both systems.

AMBIGUITY ON THE LEGISLATIVE BACKING OF E-SHRAM

One of the biggest reasons for confusion on the ground is that there is no clarity on the statutory backing of the E-Shram portal. It is unclear whether the E-Shram portal is based on the old UOW Act or the new Code on Social Security, 2020.

There is some evidence to suggest that E-Shram is under the new codes. *First*, the process of E-Shram registration mirrors the process laid out in Rules 47 and 50 of the draft rules on social security. The draft rules specifically mention that registration will be conducted through an online portal linked to Aadhaar, as is the case in E-Shram. *Second*, the

⁵⁰ Regulated by the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

eligibility criteria mentioned on the E-Shram portal (16–59 years) is almost identical to the criteria laid out in Section 106 of the Code on Social Security, 2020, for construction workers. *Third*, in preparation for the roll out of E-Shram, the Ministry of Labour and Employment notified Section 142 of the Code on Social Security, 2020, which makes Aadhaar compulsory for unorganized workers to register 'as member[s] or beneficiar[ies]' under the Code. E-Shram, an Aadhaar-based unorganized workers registration portal, was launched soon after the notification of Section 142, which further strengthens the argument that E-Shram has been developed pursuant to the new Code.

However, the Code as a whole has not yet been notified. The notification of Section 142 in isolation, without the notification of registration-related provisions in the Code that Section 142 is to be read with is, as argued by Yajat Kumar, a constitutional anomaly.⁵¹ Furthermore, the draft rules have not been finalized or notified as of 22 November 2021. In light of this confusion, we filed a Right to Information (RTI) to the Gujarat Labour Department seeking the official notification as per which E-Shram has been formulated. The department did not specifically address our query and instead provided us with information about the process and benefits of E-Shram. Without notification of the parent Act and Rules regarding the implementation, E-Shram seems to be operating in a legislative vacuum, making it difficult to demand accountability from the state.⁵² This has created fertile conditions for confusion and chaos in implementation.

THE EMERGENCE OF PARALLEL REGISTRATION SYSTEMS

From our experience, the practical implications of this ambiguity on the ground can be seen in the emergence of parallel systems of registration under the old system and under E-Shram. In Chhattisgarh, workers presently can register themselves in the state's portal as per the UOW Act or the BOCW Act and avail benefits under the State Government's schemes. Until recently, the

⁵¹ Kumar, Y. (2021, November 8). The legality of Aadhaar seeding for social security purposes. Indian Constitutional Law and Philosophy. <https://indconlawphil.wordpress.com/2021/10/28/guest-post-the-legality-of-aadhaar-seeding-for-social-security-purposes/>

⁵² Kaushal, S. (2021, November 11). E-Shram: Gateway or gatekeeper to social security. Migrantscape. <https://migrantscape.wordpress.com/2021/11/11/e-shram-gateway-or-gatekeeper-to-social-security/>

State Government ran two portals under each of these Acts. The State Government has now created a new user-friendly joint self-registration portal, which allows both categories of workers to register. This portal was rolled out around August 2021, not long before the launch of the E-Shram portal. This has resulted in a curious situation wherein workers can either register themselves under the state or central system.

Despite parallel systems, mass registration drives are being conducted in collaboration with Common Service Centres (CSCs) across the state to register workers only under E-Shram. This is partly due to the heavy publicity that E-Shram has received over the past few months. However, the main reason for this is that states have been given targets for E-Shram registrations by the centre in pursuance of the *In re miseris* order. Most importantly, there have been no efforts to converge the two systems. Nor has the state taken any efforts to conduct simultaneous registrations under both systems through the ongoing registration drive. Considering that the documentation requirements for the two systems are similar (with the state system requiring a few additional documents), CSCs can easily be instructed to simultaneously register workers under the state system without mobilizing additional resources. On being asked why such convergence is not taking place, a district-level government official from a district labour department in Chhattisgarh responded that they are simply performing their mandate of registering workers as per the *In re miseris* order. According to him, since the Central Government's response to the Supreme Court order was to set up the E-Shram portal, the responsibility of the state government is restricted to E-Shram registrations. Such a selective reading of the Supreme Court order undermines the spirit of the order, which calls for the State and Centre to perform their duty of registering workers, encompassing all existing systems.

In Gujarat, the State Government has taken some steps towards convergence. Nevertheless, considerable ambiguity persists. Soon after the *In re miseris* order, the Gujarat government re-launched its U-Win Card Scheme under the UOW Act to register unorganized workers through an online portal. Concurrently, the Gujarat government launched E-Nirman, an online portal under the BOCW Act. U-Win was subsequently merged with E-Shram. However, E-Nirman is still functional, suggesting that workers can register under the central E-Shram system and the state E-Nirman system. Adding to the confusion, this is not the first time

that the Gujarat government has conducted registration drives. In 2015, mass registrations were done under U-Win. Similarly, construction workers' registration used to be conducted offline before the introduction of E-Nirman. This offline system is locally known as 'Lal Chaupdi' or 'red booklet', as workers would get red booklets upon registration. There has been no official communication on whether registrations done under U-Win before the recent drive or registrations under the Lal Chaupdi system will get carried over to E-Shram and/or E-Nirman. Ground experience so far suggests that no such convergence has been planned.

A somewhat similar picture emerges from Maharashtra and Madhya Pradesh. A perusal of the Maharashtra Labour Department website shows that the state has three registration systems. This includes registration under the UOW state rules, the BOCW state rules, and the state-specific Maharashtra Domestic Workers Welfare Board Act, 2008. Madhya Pradesh similarly has a system for registration of workers under the state-specific Madhya Pradesh Asangathit Karmkar Kalyan Adhinyam, 2003, and the BOCW state rules. Experience from the ground in both states confirms that E-Shram has superseded these systems without accounting for the existing infrastructure. Unlike Chhattisgarh and Gujarat, where registrations can still occur under the state system, state systems in Maharashtra and Madhya Pradesh seem to be defunct.

IMPLICATIONS OF THE PARALLEL SYSTEMS

The existence of parallel systems has resulted in the following complications.

Transfer of Data

There is no mechanism to carry over or transfer registrations between these parallel systems. This means that workers registered under the E-Nirman in Gujarat or the state UOW/BOCW systems in Chhattisgarh after the launch of E-Shram do not automatically get transferred to the E-Shram system. It also means that workers registered before the launch of E-Shram under the state systems (e.g., under the Lal Chaupdi or E-Nirman system in Gujarat, or under the U-WIN system in Gujarat before its convergence with E-Shram, or under the various state systems in Chhattisgarh, Maharashtra, or Madhya Pradesh) do not automatically get registered under E-Shram despite being eligible.

The validity of such State-based registrations going forward is also doubtful since there is no clarity in the

registration guidelines contained in Sections 106 and 113 of the Code and Rules 47 and 50 of the draft rules on whether registrations done before the commencement of the new Code will be carried over or subsumed in the new system. This is critical since the definitions of unorganized and construction workers have only been slightly modified. This means that most workers who were eligible under the old system will also be eligible under the new system.

More critically, the validity of E-Shram registrations as the new system comes into force is also an area of ambiguity since the legislative backing of E-Shram is not certain. If E-Shram is under the old law, we do not know how and if the registrations will get transferred to the new framework.

Entitlements and Benefits

While E-Shram and State systems in all the States discussed above have similar eligibility criteria, the entitlements are different. This means that workers registered at the same time under different systems will be entitled to different sets of entitlements. Since most registrations are taking place under E-Shram portal, workers are deprived of benefits under the old system, despite a framework for registrations. The fact that E-Shram's legislative backing is not clear only compounds these complications. If E-Shram is under the old acts, the registration should entitle workers to schemes formulated by the state under the old UOW and BOCW Acts. If E-Shram is under the new Code, there is no clarity in the Code on how and whether the existing schemes will be transferred over to the new system. Thus, whether those registered under E-Shram can avail benefits from schemes that are not mentioned on the E-Shram website is not clear. This becomes further complicated in the context of construction worker registrations since both the old BOCW Act and the new Code entitle registered beneficiaries to statutory entitlements such as a pension, maternity benefit, insurance, etc., that are not covered in the schemes listed under E-Shram. Since the legislative basis of E-Shram is not certain, one does not know whether the registered construction workers can assert their right to these statutory benefits and if so, then under what legal instrument. What is clear amidst this confusion is that the entitlements listed under E-Shram fall short of the benefits guaranteed by law under both the old and new systems. However, in the absence of clarity on the legislative backing of E-Shram, it becomes difficult to ascertain the exact bundle of rights that workers are entitled to.

Authorities

While the parallel regimes have created confusion about the exact nature of entitlements that registered workers are entitled to, and the status of these registrations, how registrations are currently taking place also makes it difficult to attribute responsibility and demand accountability. Since the legislative backing of E-Shram is not known, it is not clear which authority can be invoked to demand accountability and clarity on the nature of entitlements. While State Labour Departments are responsible in practice for ensuring the implementation of E-Shram, their duties cannot be traced to a statutorily binding instrument in the absence of legislative clarity. Moreover, ground experience suggests that state labour departments have been instructed to implement E-Shram, without any guidelines for managing the transition between the two systems. The National and State Social Security/Welfare Boards, created under the old Acts and new Code, could be called upon to clarify the confusion created by these dual systems. This is because the Boards are responsible for formulating and administering social security entitlements. However, since we do not know which legislative framework is currently in force, the exact nature of the Board's duties is unclear.

This is heightened because the Code and Rules are also silent on what will happen to the bodies set up under the old system. The structure and duties of the boards constituted under the old system have been largely retained in the new system with minor modifications. However, the Code does not provide details on whether the existing Board will be disbanded and reconstituted or whether a handover process will happen. In the absence of such clarity, it becomes difficult to attribute responsibility and thus demand accountability from duty-bearers during this transition.

In light of this ambiguity, there should ideally exist a system to converge the existing registration processes so that the workers can avail their entitlements under all operational schemes through a single registration. However, as discussed above, effective convergence is not taking place.

CONCLUSION

Without a mechanism to facilitate the transition from the old system to the new system, there is a high risk that registrations that are currently taking place will not provide enough tangible benefits for the informal workforce. The E-Shram exercise represented a valuable

opportunity to prepare the groundwork for a smooth transition. However, ambiguities surrounding the legislative basis of the E-Shram process have only compounded implementation issues on the ground. As our experience from Gujarat, Chhattisgarh, Maharashtra, and Madhya Pradesh has shown, there is very little clarity on how these various registration systems are meant to interact, leading to redundancies and confusion. The centre needs to act urgently to protect the rights of informal workers by providing clarity and setting up a clear mechanism for the transition. Most importantly, it needs to ensure that workers receive the social security entitlements that they require and deserve.

RECOMMENDATIONS

Based on our field experience, we recommend the following as immediate action points.

1. The central government must clarify the legislative backing on E-Shram.
2. State labour departments must transfer all old registrations to E-Shram.
3. State labour departments must proactively merge the existing multiple registration systems, including those under state acts that are not repealed by the new Code, to ensure that a single registration entitles labourers to benefits from all existing systems. While such a mechanism for merging is being developed, CSCs and other registration personnel should be instructed to register workers as per all systems that they are entitled to. Once the merging mechanism is in place, previously conducted registrations should be transferred to this singular system.
4. The Central and State Governments must clarify the entitlements that workers are registered to on registration under E-Shram and state systems and the process for availing these benefits.
5. The Central and State Governments must clarify how the following transitions will take place:
 - (a) Transfer of registrations conducted under previous systems.
 - (b) Transition of authorities responsible for administering labour registration systems from old to new.
 - (c) The transition of the various boards set up under the old laws.
 - (d) Transfer of budgetary allocations, specifically cess money under the BOCW system.
 - (e) Transfer of existing state and central schemes under the old laws as the new laws come into force.